



TUOLUMNE CITY SANITARY DISTRICT WASTEWATER TREATMENT PLANT UPGRADE

PROJECT NO. C-06-8247-210

CONSTRUCTION BIDDING DOCUMENTS VOLUME 1 - FRONT ENDS

MARCH 2021



TUOLUMNE CITY SANITARY DISTRICT
WASTEWATER TREATMENT PLANT UPGRADE

PROJECT NO. C-06-8247-210

CONSTRUCTION BIDDING DOCUMENTS
VOLUME 1 - FRONT ENDS

ISSUED FOR BIDS

MARCH 2021

18050 Box Factory Road, Tuolumne, CA 95379



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SECTION 00100
ADVERTISEMENT FOR BIDS

**Tuolumne City Sanitary District
Tuolumne, California, 95379
Wastewater Treatment Plant Improvement Project
Project No. 06-8247-210**

NOTICE IS HEREBY GIVEN that sealed bids will be received by the Tuolumne City Sanitary District, herein referred to as "TCSD and Owner", at the District Office up to 1:30 p.m. PST, Wednesday, June 23, 2021 for furnishing of all labor, materials, equipment, transportation, and services necessary for the completion of the public works project as defined below.

Sealed Bids for the construction of the Wastewater Treatment Plant Upgrade Project will be accepted **up until 1:30 p.m. PST, Wednesday, June 23, 2021** at the District Office located at 18050 Box Factory Road, Tuolumne, CA 95379. At such time bids will be immediately opened and tabulated by TCSD. Any bids received after the time specified shall be returned unopened.

The Bidding Documents are available in electronic form from the Public Purchase website, <https://www.publicpurchase.com/gems/tuolumnecsd.ca/buyer/public/home>. It is the responsibility of the CONTRACTOR to check the website for any addenda or questions for the project. Questions regarding the Bidding Documents shall be directed to Jeff Black, P.E. with Black Water Consulting Engineers, Inc. at jeff@blackwater-eng.com. Bidding Documents may also be obtained at CONTRACTOR'S or SUPPLIER'S expense at Sonora Blueprint, 730 Mono Way, Sonora, CA 95370. 209-532-5223.

Mandatory pre-bid job walk conference for both locations will begin at 9:00 a.m. PST, Wednesday, May 26, 2021 at the TCSD Wastewater Treatment Plant, 18050 Box Factory Road, Tuolumne, California. The sign in period will end promptly at 9:15 a.m. Contractors arriving after 9:15 a.m. will not be considered as attending.

The Issuing Office for review only of the Bidding Documents is the TCSD District Office, 18050 Box Factory Road, Tuolumne, CA 95379. Prospective bidders may examine the Bidding Documents at the Issuing Office on Monday through Friday between the hours of 9:00 a.m. to 3:00 p.m., closed for lunch from 12:00 p.m. to 1:00 p.m. and all observed Holidays.

The Project consists of modifications to the TCSD Wastewater Treatment Plant (WWTP). The WWTP is located at 18050 Box Factory Road, Tuolumne, California, 95379. The Project will have Base Bid work items and additive bid items. Base Bid items are the following: mobilization/demobilization, relining of the storage lagoon with shotcrete, installation of two floating brush aerators in the sludge lagoon, installation of three sludge pumps below grade adjacent to the integral clarifier, and SCADA improvements.

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Additive bid items include: 1) Site grading and paving to expand the concrete driveway; 2) Site grading and paving around the aeration basin; 3) Site grading and paving near the potable water pump house; and 4) Installation of a sewer effluent line east of the storage ponds. Bids will be received for a single prime contract.

The bidders shall remain anonymous while the pricing for the bid is being evaluated. The total Base Bid, plus any combination of zero or more Alternate Bids which are in the OWNER's best interest to accept, will form the basis for comparison of bids and determining the lowest bidder. The bidders shall be ranked using a numerical system, with number one (1) representing the lowest bidder. After the bids have been ranked, the bidders' identities shall be revealed for the evaluation of the non-cost portions of the bids.

Bid security shall be furnished in accordance with the Instructions to Bidders. Bidders shall submit proof of qualifications to perform the Work as described in the Instructions to Bidders.

Pursuant to Public Contract Code Section 22300, the successful Bidder may substitute certain securities for funds withheld by District to ensure his performance under the Contract.

Prospective Bidders shall be licensed Contractors in the State of California and shall be skilled and regularly engaged in the general class or type of work called for under the Contract. Each Bidder shall have a Class A California Contractor's license.

Prospective Bidders are notified that project financing is provided by the California Clean Water State Revolving Fund, which imposes contract requirements related to federal Davis Bacon wages and federal Disadvantaged Business Enterprises requirements, and American Iron and Steel requirements that are identified in the Bidding Documents and Contract Documents. An amendment to the financing agreement with the State Water Resources Control Board must be approved prior to construction of the Project.

In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the project is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code shall be paid to all workers engaged in performing the project. The Director of Industrial Relations has determined the general prevailing wage per diem rates for work in the locality in which the Project is to be performed. In accordance with California Labor Code Section 1773.2, copies of the applicable determinations of the Director are on file in the TCSD District Office and may be reviewed upon request.

Pursuant to California Labor Code Section 1771.1, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). A contractor may not bid, nor be listed as a subcontractor for any bid proposal submitted for public work without first registering with the DIR and paying the annual fee. Application and renewal are completed online at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

Attention is directed to the Federal minimum wage rate requirements. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial

Relations for similar classifications of labor, the CONTRACTOR and SUBCONTRACTORS shall pay not less than the higher wage rate. The OWNER will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determinations otherwise available for use by the CONTRACTOR and SUBCONTRACTORS, the CONTRACTOR and SUBCONTRACTORS shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question. The Tuolumne City Sanitary District and its Board of Directors reserves the right to reject any or all bids, and further reserves the right to waive any formalities or irregularities in the bids.

Owner: Tuolumne City Sanitary District
By: Dave Andres, Acting General Manager
Dates: May 6, 2021

PROJECT SITE DROP-INS WILL NOT BE ACCEPTED. INTERESTED PARTIES MUST CONTACT JEFF BLACK FOR SCHEDULING SITE VISITS IN ADDITION TO MANDATORY PRE-BID JOB WALK CONFERENCE ON MAY 26, 2021.

CWSRF required disclosure:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

END OF SECTION

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SECTION 00200
INSTRUCTIONS TO BIDDERS

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ARTICLE 1 DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. Issuing Office – The office from which the Bidding Documents are to be issued.

ARTICLE 2 COPIES OF BIDDING DOCUMENTS

- 2.1 Complete sets of the Bidding Documents may be obtained from the Issuing Office stated in the Advertisement or Invitation to Bid.
- 2.2 Complete sets of Bidding Documents shall be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 OWNER and ENGINEER, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 QUALIFICATIONS OF BIDDERS

- 3.1 To demonstrate BIDDER'S qualifications to perform the Work, each BIDDER must be prepared to submit at the time of Bid opening, upon OWNER'S request, written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
- 3.2 A BIDDER'S failure to submit required qualification information within the times indicated may disqualify BIDDER from receiving an award of the Contract.
- 3.3 No requirement in this Article 3 to submit information will prejudice the right of the OWNER to seek additional pertinent information regarding BIDDER'S qualifications.
- 3.4 BIDDER is advised to carefully review those portions of the Bid Form requiring BIDDER'S representations and certifications.
- 3.5 Each Bid must contain evidence of BIDDER'S qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract.
- 3.6 References must not be relatives of the CONTRACTOR'S representative or owners. The references given must be for clients with projects similar in nature to the work scope as outlined in the Specifications and performed within the last five years.

ARTICLE 4 SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.1 Site and Other Areas

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

4.2 Existing Site Conditions

- A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:
 - a. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Bidding Documents.
 - b. those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Bidding Documents.
 - c. reports and drawings known to the OWNER relating to Hazardous Environmental Conditions that have been identified at or adjacent to the site.
 - d. Technical Data contained in such reports and drawings.
2. OWNER will make copies of reports and drawings referenced above available to any BIDDER on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy BIDDER is entitled to rely, as provided in the General Conditions has been identified and established in the Supplementary Conditions. BIDDER is responsible for any interpretation or conclusion BIDDER draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER, or others.
- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS with respect to 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 5.06 of the General Conditions.

4.3 Site Visit and Testing by BIDDERS

- A. BIDDER shall conduct the required Site visit during normal working hours, Site visits will require an appointment and shall not disturb any ongoing operations at the Site.
- B. BIDDER is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent OWNER has control over the Site, and schedule permitting, the OWNER will provide BIDDER access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as BIDDER deems necessary for preparing and submitting a successful Bid. OWNER will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on OWNER'S authority regarding the Site.
- D. BIDDER shall comply with all applicable laws and regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by OWNER or by property owners or other entities controlling the site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. 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.

4.4 OWNER'S Safety Program

- A. Site visits and work at the Site may be governed by an OWNER safety program. As the General Conditions indicate, if an OWNER safety program exists, it will be noted in the Supplementary Conditions.

4.5 Other Work at the Site

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

ARTICLE 5 BIDDER'S REPRESENTATIONS

5.1 It is the responsibility of each BIDDER before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents.
- B. visit the Site, conduct a thorough, alert, visual examination of the Site and adjacent areas; and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work including but not limited to the American Iron and Steel requirements as mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference which apply to 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.
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions; especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. consider the information known to BIDDER itself; 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, 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; and (3) BIDDER'S safety precautions and programs.
- F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid 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 bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. become aware of the general nature of the work to be performed by OWNER and others at the Site 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.
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. agree that the submission of a Bid will constitute an incontrovertible representation by BIDDER and that BIDDER has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 PRE-BID CONFERENCE

- 6.1 A pre-Bid conference will be held at the time and location stated in the Invitation or Advertisement to Bid. Representatives of OWNER and ENGINEER will be present to discuss the Project. BIDDERS are required 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 7 INTERPRETATIONS AND ADDENDA

- 7.1 All questions about the meaning or intent of the Bidding Documents are to be submitted to ENGINEER in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Requests for an interpretation shall be made in writing to:

Black Water Consulting Engineers, Inc.

Attention: Jeff Black, President, P.E.

602 Lyell Drive

Modesto, CA 95356

Fax: (209) 222-4088

Email: jeff@blackwater-eng.com

Requests to clarify possible ambiguous or incomplete statements or designs require issuance of an addendum by the OWNER for the interpretation to become effective. All requests for clarifications shall be made in writing.

- 7.2 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 BID SECURITY

- 8.1 A Bid must be accompanied by Bid security made payable to OWNER in an amount of 5 percent of BIDDER'S maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- 8.2 The Bid security of the SUCCESSFUL BIDDER will be retained until OWNER awards the contract to such BIDDER, and 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 released. If the SUCCESSFUL BIDDER fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, OWNER may consider BIDDER to be in default, annul the Notice of Award, and the Bid security of that BIDDER will be forfeited. Such forfeiture shall be OWNER'S exclusive remedy if BIDDER defaults.
- 8.3 The Bid security of other BIDDERS that OWNER believes to not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 CONTRACT TIMES

- 9.1 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 LIQUIDATED DAMAGES

- 10.1 Provisions for liquidated damages, if any, for failure to timely attain Substantial Completion or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 SUBSTITUTE AND "OR EQUAL" ITEMS

- 11.1 The Contract for the Work, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or equal” or substitute materials and equipment subsequently approved by ENGINEER prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by ENGINEER as an “or equal” or substitute unless written request for approval has been submitted by BIDDER and has been received by ENGINEER at least 15 days prior to the date for the receipt of bids in the case of a proposed substitute and 5 days prior in the case of a proposed “or-equal”. Each such request shall comply with the requirements of Paragraph 7.04 and 7.05 of the General Conditions. Each such request shall include Manufacturer’s Certification letter for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and substitute statutes mandating domestic preference, if applicable. Refer to the American Iron and Steel Requirements section in these contract documents. The burden of proof of the merit of the proposed item is upon the BIDDER. ENGINEER’S decision of approval or disapproval of a proposed item will be final. If ENGINEER approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective BIDDERS. BIDDERS shall not rely upon approvals made in any other manner. Substitutes and “or equal” materials and equipment may be proposed by CONTRACTOR in accordance with Paragraphs 7.04 and 7.05 of the General Conditions after the Effective Date of the Contract.
- 11.2 All prices that BIDDER sets forth in its Bid shall be based on the presumption that the CONTRACTOR will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or equal” or substitution requests are made at BIDDER’S sole risk.
- 11.3 If an award is made, CONTRACTOR shall be allowed to submit proposed substitutes and “or equals” in accordance with the General Conditions.

ARTICLE 12 SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.1 If required by the bid documents, the apparent SUCCESSFUL BIDDER, and any other BIDDER so requested, shall within five days after Bid opening submit to OWNER a list of the subcontractors or suppliers proposed for the following portions of the Work: Electrical, Concrete.

If requested by OWNER, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such subcontractor, supplier, or other individual or entity. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed subcontractor, supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent SUCCESSFUL BIDDER to submit an acceptable substitute, in which case apparent SUCCESSFUL BIDDER shall submit substitute, BIDDER’S Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and OWNER may consider such price adjustment in evaluating Bids and making the Contract award.

- 12.2 If apparent SUCCESSFUL BIDDER declines to make any such substitution, OWNER may award the Contract to the next lowest responsible BIDDER that proposes to use acceptable subcontractors, suppliers, individuals, or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any BIDDER. Any subcontractor, supplier, individual, or entity so listed and against which OWNER or ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to subsequent revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 7.06 of the General Conditions.
- 12.3 CONTRACTOR shall not be required to employ any subcontractor, supplier, individual, or entity against whom CONTRACTOR has reasonable objection.
- 12.4 The CONTRACTOR shall not award work to subcontractor(s) in excess of the limits stated in SC 7.06A.

ARTICLE 13 PREPARATION OF BID

- 13.1 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form shall be completed in blue ink and the Bid Form signed in blue ink. Erasures or alterations shall be initialed in blue ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid items listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and BIDDER elects to not furnish pricing for such optional alternate item, then BIDDER may enter the words "No Bid" or "Not Applicable".
- 13.2 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- 13.3 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 partnership's address for receiving notices shall be shown.
- 13.4 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.
- 13.5 A Bid by an individual shall show the BIDDER'S name and address for receiving notices.
- 13.6 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.
- 13.7 All names shall be printed in blue ink below the signatures.

- 13.8 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.9 Postal and email addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10 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

14.1 Lump Sum

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

14.2 Allowances

- A. For cash allowances the Bid price shall include such amounts as the BIDDER deems proper for CONTRACTOR'S overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with paragraph 13.02.B of the General Conditions.

ARTICLE 15 SUBMITTAL OF BID

- 15.1 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 other documents required to be submitted under the terms of Article 7 of the Bid Form.
- 15.2 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of BIDDER, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED."
- A. Bids mailed through the United States Postal Service shall be addressed to Dave Andres, Acting General Manager, Tuolumne City Sanitary District, P.O. Box 1238, Tuolumne, CA, 95379.
- B. Bids sent through all other mailing services shall be addressed to Dave Andres, Acting General Manager, Tuolumne City Sanitary District, 18050 Box Factory Road, Tuolumne, CA, 95379.

ARTICLE 16 MODIFICATION AND WITHDRAWAL OF BID

- 16.1 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the BIDDER.
- 16.2 If a BIDDER wishes to modify its Bid prior to Bid opening, BIDDER must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.3 If within 24 hours after Bids are opened any BIDDER files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that BIDDER may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that BIDDER will be disqualified from further bidding on the Work.

ARTICLE 17 OPENING OF BIDS

- 17.1 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the Bids and alternates, if any, will be made available to BIDDERS after the opening of Bids.
- 17.2 Bids opened pursuant to Section 17.1 shall be considered public records subject to the Public Records Act (Act) (Government Code Section 6250 et. seq.) and available for inspection and copying by the public. BIDDER must specifically designate and clearly label as "CONFIDENTIAL" any and all materials or portions thereof they deem to contain trade secrets or other proprietary information exempt under the Act including citation of the code section of the Act the BIDDER contends applies, together with a brief summary as to why BIDDER contends the exemption applies. If a BIDDER does not clearly identify the "CONFIDENTIAL" portions, OWNER will not notify the BIDDER that its BID will be made available for inspection. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," OWNER will determine whether the material should be made available under the law. If OWNER determines that the material is not exempt and may be disclosed, OWNER will notify the BIDDER of the request and allow the BIDDER 10 working days to take appropriate action to prevent the OWNER'S disclosure of the records. If the BIDDER fails or neglects to take such action within said period, said failure shall constitute a waiver by BIDDER of any and all claims of exemption under the ACT and any liability of OWNER for releasing the information marked "CONFIDENTIAL" in the Bid. To the extent that OWNER withholds from disclosure all or any portion of BIDDER'S documents due to it being labeled "CONFIDENTIAL" or at BIDDER'S request, BIDDER shall indemnify, defend and hold harmless the OWNER from all damages, penalties, attorneys' fees and costs the OWNER incurs related to withholding information from public disclosure, including any legal action challenging the nondisclosure. By submitting a Bid, the BIDDER consents to the procedure and legal obligations outlined in this section and shall have no claim against OWNER by reason of actions taken under this procedure.

ARTICLE 18 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.1 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, at 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

- 19.1 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER will reject the Bid of any BIDDER that OWNER finds, after reasonable inquiry and evaluation, to not be responsible. If BIDDER purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the OWNER will reject the Bid as nonresponsive; provided that OWNER also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.
- 19.2 If OWNER awards the contract for the Work, such award shall be to the responsible BIDDER submitting the lowest responsive Bid.
- 19.3 Evaluation of Bids
- A. In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
 - B. The method used to determine the lowest bid shall be in compliance with the California Public Contract Code, §20103.8.
 - C. The bidders shall remain anonymous while the pricing for the bid is being evaluated in accordance with California Public Contract Code, §20103.8 (d). The total Base Bid, plus any combination of zero or more Alternate Bids which are in the OWNER's best interest to accept, will form the basis for comparison of bids and determining the lowest bidder. The bidders shall be ranked using a numerical system, with number one (1) representing the lowest bidder. After the bids have been ranked, the bidders' identities shall be revealed for the evaluation of the non-cost portions of the bids. In evaluating whether a BIDDER is responsible, OWNER will consider the qualifications of the BIDDER and may consider the qualifications and experience of subcontractors and suppliers proposed for those portions of the Work for which the identity of subcontractors and suppliers must be submitted as provided in the Supplementary Conditions.
- 19.4 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of BIDDERS and any proposed subcontractors or suppliers.
- 19.5 After determination of the lowest bid based on the process described above and on the responsiveness, responsibility, and other factors set forth in the Contract Documents, the award may be made to said SUCCESSFUL BIDDER on its base bid and any combination of its additive bid items for which the OWNER determines funds will be available at the time of award.

ARTICLE 20 FILING OF BID PROTESTS

20.1 Bidders may file a “protest” of a bid with the District. In order for a Bidder’s protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific District staff determination or recommendation being protested;
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at the time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, the District shall review the basis of the protest and all relevant information. The District will provide a written decision to the protestor. The protestor may then appeal the decision of the DISTRICT GENERAL MANAGER to the DISTRICT LEGAL COUNSEL.

ARTICLE 21 BONDS AND INSURANCE

21.1 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER’S requirements as to performance and payment bonds and insurance. When the SUCCESSFUL BIDDER delivers the Agreement (executed by SUCCESSFUL BIDDER) to OWNER, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 22 SIGNING OF AGREEMENT

22.1 When OWNER issues a Notice of Award to the SUCCESSFUL BIDDER, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, SUCCESSFUL BIDDER shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to OWNER. Within ten days thereafter, OWNER shall deliver one fully executed counterpart of the Agreement to SUCCESSFUL BIDDER, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 23 SALES AND USE TAXES

23.1 Refer to Paragraph SC-7.09 for the payment or non-payment of Sales and Use Taxes.

ARTICLE 24 CONTRACTS TO BE ASSIGNED

- 24.1 There are no direct purchase procurement contracts previously made by the OWNER that the CONTRACTOR will be required to accept.

ARTICLE 25 FEDERAL REQUIREMENTS

- 25.1 Federal requirements at Article 19 of the Supplementary Conditions (SC-19) apply to this Contract.
- 25.2 American Iron and Steel Requirements in Attachment 1 of these contract documents apply to this contract.

ARTICLE 26 WORKERS' COMPENSATION REQUIREMENTS

- 26.1 As required by Section 1860 of the California Labor Code and in accordance with the provisions of Section 3700 of the Labor Code, every CONTRACTOR will be required to secure the payment of workers' compensation to its employees.
- 26.2 In accordance with Section 1861 of the California Labor Code, the CONTRACTOR shall furnish the OWNER with a statement as follows: "I am aware of the provisions of 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

ARTICLE 27 WAGE RATE REQUIREMENTS

- 27.1 The prevailing wage rates of the State of California apply to this contract as do any requirements of the State of California associated with the use of these State Prevailing wages.
- 27.2 Prevailing Wages: Notice is hereby given that, pursuant to 1773 of the Labor Code of the State of California, the OWNER has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work for each craft, classification, or type of worker required to execute the contract.

A copy of said prevailing rate of per diem wages is on file in the principal office of the OWNER, to which reference is hereby made for further particulars. Said prevailing rate of per diem wages will be made available to any interested party upon request, and a copy thereof shall be posted at each job site.

- 27.3 Statutory Penalty For Failure to Pay Minimum Wages: In accordance with 1775 (a) through (c) of the California Labor Code, the CONTRACTOR shall as a penalty to the State or political subdivision on whose behalf a contract is made or awarded, forfeit not more than two hundred dollars (\$200.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the CONTRACTOR or, except as provided in subdivision 1775 (b), by any subcontractor under the CONTRACTOR.
- 27.4 Statutory Penalty for Unauthorized Overtime Work: In accordance with Section 1813 of the California Labor Code, the CONTRACTOR shall as a penalty to the State or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which said worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of Sections 1810-1815 of the California Labor Code.
- 27.5 Apprenticeship Requirements: CONTRACTOR agrees to comply with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code relating to the employment of apprentices. The responsibility for compliance with these provisions is fixed with the PRIME CONTRACTOR for all apprenticeship occupations. Under these sections of the law, contractors and subcontractors must employ apprentices in apprenticeship occupations, where journeymen in the craft are employed on the public work, in a ratio of not less than one apprentice hour for each five journeymen hours (unless an exemption is granted in accordance with 1777.5) and contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the ground of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in 3077 of the Labor Code. Only apprentices, as defined in 3077, which provides that an apprentice must be at least 16 years of age, who are in training under apprenticeship standards and who have signed written apprentice agreements will be employed on public works in apprenticeship occupations.
- 27.6 Payroll Records: CONTRACTOR shall keep accurate payroll records in format specified by the Division of Labor Standards Enforcement. Said information shall include, but not be limited to, a record of the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice, or worker employed by the CONTRACTOR. Copies of such record shall be made available for inspection at all reasonable hours, and a copy shall be made available to employee or his authorized representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards in compliance with California Labor Code, Section 1776. CONTRACTOR and subcontractors shall furnish and submit electronic certified payrolls directly to the Labor Commissioner, and duplicate copies available to the OWNER.

ARTICLE 28 REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS

- 28.1 This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code Section 1711.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.

ARTICLE 29 MAJOR EQUIPMENT ITEMS

- 29.1 Certain items of major equipment to be provided under this Contract are tabulated in Section 00433 Schedule of Manufacturers and Suppliers, Major Equipment, and Material Items. The BIDDER shall write in the name of the manufacturer for each major equipment item and submit this form with its bid. By so indicating, the BIDDER warrants that equipment manufactured and/or supplied by the named manufacturer will be provided on the Project unless review of submittal information or performance under tests reveals that the equipment does not meet the Contract Requirements. Failure to indicate a manufacturer for any single item of the equipment listed in the schedule may render the bid unresponsive to the Invitation to Bid and may be a basis for rejection of the bid.

END OF SECTION

SECTION 00205
BLIND BID PROCEDURES

PART 1 GENERAL

1.01 SUBMITTING BIDS AND BID OPENING

- A. All bids must be submitted anonymously in sealed, pre-labeled Bid Envelopes per the requirements in the issued Blind Bid Procedures and delivered to the TCSD District Office at 18050 Box Factory Road, Tuolumne, California 95379, on or before 1:30 p.m. PST, Wednesday, June 23, 2021.
- B. Said bids shall be opened and read aloud by the OWNER'S Representative as specified in Section 00100 Advertisement for Bids.
- C. The BIDDER must satisfy themselves by personal examination of the location of the proposed Work and by such other means as they prefer as to the actual conditions and requirements of the Work. It is the sole responsibility of the BIDDER to ensure that their bid is received in proper time and at the proper location and in the proper format. Any bid received after the scheduled closing time for receipt of bids or any bid received with any markings other than the pre-assigned label shall be returned to the BIDDER unopened.

1.02 ALTERNATE (ADDITIVE OR DEDUCTIVE) BID ITEMS

- A. BIDDERS will be required to submit Alternate Bids on several additive or deductive items. Alternate bids may be accepted at the option of the OWNER. The total Base Bid, plus any combination of zero or more Alternate Bids which are in the OWNER'S best interest to accept, will form the basis for the comparison of bids and determining the low bidder. BIDDERS are instructed to thoroughly familiarize themselves with the bidding procedure described herein.
- B. Bid Forms and pre-labeled Bid Envelopes with pre-assigned Bid Registration numbers will be required for submitting bids anonymously. These Forms and Envelopes will be distributed to BIDDERS at the Mandatory Pre-Bid Conference where Bidding Procedures will be reviewed.

1.03 CONTACT INFORMATION

- A. BIDDERS shall submit all questions to Jeff Black at jeff@blackwater-eng.com.

1.04 BIDDING PROCEDURES

- A. Per Public Contract Code Section 20103.8 (d) a “blind” selection of Additive and Deductive items (Alternate Bid Items) will be implemented. To receive consideration, all bids shall be made in accordance with the following instructions:
1. Bid Forms: Bids shall be written upon the following Bid Forms provided therefor, properly executed and with all items filled out; numbers shall be stated both in writing and in figures:
 - a. Short Bid Form: The Short Bid Form shall only contain BIDDER’S Bid Prices for the Base Bid, Bid Prices for Alternate Bid Items, and acknowledgement of Addenda. BIDDERS providing identifying information other than Registration Number on the Short Form will be rejected as being non-responsive to the Bidding Procedures.
 - b. Long Bid Form: The Long Bid Form shall contain BIDDER’S identifying information in addition to the information provided on the Short Bid Form; Bid Prices for the Base Bid, Bid Prices for Alternate Bid Items, and acknowledgement of Addenda. BIDDER’S Bond and other requirements as set forth in these Instructions shall be submitted as part of the Long Bid Form. The signature of all persons signing shall be in longhand.
 2. Bid Envelopes: Bid Envelopes prelabeled with a pre-assigned Bid Registration Number and containing Bid Forms will be distributed to BIDDERS at the Mandatory Pre-Bid Conference. Completed Bid Forms must be inserted into the proper Bid Envelopes and submitted as described below to receive consideration. Bid Envelopes shall not contain identifying information. Bid Envelopes providing identifying information other than Registration Number on the Short Form will be rejected as being non-responsive to the Bidding Procedures.
 - a. Short Bid Envelope (small) for Short Bid Form: The Short Bid Envelope shall be prelabeled “SHORT BID FORM” and shall exhibit the project name and a matching, pre-assigned Bid Registration Number to the one on the medium-sized, Long Bid Envelope containing the Long Bid Form. The Short Bid Form, completed as described above, shall be inserted in the Short Bid Envelope.
 - b. Long Bid Envelope (medium) for Long Bid Form: The Long Bid Envelope shall be prelabeled “LONG BID FORM” and shall exhibit the project name and a matching, pre-assigned Bid Registration Number to the one on the small, Short Bid Envelope containing the Short Bid Form. The Long Bid Form, completed as described above, shall be inserted in the Long Bid Envelope. All required documents except the Short Bid Form shall be included in the Long Bid Envelope.
 - c. Large Envelope: The Large Envelope shall be pre-labeled and shall exhibit the project name only. The Large Envelope will not exhibit a Bid Registration or any other identifying information. Both the Long Bid Envelope containing the Long Bid Form and the Short Bid Envelope containing the Short Bid Form shall be sealed and inserted into the Large Envelope.
 3. Delivery
 - a. Hand Delivery: The Large Envelope, containing both the Long Bid Envelope and the Short Bid Envelope shall be sealed and submitted prior to the Time and Place established for Receiving Bids.
 - b. Mail or Courier Delivery: The Large Envelope, containing both the Long Bid Envelope and the Short Bid Envelope shall be sealed and inserted into another

envelope or package exhibiting addresses or other identifying information as required for delivery of the envelope or package to the place established for receiving bids. Upon receipt of envelope or package, the delivery envelope or package will be destroyed so that no remaining identifying information remains on the Large Envelope. BIDDERS submitting Bid Packages via mail or courier delivery are strongly encouraged to notify Brenda Bonillo at 209-928-3517 that a Bid is being delivered in this manner.

It is the responsibility of the BIDDER to see that their bid package is submitted with sufficient time to be received by the Purchasing Manager prior to the bid closing time. The receiving time in the Purchasing Managers Office will be the governing time for acceptability of proposals.

Late bids are not accepted regardless of postmark and will be returned unopened to the sender.

4. Alternate Proposals: Bids shall not contain any recapitulations of the Work to be done. Alternate proposals will not be considered unless specifically called for.
5. Addenda: Any Addenda issued before the time in which to submit bids expires shall form a part of the Contract Documents and shall be covered in the bid. Each BIDDER shall confirm receipt of any and all addenda in the space provided on the Bid Forms.
6. Subcontractor List: All BIDDERS must submit with their Long Form Bids a list of all proposed Subcontractors in compliance with Sections 4100 through 4113 inclusive of the State Public Contract Code. Forms for this designation are furnished with the Long Bid Form
7. Sales Taxes: BIDDER shall include in their Bids any and all Federal, State and Local taxes of whatever nature in connection with material to be furnished to the OWNER. Absolutely no extras shall be allowed for such by OWNER.
8. Bid Opening: The opening of Bids shall commence on the above specified date at approximately 1:30 p.m. PST at the TCSD District Office.
 - a. Short Bid Form Opening: The Large Envelope, containing both the Long Bid Envelope and the Short Bid Envelope shall be opened at the bid opening. The Long Bid Envelope will be set aside, and the Short Bid Envelope will be opened, and bids read aloud by the OWNER'S Representative. Per the bid submission requirements, no identifying information of BIDDERS will be known or revealed at this time.
 - b. Adjournment of Bid Opening: In order to implement a "blind" selection of Alternate Bid Items per Public Contract Code Section 20103.8(d), the OWNER'S Representatives will convene privately at this time to consider the bids for Alternate Bid Items and establish the order of acceptance of said items for determination of low bidder. The County reserves the right to reject any or all bids or to waive any informality in any bid.

The length of the Adjournment is scheduled for approximately 15 minutes. BIDDERS and the public may remain at the public meeting place with the OWNER'S Representative who will be retaining the Long Bid Envelopes.
 - c. Same Day Reconvention of Bid Opening: Immediately following the above Adjournment, the OWNER'S Representatives shall reconvene at the TCSD District Office to present the established order of Alternate Bid Items for determining the low bidder and to continue the Bid Opening. The OWNER'S

Representative shall open the sealed Long Bid Form Envelopes and read aloud the bids on the Long Bid Form. The Long Bid Forms will contain identifying information for the BIDDERS and that information will be read aloud as well.

- d. Conflict in Short Form and Long Form: In the event of a conflict between a BIDDER'S Short Form and Long Form, the Short Form will take precedence.

PART 2 SHORT FORM BID PROPOSAL

Project: Tuolumne City Sanitary District Wastewater Treatment Plant Upgrade

Registration Number: _____

Note: (include number as listed on envelopes received at mandatory pre-bid meeting)

2.01 BIDDER REPRESENTATION

- A. In Submitting this Bid, BIDDER represents that:
BIDDER has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2.02 BASE BID SCHEDULE

Bid Item	Description	Amount (\$, in figures)
1	Mobilization/Demobilization	
2	Storage Lagoon Shotcrete Relining	
3	Sludge Lagoon Aerator Installation	
4	RAS Pump Installation	
5	Electrical Updates	
TOTAL BID FOR ALL UNIT PRICES:		
\$ _____ (in words)		\$ _____ (in figures)

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2.03 ALTERNATES

The following Alternate Bid may be accepted at the option of the OWNER. The Total Base Bid, plus any combination of zero or more Alternate Bids which are in the OWNER'S best interest to accept, will form the basis for the comparison of bids.

BID SCHEDULE – ADDITIVE BID ITEM A

Item	Description	Amount (\$, in figures)
A1	Driveway Concrete Paving	
	TOTAL ADDITIVE BID ITEM A AMOUNT (Sum of Bid Items A1)	\$ _____ (IN FIGURES)
	\$ _____ (in words)	

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

BID SCHEDULE – ADDITIVE BID ITEM B

Item	Description	Amount
B1	Aeration Basin Concrete Paving	
	TOTAL ADDITIVE BID ITEM B AMOUNT (Sum of Bid Items B1)	\$ _____ (IN FIGURES)
	\$ _____ (in words)	

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

BID SCHEDULE – ADDITIVE BID ITEM C

Item	Description	Amount
C1	Pump House Concrete Paving	
	TOTAL ADDITIVE BID ITEM C AMOUNT (Sum of Bid Items C1)	
	\$ _____ (in words)	\$ _____ (IN FIGURES)

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

BID SCHEDULE – ADDITIVE BID ITEM D

Item	Description	Amount
D1	Effluent Line Relocation	
	TOTAL ADDITIVE BID ITEM D AMOUNT (Sum of Bid Items D1)	
	\$ _____ (in words)	\$ _____ (IN FIGURES)

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

END OF SECTION

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SECTION 00410
LONG BID FORM
TUOLUMNE CITY SANITARY DISTRICT
WASTEWATER TREATMENT PLANT UPGRADE PROJECT

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ARTICLE 1 BID RECIPIENT

1.1 This Bid is submitted to:

**Tuolumne City Sanitary District
18050 Box Factory Road
Tuolumne, CA 95379**

1.2 The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform 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

2.1 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 90 days after the Bid opening, or for such longer period of time that BIDDER may agree to in writing upon request of OWNER.

2.2 BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within {15} days after the date of OWNER'S Notice of Award.

ARTICLE 3 BIDDER'S REPRESENTATIONS

3.1 In submitting this Bid, BIDDER represents that:

A. BIDDER has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.

Addendum Date

B. BIDDER has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

- C. BIDDER is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress and performance of the Work, including all American Iron and Steel Requirements.
- D. BIDDER has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. BIDDER has considered the information known to BIDDER itself; 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 any 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; and (3) BIDDER'S safety precautions and programs.
- F. BIDDER agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price 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 the Work to be performed by OWNER 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 confirms that the written resolution thereof by ENGINEER is acceptable to BIDDER.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by BIDDER that BIDDER has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.
- K. Where conflicts, errors, ambiguities or discrepancies have been discovered in or between Contract Documents and/or other related documents, and where said conflicts, etc., have not been resolved through interpretations or clarifications by ENGINEER as described in the Instructions to Bidders, because of insufficient time or otherwise, BIDDER has included in the Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a greater cost.

ARTICLE 4 BIDDER'S CERTIFICATION

4.1 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 4.1.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made to (a) to influence the bidding process to the detriment of OWNER, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive OWNER of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more BIDDERS, with or without the knowledge of OWNER, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 BASIS OF BID

- 5.1 BIDDER will complete the Work in accordance with the Contract Documents for the following price(s). Descriptions of the bid items are provided in Section 01110 Work Covered by Contract Documents.
- 5.2 BIDDER will submit Alternate Bids on several additive or deductive items. Alternate bids may be accepted at the option of the OWNER. The total Base Bid, plus any combination of zero or more Alternate Bids which are in the OWNER'S best interest to accept, will form the basis for comparison of bids and determining the lowest bidder. The bidders shall remain anonymous while the pricing for the bid is being evaluated. The OWNER shall review the prices and select the options it wants for Alternate Bid Items in the order of priority the OWNER shall choose at the time of the bid. The bidders shall be ranked using a numerical system, with number one (1) representing the lowest bidder. After the bids have been ranked, the bidders' identities shall be revealed for the evaluation of the non-cost portions of the bids.

BASE BID SCHEDULE

Bid Item	Description	Amount (\$, in figures)
1	Mobilization/Demobilization	
2	Storage Lagoon Shotcrete Relining	
3	Sludge Lagoon Aerator Installation	
4	RAS Pump Installation	
5	Electrical Updates	
TOTAL BID FOR ALL UNIT PRICES:		
\$ _____ <i>(in words)</i>		\$ _____ <i>(in figures)</i>

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

BID SCHEDULE – ADDITIVE BID ITEM A

Item	Description	Amount (\$, in figures)
A1	Driveway Concrete Paving	
	TOTAL ADDITIVE BID ITEM A AMOUNT (Sum of Bid Items A1)	
	\$ _____ (in words)	\$ _____ (in figures)

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

BID SCHEDULE – ADDITIVE BID ITEM B

Item	Description	Amount
B1	Aeration Basin Concrete Paving	
	TOTAL ADDITIVE BID ITEM B AMOUNT (Sum of Bid Items B1)	
	\$ _____ (in words)	\$ _____ (in figures)

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

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BID SCHEDULE – ADDITIVE BID ITEM C

Item	Description	Amount
C1	Pump House Concrete Paving	
	TOTAL ADDITIVE BID ITEM C AMOUNT (Sum of Bid Items C1)	
	\$ _____ (in words)	\$ _____ (in figures)

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

BID SCHEDULE – ADDITIVE BID ITEM D

Item	Description	Amount
D1	Effluent Line Relocation	
	TOTAL ADDITIVE BID ITEM D AMOUNT (Sum of Bid Items D1)	
	\$ _____ (in words)	\$ _____ (in figures)

BIDDER acknowledges that (1) each Bid Unit Price includes an amount considered by BIDDER to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item, and (2) 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.

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ARTICLE 6 TIME OF COMPLETION

- 6.1 BIDDER agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.2 BIDDER accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 ATTACHMENTS TO THIS BID

- 7.1 The following documents are attached to and made a condition of this Bid:
- A. Required Bid security;
 - B. List of Proposed Subcontractors;
 - C. Contractor Qualification Statement and References;
 - D. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - E. CONTRACTOR'S License No.: _____
 - F. Non-Collusion Affidavit;
 - G. Workers Compensation Certification;
 - H. Manufacturer's Certification Letter of Compliance with American Iron and Steel Requirements for all equals and substitutes approved by Addenda. (if applicable);
 - I. Disadvantaged Business Enterprise requirements completed, SWRCB form 4500-3 and 4500-4;
 - J. Contractor DIR Registration No.: _____
 - K. Schedule of Manufacturers and Suppliers Major Equipment and Material Items.

ARTICLE 8 DEFINED TERMS

- 8.1 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 9 BID SUBMITTAL

Bidder Name: _____

Submittal Date: _____

Address for giving notices: _____

Telephone Number: _____ Fax Number: _____

Contact Name and email address: _____

State Contractor's License Number: _____

Employer's Tax ID No.: _____

Contractor DIR Registration No.: _____

If BIDDER is:

An Individual

Name (typed or printed): _____

By: _____

(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

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: _____

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(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Attest: _____
(Signature of Corporate Secretary)

Date of Qualification to do business in California is _____

A Joint Venture

Name of Joint Venture Partner: _____

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 venture partner 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.)

END OF SECTION

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SECTION 00415

BID BOND

Any singular reference to BIDDER, SURETY, OWNER or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name -- Include Location*):

BOND

Bond Number: _____ Date: _____

Penal sum _____ \$ _____
(Words) (Figures)

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

BIDDER

SURETY

(Seal)
BIDDER'S Name and Corporate Seal

(Seal)
SURETY'S Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

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Title: _____

Title: _____

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

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

1. BIDDER and SURETY, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to OWNER upon default of BIDDER the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of BIDDER'S and SURETY'S liability. Recovery of such penal sum under the terms of this Bond shall be OWNER'S sole and exclusive remedy upon default of BIDDER.
2. Default of BIDDER shall occur upon the failure of BIDDER to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 OWNER accepts BIDDER'S Bid and BIDDER delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by OWNER, or
 - 3.3 OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by BIDDER and, if applicable, consented to by SURETY when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of BIDDER and within 30 calendar days after receipt by BIDDER and SURETY of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. SURETY waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and BIDDER, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without SURETY'S written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by BIDDER and SURETY and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

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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.

END OF SECTION

00415-3

SECTION 00433

**SCHEDULE OF MANUFACTURERS AND SUPPLIERS
MAJOR EQUIPMENT AND MATERIAL ITEMS**

In accordance with Section 00 21 13 Instruction to Bidders, Article 28, Major Equipment Items, the bidder proposes that the named items of major equipment and materials will be supplied by the manufacturers or suppliers as written in by the bidder.

<u>Item</u>	<u>Manufacturer or Supplier</u>
1. Floating Brush Aerators	
2. RAS Pumps	

Name of Bidder

END OF SECTION

00433-1

SECTION 00435

LIST OF SUBCONTRACTORS

NOTE: In accordance with Supplementary Condition SC-7.06.A- the CONTRACTOR shall not award work valued at more than fifty percent (50%) of the Contract Price to subcontractors without prior written approval of the OWNER.

Pursuant to California Public Contracting Code, Section 4100 et. Seq., the following list gives the work to be performed, name, and business address for each subcontractor that will be used in the work if the BIDDER is awarded the Contract.

Work to be Performed	Percent of Total Contract	Subcontractor's Name and Location of Business	DIR Registration Number	Contractor License

(Add additional sheets if necessary.)

BIDDER: _____

DATE: _____

END OF SECTION

00435-1

SECTION 00450

CONTRACTOR'S QUALIFICATION STATEMENT AND REFERENCES

PART 1 GENERAL

1.01 QUALIFICATIONS

- A. The BIDDER must demonstrate a minimum of five (5) years' experience in projects similar in nature and scope to this Project. At least two Key Personnel employed by the BIDDER must have completed at least three (3) projects, similar in scope and nature to the Project being bid as an employee of the company bidding this Project (or as the employee of a similarly qualified company) within the last five (5) years. The BIDDER must demonstrate Successful Completion during the last five (5) years of at least one project comparable in nature and scope to this Project and one project with a dollar value of at least 60 percent of the value bid for this Project. The BIDDER must have an employee, to be dedicated to this Project, who is experienced in scheduling, with demonstrated ability in employing scheduling techniques similar to those to be used for this Project.

1.02 DEFINITIONS

- A. Key Personnel: Defined as individual who will be directly assigned to this Project. Includes, but is not limited to, the OWNER, the Principals of the BIDDER, the PROJECT MANAGER, the PROJECT SUPERINTENDENT, the SCHEDULER, the BIDDER'S CONSTRUCTION ENGINEER, and Supervisory personnel such as the Foremen who will be directly assigned to this Project. Resumes of Key Personnel must be submitted and accepted by the OWNER in order for BIDDER to receive the Award. (Resumes are not due at bid time.)
- B. Successful Completion: Defined as completion of a project on time, which generally means no more than thirty (30) days later than the original contract time allocated. It also means within budget, which generally means within 5 percent of the original contract price. If there is any project submitted by the BIDDER as qualifying, but which does not meet these requirements, in order to be fully responsive the BIDDER is required to submit detailed information on that project demonstrating what caused the increases to cost or time. The name and telephone numbers of the DESIGN ENGINEER and the Client are to be provided for evaluation to determine whether the Project may be considered successful. For any project where liquidated damages were assessed, the BIDDER will not be considered to have been on time.

1.03 PROJECT EXPERIENCE AND REFERENCES

- A. List three projects of this type recently completed.

Project Description	Owner's Name, Address and Phone Number	Design Engineer's Name, Address and Phone Number	Date Completed	Contract Amount

END OF SECTION

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SECTION 00455

**NON-COLLUSION AFFIDAVIT
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

(Public Contract Code Section 7106)

State of California

County of _____

_____ being first duly sworn, deposes and

says that he or she is _____ of _____ ,
the party making the foregoing Bid, that the Bid is not made in the interest of, or on behalf of,
any undisclosed person, partnership, company, association, organization, or corporation; that
the Bid is genuine and not collusive or sham; that the BIDDER has not directly or indirectly
colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or
that anyone shall refrain from bidding; that the BIDDER has not in any manner, directly or
indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price
of the BIDDER or any other bidder, or to fix any overhead, profit, or cost element of the Bid
price, or of that of any other bidder, or to secure any advantage against the public body
awarding the contract of anyone interested in the proposed contract; that all statements
contained in the Bid are true; and further that the BIDDER has not, directly or indirectly,
submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged
information or data relative thereto, or paid, and will not pay, any fee to any corporation,
partnership, company association, organization, bid depository, or to any member or agent
thereof to effectuate a collusive or sham bid.

By _____

Subscribed and sworn to before me on _____
(date)

(Notary Public)

END OF SECTION

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SECTION 00457

**CONTRACTOR'S CERTIFICATION REGARDING
WORKERS' COMPENSATION INSURANCE**

State of California

County of _____

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

(Name of Contractor)

By: _____

(Signature of Contractor)

Date: _____

END OF SECTION

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SECTION 00510
NOTICE OF AWARD

Date of Issuance: _____

Owner: _____ Owner's Contract No.: _____

Engineer: _____ Engineer's Project No.: _____

Project: _____ Contract Name: _____

Bidder: _____

Bidder's Address: _____

TO BIDDER:

You are notified that OWNER has accepted your Bid dated [_____] for the above Contract, and that you are the SUCCESSFUL BIDDER and are awarded a Contract for:

The Project includes construction of Wastewater Treatment Plant Upgrades. The Project consists of modifications to the existing TCSD Wastewater Treatment Plant (WWTP). The existing WWTP is located at 18050 Box Factory Road, Tuolumne, CA 95379. The Project will have Base Bid work items and additive bid items. Base Bid items are the following: relining of the existing storage lagoon with shotcrete, installation of two floating brush aerators in the existing sludge lagoon, installation of three sludge pumps below grade adjacent to the existing integral clarifier, and electrical improvements.

Additive bid items include, in ascending numerical sequence for bid comparison: 1) Site grading and paving to expand the existing concrete driveway; 2) Site grading and paving near the existing potable water pump house; 3) Site grading and paving around the existing aeration basin; and 4) Installation of a sewer effluent line east of the storage ponds. Bids will be received for a single prime contract.

The Contract Price of the awarded Contract is: \$ _____

[] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

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[] sets of the Drawings will be delivered separately from the other Contract Documents.

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

1. Deliver to OWNER [] counterparts of the Agreement, fully executed by BIDDER.
2. Deliver with the executed Agreement(s) the Contract security [e.g., performance and payment bonds] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

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 Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: _____

Authorized Signature

By: _____

Title: _____

Copy: ENGINEER

END OF SECTION

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SECTION 00520

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

THIS AGREEMENT is by and

between _____ (“OWNER”) and

_____ (“CONTRACTOR”).

OWNER and CONTRACTOR hereby agree as follows:

ARTICLE 1 WORK

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

ARTICLE 2 THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

The Project consists of modifications to the TCSD Wastewater Treatment Plant (WWTP). The WWTP is located at 18050 Box Factory Road, Tuolumne, California, 95379. The Project will have Base Bid work items and additive bid items. Base Bid items are the following: relining of the existing storage lagoon with shotcrete, installation of two floating brush aerators in the existing sludge lagoon, installation of three sludge pumps below grade adjacent to the existing integral clarifier, and electrical improvements.

Additive bid items include, in ascending numerical sequence for bid comparison: 1) Site grading and paving to expand the existing concrete driveway; 2) Site grading and paving near the existing potable water pump house; 3) Site grading and paving around the existing aeration basin; and 4) Installation of a sewer effluent line east of the storage ponds.

ARTICLE 3 ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by Black Water Consulting Engineers, Inc.
- 3.02 The OWNER has retained Black Water Consulting Engineers, Inc. ("ENGINEER") to act as OWNER'S Representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 CONTRACT TIMES

4.01 Time of the Essence

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

4.02 Contract Times: Days

- A. The Work will be substantially completed within 180 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 210 calendar days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

- A. CONTRACTOR and OWNER recognize that time is of the essence as stated in Paragraph 4.01 above and that OWNER will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: CONTRACTOR shall pay OWNER one thousand five hundred dollars (\$1500) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, CONTRACTOR shall pay OWNER one thousand dollars (\$1000) for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 Special Damages

- A. In addition to the amount provided for liquidated damages, CONTRACTOR shall reimburse OWNER (1) for any fines or penalties imposed on OWNER as a direct result of the CONTRACTOR'S failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by OWNER for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After CONTRACTOR achieves Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, CONTRACTOR shall reimburse OWNER for the actual costs reasonably incurred by OWNER for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, a lump sum of: \${_____}.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- 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 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment on or about the {_____} day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units

completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as OWNER may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 95 percent of Work completed (with the balance being retainage).
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - c. Pursuant to Public Contract Code section 22300, CONTRACTOR may substitute securities for any money withheld by DISTRICT to ensure performance under the Contract. At the request and expense of CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the DISTRICT, with the State or federally chartered bank as the escrow agent, who shall return such securities to the CONTRACTOR upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the DISTRICT, which provides that no portion of the securities shall be paid to the CONTRACTOR until the DISTRICT has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed.

- B. Upon Substantial Completion of the entire construction work to be provided under the Contract Documents, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Work completed, less such amounts as ENGINEER shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent of ENGINEER'S estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

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

ARTICLE 7 INTEREST

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

ARTICLE 8 CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Contract, CONTRACTOR makes the following representations:
 - A. CONTRACTOR has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

- B. CONTRACTOR has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. CONTRACTOR has considered the information known to CONTRACTOR itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR; and (3) CONTRACTOR'S safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, CONTRACTOR agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. CONTRACTOR'S entry into this Contract constitutes an incontrovertible representation by CONTRACTOR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to { }, inclusive).
 - 2. Performance bond (pages { } to { } inclusive).
 - 3. Payment bond (pages { } to { } inclusive).
 - 4. Other bonds.
 - a. { } (pages { } to { }, inclusive).
 - 5. General Conditions (pages { } to { }, inclusive).
 - 6. Supplementary Conditions (pages { } to { }, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of { } sheets with each sheet bearing the following general title: { } [or] the Drawings listed on the attached sheet index.
 - 9. Addenda (numbers { } to { }, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages { } to { }, inclusive).
 - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in 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. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written

consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 CONTRACTOR'S Certifications

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

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement.

This Agreement will be effective on { } (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

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

License No.: _____
(where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

00520-8

CERTIFICATE OF OWNER'S ATTORNEY

OWNER'S Name: _____

CONTRACTOR'S Name: _____

Contract Work Description: _____

Contract Date: _____

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

I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof. I also am of the opinion that the CONTRACTOR'S insurance coverage(s) complies with the requirements of the Contract.

(Attorney's Signature)

DATE: _____

END OF SECTION

00520-9

SECTION 00550
NOTICE TO PROCEED

Owner:		Owner's Contract No.:	
Contractor:		Contractor's Project No.:	
Engineer:		Engineer's Project No.:	
Project:		Contract Name:	
		Effective Date of Contract:	

TO CONTRACTOR:

OWNER hereby notifies CONTRACTOR that the Contract Times under the above Contract will commence to run on [_____, 20__]. *[see Paragraph 4.01 of the General Conditions]*

On that date, CONTRACTOR shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is_____].

Before starting any Work at the Site, CONTRACTOR must comply with the following:

Paragraph 2.01.B of the General Conditions provides that you must deliver to the OWNER (with copies to ENGINEER and other identified additional insureds and loss payees) certificates of insurance you are required to purchase and maintain in accordance with the Contract Documents.

Owner: _____

Authorized Signature

By: _____

Title: _____

Date: _____

Copy: ENGINEER

END OF SECTION

00550-1

SECTION 00610
PERFORMANCE BOND

CONTRACTOR *(name and address)*:

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

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Amount:

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

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

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

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

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

00610-1

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

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

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

3.1 The OWNER first provides notice to the CONTRACTOR and the SURETY that the OWNER is considering declaring a Contractor Default. Such notice shall indicate whether the OWNER is requesting a conference among the OWNER, CONTRACTOR, and SURETY to discuss the CONTRACTOR'S performance. If the OWNER does not request a conference, the SURETY may, within five (5) business days after receipt of the OWNER'S notice, request such a conference. If the SURETY timely requests a conference, the OWNER shall attend. Unless the OWNER agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the SURETY'S receipt of the OWNER'S notice. If the OWNER, the CONTRACTOR, and the SURETY agree, the CONTRACTOR shall be allowed a reasonable time to perform

the Construction Contract, but such an agreement shall not waive the OWNER'S right, if any, subsequently to declare a Contractor Default;

3.2 The OWNER declares a Contractor Default, terminates the Construction Contract and notifies the SURETY; and

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

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

5. When the OWNER has satisfied the conditions of Paragraph 3, the SURETY shall promptly and at the SURETY'S expense take one of the following actions:

5.1 Arrange for the CONTRACTOR, with the consent of the OWNER, to perform and complete the Construction Contract;

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

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by

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

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

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

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

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

enforce any remedy available to the OWNER.

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

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

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

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

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

9. The SURETY shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated

obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, successors, and assigns.

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

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

12. Notice to the SURETY, the OWNER, or the CONTRACTOR shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Construction Contract after all proper adjustments have been made including allowance for the CONTRACTOR for any amounts received or to be received by the OWNER in settlement of insurance or other claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Construction Contract.

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

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

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

14.5 Contract Documents: All the documents that comprise the agreement between the OWNER and CONTRACTOR.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term CONTRACTOR in this Bond shall be deemed to be SUBCONTRACTOR and the term OWNER shall be deemed to be CONTRACTOR.

16. Modifications to this Bond are as follows:

END OF SECTION

SECTION 00613

PAYMENT BOND

CONTRACTOR *(name and address)*:

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

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Amount:

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

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor'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

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

00613-1

1. The CONTRACTOR and SURETY, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the OWNER to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2. If the CONTRACTOR promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the OWNER from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the SURETY and the CONTRACTOR shall have no obligation under this Bond.

3. If there is no Owner Default under the Construction Contract, the SURETY'S obligation to the OWNER under this Bond shall arise after the OWNER has promptly notified the CONTRACTOR and the SURETY (at the address described in Paragraph 13) of claims, demands, liens, or suits against the OWNER or the OWNER'S property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the CONTRACTOR and the SURETY.

4. When the OWNER has satisfied the conditions in Paragraph 3, the SURETY shall promptly and at the SURETY'S expense defend, indemnify, and hold harmless the OWNER against a duly tendered claim, demand, lien, or suit.

5. The SURETY'S obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants who do not have a direct contract with the CONTRACTOR,

5.1.1 have furnished a written notice of nonpayment to the CONTRACTOR, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

5.1.2 have sent a Claim to the SURETY (at the address described in Paragraph 13).

5.2 Claimants who are employed by or have a direct contract with the CONTRACTOR have sent a Claim to the SURETY (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the OWNER to the CONTRACTOR, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the SURETY shall promptly and at the SURETY'S expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the OWNER, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.

7.3 The SURETY'S failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the SURETY or CONTRACTOR may have or acquire as to a Claim, except as to undisputed amounts for which the SURETY and Claimant have reached agreement. If, however, the SURETY fails to discharge its obligations under Paragraph 7.1 or 7.2, the SURETY shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The SURETY'S total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the SURETY.

9. Amounts owed by the OWNER to the CONTRACTOR under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Construction Contract are dedicated to

satisfy obligations of the CONTRACTOR and SURETY under this Bond, subject to the OWNER'S priority to use the funds for the completion of the work.

10. The SURETY shall not be liable to the OWNER, Claimants, or others for obligations of the CONTRACTOR that are unrelated to the Construction Contract. The OWNER shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

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

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the SURETY pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the SURETY, the OWNER, or the CONTRACTOR shall be

mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR and OWNER shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

16.1.1 The name of the Claimant;

16.1.2 The name of the person for whom the labor was done, or materials or equipment furnished;

16.1.3 A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;

16.1.4 A brief description of the labor, materials, or equipment furnished;

16.1.5 The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;

16.1.6 The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;

16.1.7 The total amount of previous payments received by the Claimant; and

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

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

labor, materials, or equipment were furnished.

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

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

16.5 Contract Documents: All the documents that comprise the agreement between the OWNER and CONTRACTOR.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term CONTRACTOR in this Bond shall be deemed to be SUBCONTRACTOR and the term OWNER shall be deemed to be CONTRACTOR.

18. Modifications to this Bond are as follows:

END OF SECTION

00615-1

Contractor's Application for Payment No.		
	Application Period:	Application Date:
To (Owner):	From (Contractor):	Via (Engineer):
Project:	Contract:	
Owner's Contract No:	Contractor's Project No.:	Engineer's Project No.:

**Application for Payment
Change Order Summary**

Approved Change Orders		
Number	Additions	Deductions
TOTALS NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE \$ _____
2. Net change by Change Orders..... \$ _____
3. Current Contract Price (Line 1 ± 2)..... \$ _____
4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... \$ _____
5. RETAINAGE:
 - a. X ____ Work Completed \$ _____
 - b. X ____ Stored Material..... \$ _____
 - c. Total Retainage (Line 5.a + Line 5.b) \$ _____
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ _____
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)... \$ _____
8. AMOUNT DUE THIS APPLICATION..... \$ _____
9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above) \$ _____

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

Is recommended by: _____
(Engineer) (Date)

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

Is approved by: _____
(Owner) (Date)

Approved by: _____
Funding or Financing Entity (if applicable) (Date)

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:
 (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
 (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and
 (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature

By:	Date:
-----	-------

PAYMENT REQUEST FORM

SECTION 00615

Contractor's Application

[illegible]

END OF SECTION

SECTION 00630
WARRANTY BOND

Whereas, the Board of Directors of the Tuolumne City Sanitary District, State of California, and _____ (hereinafter designated as "CONTRACTOR") have entered into a Contract whereby CONTRACTOR agrees to repair any improvements set forth in said Contract identified as Tuolumne City Sanitary District Wastewater Treatment Plant Upgrade and awarded by Resolution to CONTRACTOR on _____, 20____, is hereby referred to and made a part hereof, and

Whereas, the CONTRACTOR is required under the terms of said Contract to furnish a bond for the Warranty of Improvements of said Contract.

Now, therefore, we, the CONTRACTOR and _____ as SURETY, are held and firmly bound unto the Tuolumne City Sanitary District, hereinafter called "District" in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bond ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded CONTRACTOR, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said Contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Tuolumne City Sanitary District, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by DISTRICT in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

In witness whereof, this instrument has been duly executed by the CONTRACTOR and SURETY above named, on _____, 20____.

Name of Contractor

Name of Surety

Address

Address and Telephone

Signature of Contractor

Signature of Surety

APPROVED AS TO FORM:

APPROVED AS TO SUFFICIENCY:

_____, District Attorney

District Engineer

Attach Notary Form Here

END OF SECTION

00630-2

SECTION 00631
WORK CHANGE DIRECTIVE

Work Change Directive No. _____		
Date of Issuance: _____	Effective Date: _____	
Owner: _____	Owner's Contract No.: _____	
Contractor: _____	Contractor's Project No.: _____	
Engineer: _____	Engineer's Project No.: _____	
Project: _____	Contract Name: _____	

Contractor is directed to proceed promptly with the following change(s):
Description: _____

Attachments: *[List documents supporting change]*

Purpose for Work Change Directive:
Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*
☐ Non-agreement on pricing of proposed change.
☐ Necessity to proceed for schedule or other Project reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):
Contract Price: \$ _____ [increase] [decrease].
Contract Time: _____ days [increase] [decrease].

Basis of estimated change in Contract Price:
☐ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

RECOMMENDED:	AUTHORIZED BY:	RECEIVED:
By: _____ Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)
By: _____ Date: _____
Title: _____

END OF SECTION

00631-2

SECTION 00633

CHANGE ORDER

Change Order _____

Date of Issuance: _____
 Owner: _____
 Contractor: _____
 Engineer: _____
 Project: _____

Effective Date: _____
 Owner's Contract No.: _____
 Contractor's Project No.: _____
 Engineer's Project No.: _____
 Contract Name: _____

The Contract is modified as follows upon execution of this Change Order:
 Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: _____ Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:

By: _____
 Engineer (if required)

Title: _____

Date: _____

Approved by Funding Agency (if applicable)

By: _____
 Title: _____

AUTHORIZED BY:

By: _____
 Owner (Authorized Signature)

Title: _____

Date: _____

RECEIVED:

By: _____
 Contractor (Authorized Signature)

Title: _____

Date: _____

Date: _____

00633-1

END OF SECTION

00633-2

SECTION 00655

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:		Owner's Contract No.:	
Contractor:		Contractor's Project No.:	
Engineer:		Engineer's Project No.:	
Project:		Contract Name:	

This [preliminary] [final] Certificate of Substantial Completion applies to:

☐ All Work

☐ The following specified portions of the Work:

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 Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. 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.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon OWNER'S use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of OWNER and CONTRACTOR; see Paragraph 15.03.D of the General Conditions.]*

Amendments to OWNER'S responsibilities:

☐ None

☐ As follows:

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Amendments to CONTRACTOR'S responsibilities:

[] None

[] As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract.

EXECUTED BY ENGINEER:

RECEIVED:

RECEIVED:

By: _____
(Authorized Signature)

By: _____
Owner (Authorized Signature)

By: _____
Contractor (Authorized
Signature)

Title: _____

Title: _____

Title: _____

Date: _____

Date: _____

Date: _____

END OF SECTION

00655-2

SECTION 00700
GENERAL CONDITIONS

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 DEFINED TERMS

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

Documents or the acceptability of Work under the Contract Documents; contesting ENGINEER'S decision regarding a Change Proposal; seeking resolution of a contractual issue that ENGINEER has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by CONTRACTOR directly to OWNER, duly submitted in compliance with the procedural requirements set forth herein, contesting ENGINEER'S decision regarding a Change Proposal; or seeking resolution of a contractual issue that ENGINEER has declined to address. A demand for money or services by a third party is not a Claim.

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

23. Laws and Regulations; Laws or Regulations - Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. Liens - Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. Milestone - A principal event in the performance of the Work that the Contract requires CONTRACTOR to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. Notice of Award - The written notice by OWNER to a Bidder of OWNER'S acceptance of the Bid.
27. Notice to Proceed - A written notice by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work.
28. OWNER - The individual or entity with which CONTRACTOR has contracted regarding the Work, and which has agreed to pay CONTRACTOR for the performance of the Work, pursuant to the terms of the Contract.
29. Progress Schedule - A schedule, prepared and maintained by CONTRACTOR, describing the sequence and duration of the activities comprising the CONTRACTOR'S plan to accomplish the Work within the Contract Times.
30. Project - The total undertaking to be accomplished for OWNER by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. Project Manual - The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. Resident Project Representative - The authorized representative of ENGINEER assigned to assist ENGINEER at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. Schedule of Submittals - A schedule, prepared and maintained by CONTRACTOR, of required submittals and the time requirements for ENGINEER'S review of the submittals and the performance of related construction activities.
35. Schedule of Values - A schedule, prepared and maintained by CONTRACTOR, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing CONTRACTOR'S Applications for Payment.
36. Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. Site - Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.
38. Specifications - The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. Subcontractor - An individual or entity having a direct contract with CONTRACTOR or with any other subcontractor for the performance of a part of the Work.
40. Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
41. Successful Bidder - The Bidder whose Bid the OWNER accepts, and to which the OWNER makes an award of contract, subject to stated conditions.
42. Supplementary Conditions - The part of the Contract that amends or supplements these General Conditions.
43. Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or a subcontractor.
44. Technical Data - Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to CONTRACTOR are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. Unit Price Work - Work to be paid for on the basis of unit prices.
47. Work - The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation

necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. Work Change Directive - A written directive to CONTRACTOR issued on or after the Effective Date of the Contract, signed by OWNER and recommended by ENGINEER, ordering an addition, deletion, or revision in the Work.

1.02 TERMINOLOGY

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by ENGINEER. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. Day:
1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- D. Defective:
1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to ENGINEER'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. Furnish, Install, Perform, Provide:
1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or

equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of CONTRACTOR with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then CONTRACTOR shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 PRELIMINARY MATTERS

2.01 DELIVERY OF BONDS AND EVIDENCE OF INSURANCE

- A. Bonds: When CONTRACTOR delivers the executed counterparts of the Agreement to OWNER, CONTRACTOR shall also deliver to OWNER such bonds as CONTRACTOR may be required to furnish.
- B. Evidence of CONTRACTOR'S Insurance: When CONTRACTOR delivers the executed counterparts of the Agreement to OWNER, CONTRACTOR shall also deliver to OWNER, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by CONTRACTOR in accordance with Article 6.
- C. Evidence of OWNER'S Insurance: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, OWNER shall promptly deliver to CONTRACTOR, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by OWNER under Article 6.

2.02 COPIES OF DOCUMENTS

- A. OWNER shall furnish to CONTRACTOR four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. OWNER shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by

ENGINEER and other design professionals. OWNER shall make such original printed record version of the Contract available to CONTRACTOR for review. OWNER may delegate the responsibilities under this provision to ENGINEER.

2.03 BEFORE STARTING CONSTRUCTION

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

2.04 PRECONSTRUCTION CONFERENCE; DESIGNATION OF AUTHORIZED REPRESENTATIVES

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

2.05 INITIAL ACCEPTANCE OF SCHEDULES

- A. At least 10 days before submission of the first Application for Payment a conference, attended by CONTRACTOR, ENGINEER, and others as appropriate, will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with Paragraph 2.03.A. CONTRACTOR shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.
 - 1. The Progress Schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the Progress

- Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve CONTRACTOR from CONTRACTOR'S full responsibility therefor.
2. CONTRACTOR'S Schedule of Submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.
 3. CONTRACTOR'S Schedule of Values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 ELECTRONIC TRANSMITTALS

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

ARTICLE 3 DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 INTENT

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. ENGINEER will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 REFERENCE STANDARDS

A. Standards Specifications, Codes, Laws and Regulations

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

3.03 REPORTING AND RESOLVING DISCREPANCIES

A. Reporting Discrepancies:

1. CONTRACTOR'S Verification of Figures and Field Measurements: Before undertaking each part of the Work, CONTRACTOR shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. CONTRACTOR shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that CONTRACTOR discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by ENGINEER, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. CONTRACTOR'S Review of Contract Documents: If, before or during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier, then CONTRACTOR shall promptly report it to ENGINEER in writing. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by ENGINEER, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof.

B. Resolving Discrepancies:

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

3.04 REQUIREMENTS OF THE CONTRACT DOCUMENTS

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

3.05 REUSE OF DOCUMENTS

- A. CONTRACTOR and its subcontractors and suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without OWNER'S express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 COMMENCEMENT AND PROGRESS OF THE WORK

4.01 COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED

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

4.02 STARTING THE WORK

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

4.03 REFERENCE POINTS

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

4.04 PROGRESS SCHEDULE

- A. CONTRACTOR shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. CONTRACTOR shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed

pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as OWNER and CONTRACTOR may otherwise agree in writing.

4.05 DELAYS IN CONTRACTOR'S PROGRESS

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

- F. CONTRACTOR shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of CONTRACTOR.
- G. CONTRACTOR must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 AVAILABILITY OF LANDS

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

5.02 USE OF SITE AND OTHER AREAS

- A. Limitation on Use of Site and Other Areas:
 - 1. CONTRACTOR shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that CONTRACTOR has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for CONTRACTOR'S operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible, CONTRACTOR shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law;

and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, CONTRACTOR'S performance of the Work, or because of other actions or conduct of the CONTRACTOR or those for which CONTRACTOR is responsible.

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

5.03 SUBSURFACE AND PHYSICAL CONDITIONS

- A. Reports and Drawings: The Supplementary Conditions identify:
 - 1. those reports known to OWNER of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to OWNER of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. Reliance by CONTRACTOR on Technical Data Authorized: CONTRACTOR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CONTRACTOR may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to CONTRACTOR. Except for such reliance on Technical Data, CONTRACTOR may not rely upon or make any claim against

OWNER or ENGINEER, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for CONTRACTOR'S purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

A. Notice by CONTRACTOR: If CONTRACTOR believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which CONTRACTOR is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. OWNER'S Statement to CONTRACTOR Regarding Site Condition: After receipt of ENGINEER'S written findings, conclusions, and recommendations, OWNER shall issue a written statement to CONTRACTOR (with a copy to ENGINEER) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting ENGINEER'S written findings, conclusions, and recommendations, in whole or in part.

D. Possible Price and Times Adjustments:

1. CONTRACTOR shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in CONTRACTOR'S cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. CONTRACTOR'S entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR'S ability to complete the Work within the Contract Times.
2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. CONTRACTOR knew of the existence of such condition at the time CONTRACTOR made a commitment to OWNER with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR'S making such commitment; or
 - c. CONTRACTOR failed to give the written notice as required by Paragraph 5.04.A.
3. If OWNER and CONTRACTOR agree regarding CONTRACTOR'S entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. CONTRACTOR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after OWNER'S issuance of the OWNER'S written statement to CONTRACTOR regarding the subsurface or physical condition in question.

5.05 UNDERGROUND FACILITIES

- A. CONTRACTOR'S Responsibilities: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. OWNER and ENGINEER do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

- b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including OWNER) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. Notice by CONTRACTOR: If CONTRACTOR believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER.
- C. ENGINEER'S Review: ENGINEER will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from CONTRACTOR; prepare recommendations to OWNER regarding the CONTRACTOR'S resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise OWNER in writing of ENGINEER'S findings, conclusions, and recommendations. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.
- D. OWNER'S Statement to CONTRACTOR Regarding Underground Facility: After receipt of ENGINEER'S written findings, conclusions, and recommendations, OWNER shall issue a written statement to CONTRACTOR (with a copy to ENGINEER) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting ENGINEER'S written findings, conclusions, and recommendations in whole or in part.
- E. Possible Price and Times Adjustments:
 - 1. CONTRACTOR shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in CONTRACTOR'S cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

- c. CONTRACTOR'S entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to CONTRACTOR'S ability to complete the Work within the Contract Times; and
 - d. CONTRACTOR gave the notice required in Paragraph 5.05.B.
- 2. If OWNER and CONTRACTOR agree regarding CONTRACTOR'S entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- 3. CONTRACTOR may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after OWNER'S issuance of the OWNER'S written statement to CONTRACTOR regarding the Underground Facility in question.

5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE

- A. Reports and Drawings: The Supplementary Conditions identify:
 - 1. those reports and drawings known to OWNER relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 - 2. Technical Data contained in such reports and drawings.
- B. Reliance by CONTRACTOR on Technical Data Authorized: CONTRACTOR may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then CONTRACTOR may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to CONTRACTOR. Except for such reliance on Technical Data, CONTRACTOR may not rely upon or make any claim against OWNER or ENGINEER, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for CONTRACTOR'S purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any CONTRACTOR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. CONTRACTOR shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. CONTRACTOR shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

- E. If CONTRACTOR encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, then CONTRACTOR shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with ENGINEER, OWNER shall take such actions as are necessary to permit OWNER to timely obtain required permits and provide CONTRACTOR the written notice required by Paragraph 5.06.F. If CONTRACTOR or anyone for whom CONTRACTOR is responsible created the Hazardous Environmental Condition in question, then OWNER may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. CONTRACTOR shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after OWNER has obtained any required permits related thereto, and delivered written notice to CONTRACTOR either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, then within 30 days of OWNER'S written notice regarding the resumption of Work, CONTRACTOR may submit a Change Proposal, or OWNER may impose a set-off.
- H. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. OWNER may have such deleted portion of the Work performed by OWNER'S own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, subcontractors, and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified

as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this Paragraph 5.06.I shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by CONTRACTOR or by anyone for whom CONTRACTOR is responsible, or to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this Paragraph 5.06.J shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 BONDS AND INSURANCE

6.01 PERFORMANCE, PAYMENT, AND OTHER BONDS

- A. CONTRACTOR shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of CONTRACTOR'S obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. CONTRACTOR shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. CONTRACTOR shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then CONTRACTOR shall promptly notify OWNER and ENGINEER and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If CONTRACTOR has failed to obtain a required bond, OWNER may exclude the CONTRACTOR from the Site and exercise OWNER'S termination rights under Article 16.
- F. Upon request, OWNER shall provide a copy of the payment bond to any subcontractor, supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 INSURANCE - GENERAL PROVISIONS

- A. OWNER and CONTRACTOR shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. CONTRACTOR shall deliver to OWNER, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that CONTRACTOR has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by OWNER or any other insured, CONTRACTOR shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. CONTRACTOR may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. OWNER shall deliver to CONTRACTOR, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that OWNER has obtained and is maintaining the policies, coverages, and endorsements required of OWNER by the Contract (if any). Upon request by CONTRACTOR or any other

insured, OWNER shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. OWNER may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- E. Failure of OWNER or CONTRACTOR to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of OWNER or CONTRACTOR to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If CONTRACTOR has failed to obtain and maintain required insurance, OWNER may exclude the CONTRACTOR from the Site, impose an appropriate set-off against payment, and exercise OWNER'S termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. OWNER does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect CONTRACTOR or CONTRACTOR'S interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on CONTRACTOR'S liability under the indemnities granted to OWNER and other individuals and entities in the Contract.

6.03 CONTRACTOR'S INSURANCE

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

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

operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

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

- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 OWNER'S LIABILITY INSURANCE

- A. In addition to the insurance required to be provided by CONTRACTOR under Paragraph 6.03, OWNER, at OWNER'S option, may purchase and maintain at OWNER'S expense OWNER'S own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.
- B. OWNER'S liability policies, if any, operate separately and independently from policies required to be provided by CONTRACTOR, and CONTRACTOR cannot rely upon OWNER'S liability policies for any of CONTRACTOR'S obligations to the OWNER, ENGINEER, or third parties.

6.05 PROPERTY INSURANCE

- A. Builder's Risk: Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the OWNER and CONTRACTOR as named insureds, and all subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to OWNER and CONTRACTOR.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation,

fabrication, construction, erection, or completion of the Work, including OWNER-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by OWNER, such that those portions of the Work that are not yet occupied or used by OWNER shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by OWNER, until the Work is complete.
- B. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. Deductibles: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. Partial Occupancy or Use by OWNER: If OWNER will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then OWNER (directly, if it is the purchaser of the builder's risk policy, or through CONTRACTOR) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by OWNER may come off the builder's risk policy, while those portions of the Work not yet occupied or used by OWNER shall remain covered by the builder's risk insurance.

- E. Additional Insurance: If CONTRACTOR elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at CONTRACTOR'S expense.
- F. Insurance of Other Property: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by CONTRACTOR, a subcontractor, or an employee of CONTRACTOR or a subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 WAIVER OF RIGHTS

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against ENGINEER or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. OWNER and CONTRACTOR waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against ENGINEER, its consultants, all subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER or CONTRACTOR as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. OWNER waives all rights against CONTRACTOR, subcontractors, and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER'S property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by OWNER; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss,

the insurers will have no rights of recovery against CONTRACTOR, subcontractors, or ENGINEER, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

- D. CONTRACTOR shall be responsible for assuring that the agreement under which a subcontractor performs a portion of the work contains provisions whereby the subcontractor waives all rights against OWNER, CONTRACTOR, all individuals or entities identified in the Supplementary Conditions as insureds, the ENGINEER and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 RECEIPT AND APPLICATION OF PROPERTY INSURANCE PROCEEDS

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 CONTRACTOR'S RESPONSIBILITIES

7.01 SUPERVISION AND SUPERINTENDENCE

- A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances.

7.02 LABOR; WORKING HOURS

- A. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. CONTRACTOR will not perform Work on a Saturday, Sunday, or any legal holiday. CONTRACTOR may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with OWNER'S written consent, which will not be unreasonably withheld.

7.03 SERVICES, MATERIALS, AND EQUIPMENT

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

7.04 "OR EQUALS"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the Contract Price has been based upon CONTRACTOR furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, CONTRACTOR may request that ENGINEER authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If ENGINEER in its sole discretion determines that an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and

sufficiently similar so that no change in related Work will be required, ENGINEER shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment ENGINEER determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to OWNER.
- b. CONTRACTOR certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the OWNER or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

- B. CONTRACTOR'S Expense: CONTRACTOR shall provide all data in support of any proposed "or equal" item at CONTRACTOR'S expense.
- C. ENGINEER'S Evaluation and Determination: ENGINEER will be allowed a reasonable time to evaluate each "or-equal" request. ENGINEER may require CONTRACTOR to furnish additional data about the proposed "or-equal" item. ENGINEER will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until ENGINEER'S review is complete and ENGINEER determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. ENGINEER will advise CONTRACTOR in writing of any negative determination.
- D. Effect of ENGINEER'S Determination: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The ENGINEER'S denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. Treatment as a Substitution Request: If ENGINEER determines that an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item, CONTRACTOR may request that ENGINEER consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 SUBSTITUTES

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, CONTRACTOR may request that ENGINEER authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

1. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. ENGINEER will not accept requests for review of proposed substitute items of material or equipment from anyone other than CONTRACTOR.
 2. The requirements for review by ENGINEER will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as ENGINEER may decide is appropriate under the circumstances.
 3. CONTRACTOR shall make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for other work on the Project) to adapt the design to the proposed substitute item, and 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. ENGINEER'S Evaluation and Determination: ENGINEER will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from OWNER. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item. ENGINEER will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until ENGINEER'S review is complete and ENGINEER determines that the proposed item is an acceptable substitute. ENGINEER'S determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. ENGINEER will advise CONTRACTOR in writing of any negative determination.

- C. Special Guarantee: OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.
- D. Reimbursement of ENGINEER'S Cost: ENGINEER will record ENGINEER'S costs in evaluating a substitute proposed or submitted by CONTRACTOR. Whether or not ENGINEER approves a substitute so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the reasonable charges of ENGINEER for evaluating each such proposed substitute. CONTRACTOR shall also reimburse OWNER for the reasonable charges of ENGINEER for making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER) resulting from the acceptance of each proposed substitute.
- E. CONTRACTOR'S Expense: CONTRACTOR shall provide all data in support of any proposed substitute at CONTRACTOR'S expense.
- F. Effect of ENGINEER'S Determination: If ENGINEER approves the substitution request, CONTRACTOR shall execute the proposed Change Order and proceed with the substitution. The ENGINEER'S denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. CONTRACTOR may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. CONTRACTOR may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to OWNER.
- B. CONTRACTOR shall retain specific subcontractors, suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of CONTRACTOR'S Bid or final negotiation of the terms of the Contract, OWNER may not require CONTRACTOR to retain any subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against which CONTRACTOR has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, CONTRACTOR shall submit to OWNER the identity of the proposed subcontractor or supplier (unless OWNER has already deemed such proposed subcontractor or supplier acceptable, during the bidding process or otherwise). Such proposed subcontractor or supplier shall be deemed acceptable to OWNER unless OWNER raises a substantive, reasonable objection within five days.
- E. OWNER may require the replacement of any subcontractor, supplier, or other individual or entity retained by CONTRACTOR to perform any part of the Work. OWNER also may require CONTRACTOR to retain specific replacements; provided, however, that OWNER may not require a replacement to which CONTRACTOR has

a reasonable objection. If CONTRACTOR has submitted the identity of certain subcontractors, suppliers, or other individuals or entities for acceptance by OWNER, and OWNER has accepted it (either in writing or by failing to make written objection thereto), then OWNER may subsequently revoke the acceptance of any such subcontractor, supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity.

- F. If OWNER requires the replacement of any subcontractor, supplier, or other individual or entity retained by CONTRACTOR to perform any part of the Work, then CONTRACTOR shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and CONTRACTOR shall initiate a Change Proposal for such adjustment within 30 days of OWNER'S requirement of replacement.
- G. No acceptance by OWNER of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of OWNER to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis CONTRACTOR shall submit to ENGINEER a complete list of all subcontractors and suppliers having a direct contract with CONTRACTOR, and of all other subcontractors and suppliers known to CONTRACTOR at the time of submittal.
- I. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions.
- J. CONTRACTOR shall be solely responsible for scheduling and coordinating the work of subcontractors, suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. CONTRACTOR shall restrict all subcontractors, suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with ENGINEER or OWNER, except through CONTRACTOR or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for CONTRACTOR by a subcontractor or supplier shall be pursuant to an appropriate contractual agreement that specifically binds the subcontractor or supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER.

- N. OWNER may furnish to any subcontractor or supplier, to the extent practicable, information about amounts paid to CONTRACTOR on account of Work performed for CONTRACTOR by the particular subcontractor or supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such subcontractor, supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such subcontractor, supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any money due any such subcontractor, supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 PATENT FEES AND ROYALTIES

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

7.08 PERMITS

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

7.09 TAXES

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

7.10 LAWS AND REGULATIONS

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

7.11 RECORD DOCUMENTS

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

7.12 SAFETY AND PROTECTION

- A. CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNER; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. CONTRACTOR shall comply with the applicable requirements of OWNER'S safety programs, if any. The Supplementary Conditions identify any OWNER'S safety programs that are applicable to the Work.
- D. CONTRACTOR shall inform OWNER and ENGINEER of the specific requirements of CONTRACTOR'S safety program with which OWNER'S and ENGINEER'S employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any subcontractor, supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any

of them may be liable, shall be remedied by CONTRACTOR at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any subcontractor, supplier, or other individual or entity directly or indirectly employed by any of them).

- F. CONTRACTOR'S duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. CONTRACTOR'S duties and responsibilities for safety and protection shall resume whenever CONTRACTOR or any subcontractor or supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 SAFETY REPRESENTATIVE

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

7.14 HAZARD COMMUNICATION PROGRAMS

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

7.15 EMERGENCIES

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

7.16 SHOP DRAWINGS, SAMPLES, AND OTHER SUBMITTALS

- A. Shop Drawing and Sample Submittal Requirements:
 - 1. Before submitting a Shop Drawing or Sample, CONTRACTOR shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to CONTRACTOR'S responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
 - 2. Each submittal shall bear a stamp or specific written certification that CONTRACTOR has satisfied CONTRACTOR'S obligations under the Contract Documents with respect to CONTRACTOR'S review of that submittal, and that CONTRACTOR approves the submittal.
 - 3. With each submittal, CONTRACTOR shall give ENGINEER specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.
- B. Submittal Procedures for Shop Drawings and Samples: CONTRACTOR shall submit Shop Drawings and Samples to ENGINEER for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as ENGINEER may require.
- 1. Shop Drawings:
 - a. CONTRACTOR shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by Paragraph 7.16.D.
 - 2. Samples:
 - a. CONTRACTOR shall submit the number of Samples required in the Specifications.
 - b. CONTRACTOR shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by Paragraph 7.16.D.
 - 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to ENGINEER'S review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.
- C. Other Submittals: CONTRACTOR shall submit other submittals to ENGINEER in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. ENGINEER'S Review:

1. ENGINEER will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to ENGINEER. ENGINEER'S review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. ENGINEER'S review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. ENGINEER'S review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. ENGINEER'S review and approval of a Shop Drawing or Sample shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has complied with the requirements of Paragraph 7.16.A.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. ENGINEER will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. ENGINEER'S review and approval of a Shop Drawing or Sample shall not relieve CONTRACTOR from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. ENGINEER'S review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither ENGINEER'S receipt, review, acceptance nor 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 Drawing, sample, or other item requiring approval, and CONTRACTOR shall be responsible for ENGINEER'S charges to OWNER for such time. OWNER may impose a setoff against payments due to CONTRACTOR to secure reimbursement for such charges.
3. If CONTRACTOR requests a change of a previously approved submittal item, CONTRACTOR shall be responsible for ENGINEER'S charges to OWNER for its

review time, and OWNER may impose a set-off against payments due to CONTRACTOR to secure reimbursement for such charges, unless the need for such change is beyond the control of CONTRACTOR.

7.17 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- A. CONTRACTOR warrants and guarantees to OWNER that all Work will be in accordance with the Contract Documents and will not be defective. ENGINEER and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on CONTRACTOR'S warranty and guarantee.
- B. CONTRACTOR'S warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, subcontractors, suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
 - 2. normal wear and tear under normal usage.
- C. CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by ENGINEER;
 - 2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
 - 4. use or occupancy of the Work or any part thereof by OWNER;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. the issuance of a notice of acceptability by ENGINEER;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by OWNER.
- D. If the Contract requires the CONTRACTOR to accept the assignment of a contract entered into by OWNER, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to CONTRACTOR'S performance obligations to OWNER for the Work described in the assigned contract.

7.18 INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CONTRACTOR under the Contract or otherwise, CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out

of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of CONTRACTOR, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against OWNER or ENGINEER or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of CONTRACTOR under Paragraph 7.18.A shall not extend to the liability of ENGINEER and ENGINEER'S officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 DELEGATION OF PROFESSIONAL DESIGN SERVICES

- A. CONTRACTOR will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out CONTRACTOR'S responsibilities for construction means, methods, techniques, sequences and procedures. CONTRACTOR shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of CONTRACTOR by the Contract Documents, OWNER and ENGINEER will specify all performance and design criteria that such services must satisfy. CONTRACTOR shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to ENGINEER.

- C. OWNER and ENGINEER shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided OWNER and ENGINEER have specified to CONTRACTOR all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, ENGINEER'S review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. ENGINEER'S review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. CONTRACTOR shall not be responsible for the adequacy of the performance or design criteria specified by OWNER or ENGINEER.

ARTICLE 8 OTHER WORK AT THE SITE

8.01 OTHER WORK

- A. In addition to and apart from the Work under the Contract Documents, the OWNER may perform other work at or adjacent to the Site. Such other work may be performed by OWNER'S employees, or through contracts between the OWNER and third parties. OWNER may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If OWNER performs other work at or adjacent to the Site with OWNER'S employees, or through contracts for such other work, then OWNER shall give CONTRACTOR written notice thereof prior to starting any such other work. If OWNER has advance information regarding the start of any utility work at or adjacent to the Site, OWNER shall provide such information to CONTRACTOR.
- C. CONTRACTOR shall afford each other contractor that performs such other work, each utility owner performing other work, and OWNER, if OWNER is performing other work with OWNER'S employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that CONTRACTOR may cut or alter others' work with the written consent of ENGINEER and the others whose work will be affected.
- D. If the proper execution or results of any part of CONTRACTOR'S Work depends upon work performed by others under this Article 8, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR'S Work. CONTRACTOR'S failure to so report will constitute an acceptance of such other work as fit and proper for

integration with CONTRACTOR'S Work except for latent defects and deficiencies in such other work.

8.02 COORDINATION

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

8.03 LEGAL RELATIONSHIPS

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

- C. When OWNER is performing other work at or adjacent to the Site with OWNER'S employees, CONTRACTOR shall be liable to OWNER for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by OWNER as a result of CONTRACTOR'S failure to take reasonable and customary measures with respect to OWNER'S other work. In response to such damage, delay, disruption, or interference, OWNER may impose a set-off against payments due to CONTRACTOR.
- D. If CONTRACTOR damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through CONTRACTOR'S failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of CONTRACTOR'S actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against CONTRACTOR, OWNER, or ENGINEER, then CONTRACTOR shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless OWNER and ENGINEER, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 OWNER'S RESPONSIBILITIES

9.01 COMMUNICATIONS TO CONTRACTOR

- A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

9.02 REPLACEMENT OF ENGINEER

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

9.03 FURNISH DATA

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

9.04 PAY WHEN DUE

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

9.05 LANDS AND EASEMENTS; REPORTS, TESTS, AND DRAWINGS

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

9.06 INSURANCE

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

9.07 CHANGE ORDERS

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

9.08 INSPECTIONS, TESTS, AND APPROVALS

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

9.09 LIMITATIONS ON OWNER'S RESPONSIBILITIES

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

9.10 UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITION

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

9.11 EVIDENCE OF FINANCIAL ARRANGEMENTS

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

9.12 SAFETY PROGRAMS

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

ARTICLE 10 ENGINEER'S STATUS DURING CONSTRUCTION

10.01 OWNER'S REPRESENTATIVE

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

10.02 VISITS TO SITE

- A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR'S executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.
- B. ENGINEER'S visits and observations are subject to all the limitations on ENGINEER'S authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of ENGINEER'S visits or observations of CONTRACTOR'S Work, ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

10.03 PROJECT REPRESENTATIVE

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

as provided in Paragraph 10.08. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER'S consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 REJECTING DEFECTIVE WORK

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

10.05 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS

- A. ENGINEER'S authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. ENGINEER'S authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. ENGINEER'S authority as to Change Orders is set forth in Article 11.
- D. ENGINEER'S authority as to Applications for Payment is set forth in Article 15.

10.06 DETERMINATIONS FOR UNIT PRICE WORK

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

10.07 DECISIONS ON REQUIREMENTS OF CONTRACT DOCUMENTS AND ACCEPTABILITY OF WORK

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

10.08 LIMITATIONS ON ENGINEER'S AUTHORITY AND RESPONSIBILITIES

- A. Neither ENGINEER'S authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR'S means, methods, techniques, sequences, or

procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

- C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any subcontractor, any supplier, or of any other individual or entity performing any of the Work.
- D. ENGINEER'S review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 COMPLIANCE WITH SAFETY PROGRAM

- A. While at the Site, ENGINEER'S employees and representatives will comply with the specific applicable requirements of OWNER'S and CONTRACTOR'S safety programs (if any) of which ENGINEER has been informed.

ARTICLE 11 AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. Change Orders:
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. OWNER and CONTRACTOR may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the ENGINEER. Such an amendment shall be set forth in a Change Order.
 - 2. Work Change Directives: A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by

the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. CONTRACTOR must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. OWNER must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 OWNER-AUTHORIZED CHANGES IN THE WORK

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

11.03 UNAUTHORIZED CHANGES IN THE WORK

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

11.04 CHANGE OF CONTRACT PRICE

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph

11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

- B. An adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or 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 where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. CONTRACTOR'S Fee: When applicable, the CONTRACTOR'S fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the CONTRACTOR'S fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the CONTRACTOR'S fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the CONTRACTOR'S fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the subcontractor that actually performs the Work, at whatever tier, and (2) with respect to CONTRACTOR itself and to any subcontractors of a tier higher than that of the subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by OWNER shall be no greater than 27 percent of the costs incurred by the subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR'S fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 CHANGE OF CONTRACT TIMES

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

11.06 CHANGE PROPOSALS

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

deemed a denial, and CONTRACTOR may choose to seek resolution under the terms of Article 12.

11.07 EXECUTION OF CHANGE ORDERS

- A. OWNER and CONTRACTOR shall execute appropriate Change Orders covering:
 - 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. changes in Contract Price resulting from an OWNER set-off, unless CONTRACTOR has duly contested such set-off;
 - 3. changes in the Work which are: (a) ordered by OWNER pursuant to Paragraph 11.02, (b) required because of OWNER'S acceptance of defective Work under Paragraph 14.04 or OWNER'S correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for ENGINEER'S recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If OWNER or CONTRACTOR refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 NOTIFICATION TO SURETY

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

ARTICLE 12 CLAIMS

12.01 CLAIMS

- A. Claims Process: The following disputes between OWNER and CONTRACTOR shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by OWNER or CONTRACTOR of ENGINEER'S decisions regarding Change Proposals;
 - 2. OWNER demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that ENGINEER has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

- B. Submittal of Claim: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the ENGINEER, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by CONTRACTOR seeking an increase in the Contract Times or Contract Price, or both, CONTRACTOR shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of CONTRACTOR'S knowledge and belief the amount of time or money requested accurately reflects the full amount to which CONTRACTOR is entitled.
- C. Review and Resolution: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to ENGINEER.
- D. Mediation:
1. At any time after initiation of a Claim, OWNER and CONTRACTOR may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 2. If OWNER and CONTRACTOR agree to mediation, then after 60 days from such agreement, either OWNER or CONTRACTOR may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. OWNER and CONTRACTOR shall each pay one-half of the mediator's fees and costs.
- E. Partial Approval: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either OWNER or CONTRACTOR may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action

on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 COST OF THE WORK

- A. Purposes for Determination of Cost of the Work: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, CONTRACTOR is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. Costs Included: Except as otherwise may be agreed to in writing by OWNER, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
 3. Payments made by CONTRACTOR to subcontractors for Work performed by subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides

that the subcontractor is to be paid on the basis of Cost of the Work plus a fee, the subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR'S Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of CONTRACTOR, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that CONTRACTOR is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR'S principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the CONTRACTOR'S fee.
 2. Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the Site.
 3. Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
 4. Costs due to the negligence of CONTRACTOR, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. CONTRACTOR'S Fee: When the Work as a whole is performed on the basis of cost-plus, CONTRACTOR'S fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR'S fee shall be determined as set forth in Paragraph 11.04.C.
- E. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

13.02 ALLOWANCES

- A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to OWNER and ENGINEER.
- B. Cash Allowances: CONTRACTOR agrees that:
1. the cash allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. CONTRACTOR'S costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances,

and no demand for additional payment on account of any of the foregoing will be valid.

- C. Contingency Allowance: CONTRACTOR agrees that a contingency allowance, if any, is for the sole use of OWNER to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 UNIT PRICE WORK

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to CONTRACTOR for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.
- D. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER'S written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of the following paragraph.
- E. Within 30 days of ENGINEER'S written decision under the preceding paragraph, CONTRACTOR may submit a Change Proposal, or OWNER may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. CONTRACTOR believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

14.01 ACCESS TO WORK

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

14.02 TESTS, INSPECTIONS, AND APPROVALS

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

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by OWNER, ENGINEER, or another designated individual or entity, then

CONTRACTOR shall assume full responsibility for arranging and obtaining such approvals.

- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, CONTRACTOR shall, if requested by ENGINEER, uncover such Work for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR had given ENGINEER timely notice of CONTRACTOR'S intention to cover the same and ENGINEER had not acted with reasonable promptness in response to such notice.

14.03 DEFECTIVE WORK

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

14.04 ACCEPTANCE OF DEFECTIVE WORK

- A. If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so (subject, if such acceptance occurs prior to final payment, to ENGINEER'S confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). CONTRACTOR shall pay all claims, costs, losses, and

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

14.05 UNCOVERING WORK

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

14.06 OWNER MAY STOP THE WORK

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

CONTRACTOR, any subcontractor, any supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 OWNER MAY CORRECT DEFECTIVE WORK

- A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work, or to remove and replace rejected Work as required by ENGINEER, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, then OWNER may, after seven days written notice to CONTRACTOR, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, OWNER shall proceed expeditiously. In connection with such corrective or remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR'S services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees, OWNER'S other contractors, and ENGINEER and ENGINEER'S consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by OWNER in exercising the rights and remedies under this Paragraph 14.07 will be charged against CONTRACTOR as setoffs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR'S defective Work.
- D. CONTRACTOR shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies under this Paragraph 14.07.

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

15.01 PROGRESS PAYMENTS

- A. Basis for Progress Payments: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by CONTRACTOR during the pay period.
- B. Applications for Payments:
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), CONTRACTOR shall submit to

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

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

C. Review of Applications:

1. ENGINEER will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.
2. ENGINEER'S recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER'S observations of the executed Work as an experienced and qualified design professional, and on ENGINEER'S review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER'S knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to CONTRACTOR'S being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER'S responsibility to observe the Work.
3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract; or

- b. there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.
 - 4. Neither ENGINEER'S review of CONTRACTOR'S Work for the purposes of recommending payments nor ENGINEER'S recommendation of any payment, including final payment, will impose responsibility on ENGINEER:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for CONTRACTOR'S failure to comply with Laws and Regulations applicable to CONTRACTOR'S performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes CONTRACTOR has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.
 - 5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER'S opinion, it would be incorrect to make the representations to OWNER stated in Paragraph 15.01.C.2.
 - 6. ENGINEER will recommend reductions in payment (set-offs) necessary in ENGINEER'S opinion to protect OWNER from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. OWNER has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. OWNER has been required to remove or remediate a Hazardous Environmental Condition for which CONTRACTOR is responsible; or
 - e. ENGINEER has actual knowledge of the occurrence of any of the events that would constitute a default by CONTRACTOR and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due:
- 1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER'S recommendation, the amount recommended (subject to any OWNER set-offs) will become due, and when due will be paid by OWNER to CONTRACTOR within 30 days.

E. Reductions in Payment by OWNER:

1. In addition to any reductions in payment (set-offs) recommended by ENGINEER, OWNER is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against OWNER on account of CONTRACTOR'S conduct in the performance or furnishing of the Work, or OWNER has incurred costs, losses, or damages on account of CONTRACTOR'S conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. CONTRACTOR has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. CONTRACTOR has failed to provide and maintain required bonds or insurance;
 - d. OWNER has been required to remove or remediate a Hazardous Environmental Condition for which CONTRACTOR is responsible;
 - e. OWNER has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. OWNER has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by CONTRACTOR and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of CONTRACTOR'S failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling OWNER to a set off against the amount recommended.
2. If OWNER imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of ENGINEER, OWNER will give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and the specific amount of the reduction, and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, if CONTRACTOR remedies the reasons for such action. The reduction imposed shall be binding on CONTRACTOR unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that OWNER'S refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 CONTRACTOR'S WARRANTY OF TITLE

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

15.03 SUBSTANTIAL COMPLETION

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

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

15.04 PARTIAL USE OR OCCUPANCY

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

15.05 FINAL INSPECTION

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

15.06 FINAL PAYMENT

A. Application for Payment:

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, CONTRACTOR may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to OWNER free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that CONTRACTOR believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER might in any way be responsible, or which might in any way result in liens or other burdens on OWNER'S property, have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien, or OWNER at its option may issue joint checks payable to CONTRACTOR and specified subcontractors and suppliers.

B. ENGINEER'S Review of Application and Acceptance:

1. If, on the basis of ENGINEER'S observation of the Work during construction and final inspection, and ENGINEER'S review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER'S recommendation of final payment and present the Application for Payment to OWNER for payment. Such recommendation shall account for any set-offs against payment that are necessary in ENGINEER'S opinion to protect OWNER from loss for the reasons stated above with respect to progress payments. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend

final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

- C. Completion of Work: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the ENGINEER'S written recommendation of final payment.
- D. Payment Becomes Due: Thirty days after the presentation to OWNER of the final Application for Payment and accompanying documentation, the amount recommended by ENGINEER (less any further sum OWNER is entitled to set off against ENGINEER'S recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by OWNER to CONTRACTOR.

15.07 WAIVER OF CLAIMS

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

15.08 CORRECTION PERIOD

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that CONTRACTOR has arranged to use through construction easements or otherwise, and other adjacent areas used by CONTRACTOR as permitted by Laws and Regulations, is found to be defective, then CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If CONTRACTOR does not promptly comply with the terms of OWNER'S written instructions, or in an emergency where delay would cause serious risk of loss or

damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. CONTRACTOR shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. CONTRACTOR'S obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 SUSPENSION OF WORK AND TERMINATION

16.01 OWNER MAY SUSPEND WORK

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

16.02 OWNER MAY TERMINATE FOR CAUSE

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

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

16.03 OWNER MAY TERMINATE FOR CONVENIENCE

- A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER,

terminate the Contract. In such case, CONTRACTOR shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. CONTRACTOR shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 CONTRACTOR MAY STOP WORK OR TERMINATE

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

ARTICLE 17 FINAL RESOLUTION OF DISPUTES

17.01 METHODS AND PROCEDURES

- A. Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this Article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 2. Disputes between OWNER and CONTRACTOR concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

- B. Final Resolution of Disputes: For any dispute subject to resolution under this Article, OWNER or CONTRACTOR may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 MISCELLANEOUS

18.01 GIVING NOTICE

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

18.02 COMPUTATION OF TIMES

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

18.03 CUMULATIVE REMEDIES

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

18.04 LIMITATION OF DAMAGES

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

18.05 NO WAIVER

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

18.06 SURVIVAL OF OBLIGATIONS

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

18.07 CONTROLLING LAW

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

18.08 HEADINGS

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

END OF SECTION

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SECTION 00800
SUPPLEMENTARY CONDITIONS

I. SUPPLEMENTARY CONDITIONS

A. Caption and Introductory Statements

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions. All provisions that are not so amended or supplemented remain in full force and effect.

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

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

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

SC-1.01.A.8 Add the following language at the end of last sentence of Paragraph 1.01.A.8:

The Change Order form to be used on this Project is EJCDC No. C-941. An example of the Change Order form is provided in Section 00633 Change Order. Agency approval is required before Change Orders are effective.

SC-1.01.A.48 Add the following language at the end of the last sentence of Paragraph 1.01.A.48:

A Work Change Directive cannot change Contract Price or Contract Times without a subsequent Change Order.

SC-1.01.A.49 Add the following new Paragraph after Paragraph 1.01.A.48:

Abnormal Weather Conditions - Conditions of extreme or unusual weather for a given region, elevation, or season as determined by ENGINEER. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered Abnormal Weather Conditions.

SC-1.01.A.49 Add the following new Paragraph after Paragraph 1.01.A.48:

American Iron and Steel (AIS) Requirements - Compliance with the AIS Requirements for this project are described in Attachment 1 of these Contract Documents. All necessary AIS certifications shall be obtained by the CONTRACTOR from product manufacturers and stored in a binder. Copies of all necessary AIS certifications shall be provided to the CONSTRUCTION MANAGER by the CONTRACTOR.

SC-1.01.A.50 Add the following new Paragraph after Paragraph 1.01.A.49:

Davis Bacon Compliance - Compliance with the Davis Bacon Requirements for this Project are described in Attachment 2 of these Contract Documents.

SC-1.01.A.51 Add the following new Paragraph after Paragraph 1.01.A.50:

Disadvantaged Business Enterprise Requirements - Compliance with the Disadvantaged Business Enterprise Requirements for this Project are described in Attachment 3 of these Contract Documents.

SC-1.01.A.52 Add the following new Paragraph after Paragraph 1.01.A.51:

California Wage Requirements - Compliance with California Wage Requirements for this Project are described in Specifications as listed in the table of contents of the Project Manual under Article 26 in the Instructions to Bidders of these Contract Documents.

ARTICLE 2 PRELIMINARY MATTERS

SC-2.02 *Copies of Documents*

SC-2.02.A Amend the first sentence of Paragraph 2.02.A. to read as follows:

OWNER shall furnish to CONTRACTOR five copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

SC-2.02 Add the following new paragraph immediately after Paragraph 2.02.B:

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- A. Conformed documents incorporate and integrate Addenda and amendments negotiated prior to the Effective Date of the Contract. The conformed documents are produced for the convenience of the user and are not binding on the OWNER nor do conformed documents take the place of the Contract Documents.

ARTICLE 3 DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 *Intent*

SC-3.01 Add the following new paragraphs immediately after Paragraph 3.01.E:

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

ARTICLE 4 COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.01.A Amend the last Paragraph of 4.01.A by striking out the following words:

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.

SC-4.05.C.2 **Amend Paragraph 4.05.C.2 by striking out the following text:**
“abnormal weather conditions;” and inserting the following text:

Abnormal Weather Conditions;

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

SC-5.01 *Subsurface and Physical Conditions*

**SC/GBR-5.03 and 5.04. Delete Paragraphs 5.03 and 5.04 of the General Conditions
in their entirety and replace with the following provisions:**

SC/GBR-5.03 Subsurface and Physical Conditions

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

1. those reports known to OWNER of explorations and tests of
subsurface conditions at or adjacent to the Site (other than any
Geotechnical Data Report or Geotechnical Baseline Report),
and Technical Data contained in such reports. Such reports
are as follows:

- a. Geotechnical Report dated *[March 2007, prepared by
Blackburn Consulting, entitled: "Tuolumne City Sanitary
District Wastewater Treatment Plant Expansion, Tuolumne
City, California, Geotechnical Report", consisting of 89
pages.]* The Technical Data contained in such report upon
whose accuracy CONTRACTOR may rely are those
indicated in the definition of Technical Data in the General
Conditions.

B. Reliance by CONTRACTOR on Technical Data Authorized:

CONTRACTOR may rely upon the accuracy of the Technical Data
contained in such reports and drawings, but such reports and
drawings are not Contract Documents. Except for such reliance on
Technical Data, CONTRACTOR may not rely upon or make any
claim against OWNER or ENGINEER, or any of their officers,
directors, members, partners, employees, agents, consultants, or
subcontractors, with respect to:

1. the completeness of such reports and drawings for
CONTRACTOR'S purposes, including, but not limited to, any
aspects of the means, methods, techniques, sequences, and

procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

SC/GBR-5.04 Differing Subsurface or Physical Conditions

A. Notice: If CONTRACTOR believes that any subsurface condition that is uncovered or revealed at the Site:

1. differs materially from conditions shown or indicated in the Geotechnical Report; or
2. to the extent the Geotechnical Report is inapplicable, 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
3. to the extent the Geotechnical Report is inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or
4. to the extent the Geotechnical Report is inapplicable, is of an unusual nature, and differs materially from conditions ordinarily encounters 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 conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting CONTRACTOR to do so.

B. ENGINEER'S Review: After receipt of written notice as required by the preceding paragraph, ENGINEER will promptly review the subsurface or physical condition in question; determine the necessity of OWNER'S obtaining additional exploration or tests

with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC/GBR 5.04.A above; obtain any pertinent cost or schedule information from CONTRACTOR; prepare recommendations to OWNER regarding the CONTRACTOR'S resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise OWNER in writing of ENGINEER'S findings, conclusions, and recommendations.

C. OWNER'S Statement to CONTRACTOR Regarding Site Condition:

After receipt of ENGINEER'S written findings, conclusions, and recommendations, OWNER shall issue a written statement to CONTRACTOR (with a copy to ENGINEER) regarding the subsurface or physical condition in question, addressing the resumption or continuation 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 SC/GBR 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 of the General Conditions; and,
 - c. CONTRACTOR'S entitlement to an adjustment of the Contract Times is conditioned on such adjustment being

essential to CONTRACTOR'S ability to complete the Work within the Contract Times.

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

SC-5.06 Hazardous Environmental Conditions

SC 5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to OWNER.

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B. Not Used.

ARTICLE 6 BONDS AND INSURANCE

SC-6.01 *Performance, Payment, and Other Bonds*

SC-6.01.A Add the following paragraph immediately after Paragraph 6.01.B.1

CONTRACTOR shall furnish a warranty bond, in an amount at least equal to fifty percent of the Contract Price, following final acceptance of the work performed by the CONTRACTOR. The CONTRACTOR may replace the performance bond with the warranty bond on the date which the warranty bond takes effect. The warranty bond shall remain in effect until one year after the project completion date.

SC-6.02 *Insurance - General Provisions*

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

A. CONTRACTOR may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.03 *Contractor's Insurance*

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

K. The limits of liability for 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:

State:	Statutory
Employer's Liability	\$1,000,000

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$5,000,000
Each Occurrence (Bodily Injury and Property)	\$5,000,000
Excess or Umbrella Liability	\$ N/A

3. Automobile Liability under Paragraph 6.03.D of the General Conditions:

Combined Single Limit	\$2,000,000
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4. Excess or Umbrella liability under Paragraph 6.03.E of the General Conditions:

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

5. The Blanket Contractual Liability coverage required by Paragraph 6.03.C.2 of the General Conditions shall be provided as part of the Commercial General Liability coverage.
6. The OWNER and ENGINEER are to be included as additional insureds.

ARTICLE 7 CONTRACTOR'S RESPONSIBILITIES

SC-7.01 Supervision and Superintendence

SC-7.01.B. Amend Paragraph 7.01.B to add the following sentences:

"The CONTRACTOR shall identify their representative at the Site that shall have authority to act on behalf of CONTRACTOR. All communications given to or received from this representative shall be binding on CONTRACTOR."

SC-7.01.C. Add the following new paragraph immediately after Paragraph 7.01.B:

Any superintendent or other personnel, who repeatedly fails to follow the ENGINEER'S written or oral orders, directions, instructions, or

determinations, shall be subject to removal from the project. Upon the written request of the ENGINEER, the CONTRACTOR shall immediately remove such superintendent or other personnel and name a replacement in writing. Noncompliance with the ENGINEER'S request to remove and replace personnel at any level shall be grounds for terminating the Contract.

SC-7.02 *Labor; Working Hours*

SC-7.02.B. **Add the following new subparagraphs immediately after Paragraph 7.02.B:**

1. Regular working hours will be 7:00 AM - 4:00 PM at the TCSD WWTP.

2. OWNER'S legal holidays are:

New Year's Day (January 1).

Birthday of Martin Luther King, Jr. (Third Monday in January).

Presidents Day (Third Monday in February).

Memorial Day (Last Monday in May).

Independence Day (July 5, 2021; July 4 2022).

Labor Day (First Monday in September).

Columbus Day (Second Monday in October).

Veterans Day (November 11).

Thanksgiving Day (Fourth Thursday in November).

Day after Thanksgiving (Fourth Friday in November).

Christmas Eve (December 24).

Christmas Day (December 23, 2021; December 25, 2022).

SC-7.02.C. **Add the following new paragraph immediately after Paragraph 7.02.B:**

CONTRACTOR shall be responsible for the cost of any overtime pay or other expense incurred by the OWNER for ENGINEER'S services (including those of the Resident Project Representative, if any), OWNER'S representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If CONTRACTOR is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then OWNER may impose a reasonable set-off against payments due under Article 15.

SC-7.03 *Services, Materials, and Equipment*

SC-7.03.B. Add the following new subparagraphs immediately after Paragraph 7.03.B:

- A. Where the Work requires equipment be furnished, due to the lack of standardization of equipment as produced by the various manufacturers, it may become necessary to make minor modifications in the structures, buildings, piping, mechanical work, electrical work, accessories, controls, or other work, to accommodate the particular equipment offered. CONTRACTOR'S bid price for any equipment offered shall include the cost of making any necessary changes subject to the approval of ENGINEER.

SC-7.06 Concerning Subcontractors, Suppliers and Others

SC-7.06 Delete Paragraphs 7.06.C, 7.06.D, 7.06.E, and 7.06.F in their entirety and insert the following in their place:

[Deleted]

SC-7.06.A Amend Paragraph 7.06.A by adding the following text to the end of the paragraph:

The CONTRACTOR shall not award work valued at more than fifty percent of the Contract Price to subcontractor(s), without prior written approval of the OWNER.

SC-7.08 Permits

SC-7.08. Add a new paragraph immediately after Paragraph 7.08A. which is to read as follows:

- A. In those instances where a certificate of occupancy must be obtained before the Work under this Contract can be occupied and placed into service by OWNER, it shall be the responsibility of CONTRACTOR to arrange, coordinate, and pay any costs of obtaining said certificate."

SC-7.12 Safety and Protection

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

- A. For all excavations in excess of five (5) feet, the CONTRACTOR shall, pursuant to Labor Code Section 6705, submit in advance of any excavation hereunder a detailed plan showing the design of

shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground. No such excavation shall be made until said detailed plan is submitted by CONTRACTOR and accepted by ENGINEER.

ARTICLE 9 OWNER'S RESPONSIBILITIES

SC-9.13 OWNER'S Site Representative

SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

SC-9.13 OWNER will furnish an "OWNER'S Site Representative" to represent OWNER at the Site and assist OWNER in observing the progress and quality of the Work.

ARTICLE 11 AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

SC-11.07 Execution of Change Order

SC-11.07.C Add the following new Paragraph after Paragraph 11.07.B:

All Contract Change Orders must be concurred with in writing on the required change order form before they are effective.

ARTICLE 12 CLAIMS

SC-12.01 Claims

SC-12.01 Delete Paragraph 12.01.A through 12.01.G in their entirety and insert the following in their place:

A. If this is a "Public Works Contract" as defined in Section 22200 of the California Public Contract Code, claims shall be resolved pursuant to Section 9204 of the California Public Contract Code. Key provisions of that section are summarized as follows:

1. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - (B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the CONTRACTOR

pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

2. Upon receipt of a claim pursuant to this section, OWNER shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, OWNER and CONTRACTOR may, by mutual agreement, extend the time period provided in this subdivision.
3. Contactor shall furnish reasonable documentation to support the claim.
4. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after OWNER issues its written statement.
5. If CONTRACTOR disputes OWNER'S written response, or if OWNER fails to respond to a claim, CONTRACTOR may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, OWNER shall schedule a meet and confer conference within 30 days for settlement of the dispute.
6. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, OWNER shall provide CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after OWNER issues its written statement, any undisputed portion of the claim, as identified by the CONTRACTOR in writing, shall be submitted to nonbinding mediation with the public entity and CONTRACTOR sharing the associated costs equally. If the mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

7. Failure by OWNER to respond to a claim from CONTRACTOR within the time periods described herein or to otherwise meet the time requirements of this section shall result in the claim being rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
8. Amounts not paid in a timely manner as required by this section shall bear interest at the maximum legal rate.

B. Dispute Resolution

1. The parties to this Contract are subject to the provisions of Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code, which requires compliance with the procedures set forth therein to resolve any claim by the Contractor of \$375,000 or less regarding an extension of time, a change order, extra work, or any other disputed amount. If after the procedures set forth in Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code are completed and a civil action is filed, the action shall be subject to the mediation and arbitration provisions required by section 20104.4 of the Public Contract Code.

C. Third Party Disputes

1. Pursuant to Public Contract Code section 9201, the District shall provide the Contractor with timely notification of the receipt of any third-party claim, relating the Contract. The District is entitled to recover its reasonable costs incurred in providing such information.

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

SC-13.01 *Cost of the Work*

SC 13.01.B.5.c Delete Paragraph 13.01.B.5.c in its entirety and insert the following in its place:

A. Construction Equipment and Machinery:

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- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by CONTRACTOR will be paid at a rate shown for such equipment in the Caltrans Labor Surcharge & Equipment Rental Rate Book. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

SC-13.02 Allowances

SC-13.02.C Delete Paragraph 13.02.C in its entirety and insert the following in its place:

[Deleted]

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

SC-15.01 Progress Payments

SC-15.01.B Amend the second sentence of Paragraph 15.01.B.1 by striking out the following text:

“a bill of sale, invoice, or other.”

SC-15.01.D Add the following language at the end of Paragraph 15.01.D.1:

The payment shall be made within 30 days of becoming due.

SC-15.03 Substantial Completion

SC-15.01.B.3 Add the following language at the end of Paragraph 15.01.B.3:

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No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the CONTRACTOR.

SC-15.01.B.4. Add the following new paragraph after Paragraph 15.01.B.3:

The Application for Payment Form to be used on this Project is EJCDC No. C- 620. The Agency must approve all Applications for Payment before payment is made.

SC-15.01.D.1 Delete Paragraph 15.01.D.1 in its entirety and insert the following in its place:

The Application for Payment with ENGINEER'S recommendation will be presented to the OWNER and Agency for consideration, If both the OWNER and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due sixty (60) days after the Application for Payment is presented to the OWNER, and the OWNER will make payment to the CONTRACTOR.

SC-15.02.A Amend Paragraph 15.02.A by striking out the following text:

"no later than seven days after the time of payment by OWNER" and insert "no later than the time of payment by OWNER."

SC 15.03.B Add the following new subparagraph to Paragraph 15.03.B:

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

SC-15.06.D Delete Paragraph 15.06.D in its entirety and insert the following in its place:

Thirty-five days after the filing of a Notice of Completion with the County Recorder and after presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER, less any sum OWNER is entitled to set off against ENGINEER'S recommendation, including but not limited to

liquidated damages, will become due and will be paid by OWNER to CONTRACTOR.

SC-15.07 Waiver of Claims

SC-15.07.B. Amend Paragraph 15.07.B to state:

"The acceptance of final payment by CONTRACTOR will constitute a waiver by CONTRACTOR of all claims and rights against OWNER and/or ENGINEER other than those pending matters that have been duly submitted or appealed under the provisions of Article 17."

ARTICLE 16 SUSPENSION OF WORK AND TERMINATION

SC-16.04 Contractor May Stop Work or Terminate

SC-16.04.A. Amend Paragraph 16.04.A to state:

If, through no act or fault of CONTRACTOR, (1) the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or (2) ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or (3) OWNER fails for 90 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the contract and recover from OWNER payment on the same terms as provided in Paragraph 16.03.

SC-19 Add the following new Article:

ARTICLE 19 FEDERAL REQUIREMENTS

SC-19.01 Agency Not a Party

A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract.

SC-19.02 Contract Approval

A. OWNER and CONTRACTOR will furnish OWNER'S attorney such evidence as required so that OWNER'S attorney can complete and execute the "Certificate of OWNER'S Attorney" before OWNER submits the executed Contract Documents to Agency for approval.

- B. Concurrence by Agency in the award of the Contract is required before the Contract is effective.

SC-19.03

Conflict of Interest & Gratuities

- A. CONTRACTOR may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. OWNER'S officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in or other interest in or a tangible personal benefit from the CONTRACTOR. OWNER'S officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from CONTRACTOR or subcontractors.

SC-19.04

Gratuities

- A. 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.
- B. In the event this Contract is terminated as provided in Paragraph 19.04.A, 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.

SC-19.05**Small, Minority and Women's Businesses**

- A. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. If CONTRACTOR intends to let any subcontracts for a portion of the work, CONTRACTOR must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible. Affirmative steps must include:
- (1) Placing qualified small and minority businesses and women's enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses; and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation by small, minority, and women's businesses;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

SC-19.06**Anti-Kickback**

- A. CONTRACTOR shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, "CONTRACTORS and subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans and Grants from the United States"). The Act provides that CONTRACTOR or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. OWNER shall report all suspected or reported violations to Agency.

SC-19.07**Clean Air Act and the Federal Water Pollution Control Act**

- A. CONTRACTOR to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported

to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

SC-19.08 Equal Employment Opportunity

- A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 CFR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

SC-19.09 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

- A. The CONTRACTOR certifies to the OWNER and every subcontractor certifies to the CONTRACTOR that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The CONTRACTOR and every subcontractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the OWNER. Necessary certification and disclosure forms shall be provided by OWNER.

SC-19.10 Environmental Requirements

When constructing a project involving trenching and/or other related earth excavations, CONTRACTOR shall comply with the following environmental conditions:

- A. Wetlands - When disposing of excess, spoil, or other construction materials on public or private property, CONTRACTOR shall not fill in or otherwise convert wetlands.
- B. Floodplains - When disposing of excess, spoil, or other construction materials on public or private property, CONTRACTOR shall not fill in or otherwise convert 100-year

floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey maps.

- C. Historic Preservation - Any excavation by CONTRACTOR that uncovers an historical or archaeological artifact or human remains shall be immediately reported to OWNER and a representative of Agency. Construction shall be temporarily halted pending the notification process and further direction issued by Agency after consultation with the State Historic Preservation Officer (SHPO).
- D. Endangered Species - CONTRACTOR shall comply with the Endangered Species Act, which provides for protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of CONTRACTOR, CONTRACTOR will immediately report this evidence to OWNER and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.
- E. Mitigation Measures - The CONTRACTOR must comply with the applicable measures included in the Mitigation Monitoring and Reporting Plan (MMRP). The MMRP is provided as Attachment 4 of these contract documents.

SC-19.11

American Iron and Steel Requirements

- A. The CONTRACTOR must comply with the American Iron and Steel Requirements for this project as described in Attachment 1 of these Contract Documents.

SC-19.12

Debarment and Suspension (Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532)

- A. The CONTRACTOR shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Contractor shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The CONTRACTOR shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall obtain certification from its contractors as to themselves and their

principals as to the following, and hereby certifies as to itself and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
2. Have not within a three (3) year period preceding Project been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (ii) of this section; and
4. Have not within a three (3) year period preceding this project had one or more public transactions (federal, state or local) terminated for cause or default.
5. Suspension and debarment information can be accessed at <http://www.sam.gov>. The CONTRACTOR represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The CONTRACTOR acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

SC-19.13

Super Cross-Cutters – Civil Rights Obligations

- A. The CONTRACTOR must comply with the following federal non-discrimination requirements as described in Attachment 5 of these Contract Documents:
1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 3. The Age Discrimination Act of 1975, which prohibits age discrimination.

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4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
5. 40 CFR Part 7, as it relates to the foregoing.

SC-20 Add the following new Article:

ARTICLE 20 CONSTRUCTION PROJECT SIGN REQUIREMENT

SC-20.01 Construction Project Sign

- A. CONTRACTOR will furnish and place a project sign at a location designated by the ENGINEER. The sign shall adhere to the details given in Attachment 6. The sign shall be prepared by a professional sign maker. The CONTRACTOR shall maintain the sign in good condition for the duration of the construction period.

SC-21 Add the following new Article:

ARTICLE 21 CALIFORNIA STATE REQUIREMENTS

SC-21.01 Registration with the California Department of Industrial Relations

- A. This project is a “public works” project as defined in California Labor Code Section 1720 through 1743. In accordance with California Labor Code Article 1725.5, CONTRACTOR and all subcontractors are required to be registered with the California Department of Industrial Relations (DIR) in order to bid or be listed on a bid and/or work on a public works project.

SC-21.02 Antitrust Claim Settlement

- A. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.

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SC-21.03**Utilities**

- A. CONTRACTOR shall be responsible for marking all excavations and notifying Underground Service Alert (USA) at least 48 hours before digging and follow all other provisions of California Government Code Sections 4216 through 4216.9. CONTRACTOR shall maintain an active USA ticket number for the entire duration of the excavation.
- B. Unless otherwise indicated in the Contract Documents, all utility lines, conduits, wires, or structures shall be maintained by the CONTRACTOR and shall not be disturbed, disconnected, or damaged by him during the progress of the Work, provided, that should the CONTRACTOR in the performance of the Work disturb, disconnect, or damage any of the above, all expenses arising from such disturbance or in the replacement or repair thereof shall be borne by the CONTRACTOR. However, in accordance with Section 4215 of the California Government Code, the CONTRACTOR shall be compensated for all costs of locating and repairing damage to main or trunkline utility facilities located on the work site and for costs of operating equipment on the work site necessarily idled during such work where the CONTRACTOR has exercised reasonable care in removing or relocating utility facilities which are inaccurately indicated in the Contract Documents.

SC-21.04**Trenching Work**

- A. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, CONTRACTOR shall comply with all applicable provisions of the Labor Code, including section 6705. To this end, CONTRACTOR shall submit for DISTRICT'S review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

END OF SECTION

00800-24

ATTACHMENT 1

AMERICAN IRON AND STEEL REQUIREMENTS

PART 1 GENERAL

- A. All iron and steel products used in this project must be produced in the United States in compliance with the Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014, and subsequent statutes mandating a domestic preference (AIS Requirements) and the Funding Agreement for this Project. A copy of the AIS Requirements is included with this attachment.

PART 2 DEFINITIONS

- A. **“Iron and steel products”** are defined as 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. **“Steel”** means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Only items on the above list made primarily of iron or steel, permanently incorporated into the project must be produced in the United States. 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.
- C. **“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. 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.
- D. **“Primary iron or steel”** is defined as a product made of greater than 50 percent iron or steel, measured by cost. The cost should be based on the material costs. If a product is determined to be less than 50 percent iron and steel, the AIS requirements do not apply. An exception to this definition is reinforced precast concrete products in which the reinforcing bar and wire must be produced in the United States even if their cost is less than 50 percent of the total material cost. Additionally, the casting of the concrete product must take place in the United States.
- E. Refer to the AIS Requirements for additional definitions.



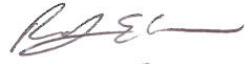
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460


MAR 20 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,
Consolidated Appropriations Act, 2014

FROM: *for* Andrew D. Sawyers, Director 
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director 
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

ATTACH 1 - 2

Implementation

The Act states:

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.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

Project Coverage

1) What classes of projects are covered by the AIS requirement?

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

8) What if a project has split funding from a non-SRF source?

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

9) What about refinancing?

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?

No, the AIS requirement only applies to 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)

Covered Iron and Steel Products

11) 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).

12) 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.

13) 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.

14) 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.

15) 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.

16) 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.

17) 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.

18) 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.

19) 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.

20) 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 zeeks. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) 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.

22) 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.

23) 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.

24) 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.

Compliance

25) How should an assistance recipient document compliance with the AIS requirement?

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

26) How should a State ensure assistance recipients are complying with the AIS requirement?

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

28) How do international trade agreements affect the implementation of the AIS requirements?

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

Definitions

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act 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.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: cwsrfwaiver@epa.gov. For DWSRF waiver requests, please send the application to: dwsrfwaiver@epa.gov.

Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: http://water.epa.gov/grants_funding/aisrequirement.cfm
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests				
<ul style="list-style-type: none"> Does the waiver request include the following information? <ul style="list-style-type: none"> Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products Relevant excerpts from the bid documents used by the contractors to complete the comparison A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%? 				
Availability Waiver Requests				
<ul style="list-style-type: none"> Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? <ul style="list-style-type: none"> Supplier information or other documentation indicating availability/delivery date for materials Project schedule Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers? Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information) Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States Correspondence with construction trade associations indicating the non-availability of the materials Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the _____ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 5: Sample Certifications

The following information is provided as a sample letter of step certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

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 subject 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. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

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

Signed by company representative

The following information is provided as a sample letter of certification for AIS compliance.
Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are 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. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

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

Signed by company representative

END OF SECTION

ATTACH 1 - 22

ATTACHMENT 2

DAVIS-BACON REQUIREMENTS

The Recipient shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 5.

Requirements under the Consolidated Appropriations Act, 2014 (P.L. 113-76)

For Recipients That Are Governmental Entities:

If a Recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board at DavisBacon@waterboards.ca.gov or phone (916) 327-7323. The Recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

Under the FY 2014 Consolidated Appropriation Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State Water Pollution Control Revolving Fund and to any construction project carried out in whole or in part by assistance made available by a Drinking Water Treatment Revolving Loan Fund. If the Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the State before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The Recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipients may request a finding from the State Water Board that there is not a reasonable time to notify

interested contractors of the modification of the wage determination. The State Water Board will provide a report of its findings to the Recipient.

- (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State Water Board, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (c) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The State Water Board shall insure that the Recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal Agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014 Consolidated Appropriations Act, the following clauses:
 - (1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a) (1) (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.
- (ii)(A) The Recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
 - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage

determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. The Recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
 - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible,

and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State Water Board or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient(s).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a) (3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees--
 - (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training

ATTACH 2 - 7

Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every

trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

- (a) Contract Work Hours and Safety Standards Act. The Recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The Recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.
- (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized

representatives of the USEPA, the Department of Labor, and the State Water Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the Recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The Recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

- (e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

END OF SECTION

ATTACHMENT 3
DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

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California State Water Resources Control Board
Division of Financial Assistance
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Guidelines for Meeting the California State Revolving Fund (CASRF) Programs (Clean Water and Drinking Water SRF) Disadvantaged Business Enterprise Requirements

The Disadvantaged Business Enterprise (DBE) Program is an outreach, education, and objectives program designed to increase the participation of DBEs in the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs.

How to Achieve the Purpose of the Program

Recipients of CWSRF/DWSRF financing that are subject to the DBE requirements (recipients) are required to seek, and are encouraged to use, DBEs for their procurement needs. Recipients should award a "fair share" of sub-agreements to DBEs. This applies to all sub-agreements for equipment, supplies, construction, and services.

The key functional components of the DBE Program are as follows:

- Fair Share Objectives
- DBE Certification
- Six Good Faith Efforts
- Contract Administration Requirements
- DBE Reporting

Disadvantaged Business Enterprises are:

- Entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- Minority Business Enterprise (MBE) - entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively;
- Women Business Enterprise (WBE) - entities that are at least 51% owned and/or controlled by women;
- Small Business Enterprise (SBE);
- Small Business in a Rural Area (SBRA);
- Labor Surplus Area Firm (LSAF); or
- Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Certifying DBE Firms:

Under the DBE Program, entities can no longer self-certify and contractors and sub-contractors must be certified at bid opening. Contractors and sub-contractors must provide to the CASRF recipient proof of DBE certification. Certifications will be accepted from the following:

- The U.S. Environmental Protection Agency (USEPA)
- The Small Business Administration (SBA)
- The Department of Transportation's State implemented DBE Certification Program (with U.S. citizenship)
- Tribal, State and Local governments
- Independent private organization certifications

If an entity holds one of these certifications, it is considered acceptable for establishing status under the DBE Program.

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Six Good Faith Efforts (GFE)

All CWSRF/DWSRF financing recipients are required to complete and ensure that the prime contractor complies with the GFE below to ensure that DBEs have the opportunity to compete for financial assistance dollars.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practical through outreach and recruitment activities. For Tribal, State and Local Government Recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs. Posting solicitations for bids or proposals for a minimum of 30 calendar days in a local newspaper, before the bid opening date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a group of DBEs when a contract is too large for one firm to handle individually.
5. Use the services of the SBA **and/or** Minority Business Development Agency (MBDA) of the US Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.

The forms listed in the table below and attached to these guidelines; must be completed and submitted with the GFE:

FORM NUMBER	FORM NAME	REQUIREMENT	PROVIDED BY	COMPLETED BY	SUBMITTED TO
SWRCB Form 4500-2 or EPA Form	DBE Sub-Contractor Participation Form	As Needed to Report Issues	Recipient	Sub-contractor	EPA DBE Coordinator
SWRCB Form 4500-3 or EPA Form	DBE Sub-Contractor Performance Form	Include with Bid or Proposal Package	Prime Contractor	Sub-Contractor	SWRCB by Recipient
SWRCB Form 4500-4 or EPA Form	DBE Sub-Contractor Utilization Form	Include with Bid or Proposal Package	Recipient	Prime Contractor	SWRCB by Recipient

The completed forms must be submitted with each Bid or Proposal. The recipient shall review the bidder's documents closely to determine that the GFE was performed **prior** to bid or proposal opening date. Failure to complete the GFE and to substantiate completion of the GFE before the bid opening date could jeopardize CWSRF/DWSRF financing for the project. The following situations and circumstances require action as indicated:

1. If the apparent successful low bidder was rejected, a complete explanation must be provided.
2. Failure of the apparent low bidder to **perform** the GFE **prior** to bid opening constitutes a non-responsive bid. The construction contract may then be awarded to the next low, responsive, and responsible bidder that meets the requirements or the Recipient may re-advertise the project.
3. If there is a bid dispute, all disputes shall be settled **prior** to submission of the Final Budget Approval Form.

Administration Requirements

- A recipient of CWSRF/DWSRF financing must require entities receiving funds to create and maintain a Bidders List if the recipient of the financing agreement is subject to, or chooses to follow, competitive bidding requirements.
- The Bidders list must include all firms that bid or quote on prime contracts, or bid or quote on subcontracts, including both DBEs and non-DBEs.

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- Information retained on the Bidder's List must include the following:
 1. Entity's name with point of contact;
 2. Entity's mailing address and telephone number;
 3. The project description on which the entity bid or quoted and when;
 4. Amount of bid/quote; and
 5. Entity's status as a DBE or non-DBE.
- The Bidders List must be kept until the recipient is no longer receiving funding under the agreement.
- The recipient shall include Bidders List as part of the Final Budget Approval Form.
- A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Recipient.
- A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor by the prime contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six GFEs if soliciting a replacement subcontractor.
- A recipient must require its prime contractor to employ the six GFEs even if the prime contractor has achieved its fair share objectives.

Reporting Requirements

For the duration of the construction contract(s), the recipient is required to submit to the State Water Resources Control Board DBE reports annually by October 10 of each fiscal year on the attached Utilization Report form (UR-334). Failure to provide this information as stipulated in the financial agreement language may be cause for withholding disbursements.

CONTACT FOR MORE INFORMATION

SWRCB, CASRF – Barbara August (916) 341-6952 barbara.august@waterboards.ca.gov

US EPA, Region 9 – Joe Ochab (415) 972-3761 ochab.joe@epa.gov

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

A Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the 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 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

¹ 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 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² 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 award of financial assistance.

FORM 4500-2 (DBE Subcontractor Participation Form)

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Please use the space below to report any concerns regarding the above funded project:

Subcontractor Signature	Print Name
Title	Date

The public reporting and record keeping 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. Do not send the completed form to this address.

Send completed Form 4500-2 to:
Mr. Joe Ochab, DBE Coordinator
US EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

FORM 4500-2 (DBE Subcontractor Participation Form)

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

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. A 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 from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor

DBE Certified By: <u> DOT </u> <u> SBA </u> Other: _____	Meets/exceeds EPA certification standards? YES NO Unknown
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¹ 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 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² 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 award of financial assistance.

FORM 4500-3 (DBE Subcontractor Performance Form)

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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 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).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and record keeping 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. Do not send the completed form to this address.

FORM 4500-3 (DBE Subcontractor Performance Form)

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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 DBE¹ subcontractor's² and the estimated dollar amount of each subcontract. A 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	Estimated Dollar Amount	Currently DBE Certified?

--Continue on back if needed--

¹ 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 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² 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 award of financial assistance.

FORM 4500-4 (DBE Subcontractor Utilization Form)

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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 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).

Prime Contractor Signature	Print Name
Title	Date

The public reporting and record keeping 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. Do not send the completed form to this address.

FORM 4500-4 (DBE Subcontractor Utilization Form)

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**STATE WATER RESOURCES CONTROL BOARD – DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CALIFORNIA STATE REVOLVING FUNDS (CASRF)
FORM UR-334**

1. Grant/Finance Agreement Number:		2. Annual Reporting Period 10/1/ through 09/30/		3. Purchase Period of Financing Agreement:	
4. Total Payments Paid to Prime Contractor or Sub-Contractors During Current Reporting Period: \$					
5. <u>Recipient's Name and Address:</u>			6. <u>Recipient's Contact Person and Phone Number:</u>		
7. List All DBE Payments Paid by Recipient or Prime Contractor During Current Reporting Period:					
Payment or Purchase Paid by Recipient or Prime Contractor	Amount Paid to Any DBE Contractor or Sub-Contractor For Service Provided to Recipient		Date of Payment (MM/DD/YY)	Procurement Type Code** (see below)	Name and Address of DBE Contractor of Sub-Contractor or Vendor
	MBE	WBE			
8. Initial here if no DBE contractors or sub-contractors paid during current reporting period:					
9. Initial here if all procurements for this contract are completed:					
10. Comments:					
11. Signature and Title of Recipient's Authorized Representative				12. Date	

Email Form UR-334 to:

DrinkingWaterSRF@waterboards.ca.gov OR CleanWaterSRF@waterboards.ca.gov

Questions may be directed to:

Barbara August, SWRCB
Barbara.August@waterboards.ca.gov
 Phone: (916) 341-6952
 Fax: (916) 327-7469

****Procurement Type:**

1. Construction
2. Supplies
3. Services (includes business services; professional services; repair services and personnel services)
4. Equipment

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Tuolumne City Sanitary District
 Wastewater Treatment Plant Upgrade

Disadvantaged Business Enterprise
 Requirements

**STATE WATER RESOURCES CONTROL BOARD - DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CALIFORNIA STATE REVOLVING FUNDS**

INSTRUCTIONS FOR COMPLETING FORM UR-334

- Box 1** Grant or Financing Agreement Number.
- Box 2** Annual reporting period.
- Box 3** Enter the dates between which you made procurements under this financing agreement or grant.
- Box 4** Enter the total amount of payments paid to the contractor or sub-contractors during this reporting period.
- Box 5** Enter Recipient's Name and Address.
- Box 6** Enter Recipient's Contact Name and Phone Number.
- Box 7** Enter details for the **DBE purchases only** and be sure to limit them to the current period. 1) Use either an "R" or a "C" to represent "Recipient" or "Contractor." 2) Enter a dollar total for DBE and total the two columns at the bottom of the section. 3) Provide the payment date. 4) Enter a product type choice from those at the bottom of the page. 5) List the vendor name and address in the right-hand column
- Box 8** Initial here if no DBE contractors or sub-contractors were paid during this reporting period.
- Box 9** Initial this box only if all purchases under this financing agreement or grant have been completed during this reporting period or a previous period. If you initial this box, we will no longer send you a survey.
- Box 10** This box is for explanatory information or questions.
- Box 11** Provide an authorized representative signature.
- Box 12** Enter the date form completed.

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END OF SECTION

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Appendix A. Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Plan							
Mitigation Measure Reference	Mitigation Measure	Limits, Performance Standards	Timing	Frequency	Responsible Entity (RE)	Initial	Date
Air Quality							
AQ-1	<u>Dust Control.</u> TCSD shall be responsible for dust abatement during construction and development operations. A water truck or other watering device shall be on the construction site on all working days when natural precipitation does not provide adequate moisture for complete dust control. Said watering device shall be used to spray water on the site at the end of each day and at all other intervals, as need dictates, to control dust. All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions using application of water. A water truck shall be present on site throughout construction activities.		Throughout Project construction	Throughout Project construction when inadequate moisture exists	Construction contractor		
AQ-2	<u>Equipment Emissions.</u> Throughout Project construction: C. Properly tune and maintain construction equipment and vehicles. Use low-sulfur fuel in all construction equipment as provided in California Code of Regulations (CCR) Title 17, Section 93114 (Compliance with Caltrans' Standard Specifications, Section 14-9). D. The extended idling of heavy-duty diesel-powered construction equipment within 500 feet of nearby sensitive receptors (i.e., residential dwellings) is prohibited during periods when the equipment is not in use.	See condition.	Throughout Project construction	Throughout Project construction	Construction contractor		
Biological Resources							
BIO-1	<u>Work Area.</u> All work shall occur on the project side of the existing fencing along Turnback Creek.		Throughout Project construction	Throughout Project construction	Construction contractor		
BIO-2	<u>Timing Limits.</u> Excavation, vegetation removal, and ground disturbing activities will occur within 200 feet of the centerline of Turnback Creek only between September 1 st and January 31 st of the construction year. This condition applies to site disturbances associated with the addition of HDPE lining for Storage Pond 1 and piping modifications within this 200-foot buffer area. (Project Description)		Disturbances within 200 feet of Turnback Creek between Sept. 1 st and January 31 st only	Throughout Project construction	Construction contractor		
BIO-3	<u>Drain Ponds.</u> Prior to installing HDPE liner in Pond 1, the ponds shall be drained. (Project Description)		Prior to installing HDPE liner in Pond 1	N/A	Construction contractor		

Mitigation Monitoring and Reporting Plan							
Mitigation Measure Reference	Mitigation Measure	Limits, Performance Standards	Timing	Frequency	Responsible Entity (RE)	Initial	Date
BIO-4	<p><u>Turtle relocation.</u> Within 24 hours of commencing site disturbances, the Tuolumne City Sanitary District shall have a qualified biologist survey for and, if present, relocate any non-nesting western pond turtles from the project site. The biologist shall secure permission from the California Department of Fish and Wildlife to relocate up to 3 western pond turtles prior to commencing the survey. If found on site in locations where harm to the turtle may occur from project activities, the turtle first will be given the opportunity to leave the site on its own if the turtle actively is in the process of attempting to leave the site and is likely to successfully do so within the hour in the opinion of the qualified biologist. Otherwise, the qualified biologist will relocate the turtle downstream of the WWTP along Turnback Creek where permanent or nearly permanent water is pooled or present. At the discretion of the qualified biologist, turtles may be located upstream if higher quality pools with permanent or nearly permanent pools are identified. [California Code of Regulations, Title 14, Division 1, Chapter 5, Subsection 40(b)].</p>	Limit of three WPT relocations	Within 24 hours of commencing site disturbances	Contact biologist if WPT encountered during construction	<p>Construction contractor</p> <p>Project Biologist</p>		
BIO-5	<p><u>Nesting Birds.</u> Prior to construction occurring between February 1st and August 30th (e.g., excavation, ground disturbance, or vegetation removal) a preconstruction survey for nesting birds will be conducted in accordance with the CDFW guidelines and a no-disturbance buffer will be established, if necessary. NOTE: Excavation, ground disturbance and vegetation removal are prohibited within a 200 foot buffer measured from the centerline of Turnback Creek between February 1st and August 30th.</p> <ul style="list-style-type: none"> If equipment staging, site preparation, vegetation removal, grading, excavation or other project-related construction activities are scheduled during the avian nesting season (generally February 1 through August 30), a focused survey for active nests would be conducted by a qualified biologist within 15 days prior to the beginning of project-related activities. Surveys shall be conducted in all suitable habitat in the Project site. The minimum survey radii surrounding the work area shall be the following: <ul style="list-style-type: none"> i) 250± feet for passerines; ii) 500± feet for small raptors such as accipiters; iii) 1,000± feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day, and during appropriate nesting times and shall concentrate on areas of suitable habitat. If an active nest is found, the bird shall be identified to species and the approximate distance from the closest work site to the nest estimated. No additional measures need be implemented if active nests are more than the following distances from the nearest work site: (a) 300± feet for raptors; or (b) 75± feet for other non-special-status bird species. Disturbance of active nests shall be avoided to the extent possible until it is determined that nesting is complete and the young have fledged. For species protected under the California Fish and Game Code (CFGC), if active nests are closer than those distances to the nearest work site and there is the potential for bird disturbance, CDFW will be contacted for approval to work within 300± feet of raptors, or 75± feet of other non-special-status bird species. 		<p>Construction occurring between February 1st and August 30th of the construction year</p> <p>NO ground disturbances within 200 feet of Turnback Creek between February 1st and August 30th of the construction year</p>	<p>Construction occurring between February 1st and August 30th of the construction year</p> <p>NO ground disturbances within 200 feet of Turnback Creek between February 1st and August 30th of the construction year</p>	<p>Construction contractor</p> <p>Project Biologist</p>		

Mitigation Monitoring and Reporting Plan							
Mitigation Measure Reference	Mitigation Measure	Limits, Performance Standards	Timing	Frequency	Responsible Entity (RE)	Initial	Date
BIO-6	<u>Erosion Control.</u> An Erosion Control Plan shall be submitted for approval and implemented for any construction to take place between October 15 and May 15 of any year. In the absence of such an approved and implemented plan, all construction shall cease on or before October 15, except that necessary to implement erosion control measures. All soils disturbed by grading shall be reseeded or hydromulched or otherwise stabilized as soon as possible and before the rainy season begins, by October 15 of the construction year, and emergency erosion control measures shall be utilized as requested by jurisdictional agency officials.		October 15- May 15 of the construction year.	October 15- May 15 of the construction year	Construction contractor		
BIO-7	<u>Hours of Construction.</u> Project construction shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday unless an emergency situation exists. No work will be performed on Sundays and District holidays, except in emergency situations.		Throughout Project construction	Throughout Project construction	Construction contractor		
Cultural Resources							

Mitigation Monitoring and Reporting Plan							
Mitigation Measure Reference	Mitigation Measure	Limits, Performance Standards	Timing	Frequency	Responsible Entity (RE)	Initial	Date
CULT-1	<p><u>Unanticipated Cultural Resource Discoveries.</u> If a cultural resource is discovered during construction activities, TCSD shall comply with the following provisions:</p> <p>A. The person discovering the cultural resource shall notify the TCSD or a qualified professional by telephone within 4 hours of the discovery or the next working day if the department is closed.</p> <p>B. When the cultural resource is located outside the area of disturbance, a qualified professional shall be allowed to photodocument and record the resource and construction activities may continue during this process. On parcels of two or more gross acres, the area of disturbance includes building pads, driveways or utility lines, grading and vegetation removal areas, plus 300 feet.</p> <p>C. When the cultural resource is located within the area of disturbance, all activities that may impact the resource shall cease immediately upon discovery of the resource. All activity that does not affect the cultural resource as determined by a qualified professional may continue. A qualified professional shall be allowed to conduct an evaluative survey to evaluate the significance of the cultural resource.</p> <p>D. When the cultural resource is determined to not be significant, the qualified professional shall be allowed to photodocument and record the resource. Construction activities may resume after authorization from the qualified professional.</p> <p>E. When a resource is determined to be significant, the resource shall be avoided with said resource having boundaries established around its perimeter by a qualified professional or a cultural resource management plan shall be prepared by a qualified professional to establish measures formulated and implemented in accordance with Sections 21083.2 and 21084.1 of the California Environmental Quality Act (CEQA) to address the effects of construction on the resource. The qualified professional shall be allowed to photodocument and record the resource. Construction activities may resume after authorization from the qualified professional. All further activity authorized by this permit shall comply with the cultural resources management plan.</p> <p>For the purposes of implementing this measure, a “qualified professional” is an individual (e.g., historian or archaeologist) meeting the Secretary of the Interior’s Qualification Standards , A “cultural resource” is any building, structure, object, site, district, or other item of cultural, social, religious, economic, political, scientific, agricultural, educational, military, engineering or architectural significance to the citizens of Tuolumne County, the State of California, or the nation which is 50 years of age or older or has been listed on or is eligible for listing on the National Register of Historic Places, the California Register of Cultural Resources, or any local register.</p>	<p>HSC Sections 7054 & 7050.5(c)</p> <p>PRC 5097.9 et. seq.</p>	Throughout Project construction	Throughout Project construction	<p>Construction contractor</p> <p>Tuolumne County coroner</p> <p>Most likely descendent (if applicable)</p>		

Mitigation Monitoring and Reporting Plan							
Mitigation Measure Reference	Mitigation Measure	Limits, Performance Standards	Timing	Frequency	Responsible Entity (RE)	Initial	Date
CULT-2	Human Remains. If human remains, burial, cremation of other mortuary feature are uncovered during construction activities, all work within 50 feet of the discovery shall stop until the County Coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission to obtain the Most Likely Descendent (MLD) and follow state law (PRC 5097.98 and Health and Safety Code 7050.5(c)). No further work or disturbance shall occur within 50 feet until all of the preceding actions, as applicable to the discovery, are implemented and completed. Preservation <i>in situ</i> is the preferred treatment of human remains and associated burial artifacts. [Public Resources Code Sections 5097.94, 5097.98 and Health and Safety Code Section 7050.5(c) and Section 15064.5 of the California Code of Regulations implementing the California Public Resources Code, Sections 21000-21177]	PRC Sections 5097.94, 5097.98, H&S Code 7050.5, CCR 15064.5	Throughout Project Construction	Throughout Project Construction	Construction contractor Tuolumne County coroner Most likely descendent (if applicable)		
GEOLOGY & SOILS; HYDROLOGY AND WATER QUALITY							
BIO-6	Erosion Control – See BIO-6		See BIO-6	See BIO-6	See BIO-6		
NOISE							
BIO-7	Hours of Construction - See BIO-7		See BIO-7	See BIO-7	See BIO-7		

ATTACHMENT 5

CROSS-CUTTERS

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as

provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

END OF SECTION

ATTACH 5 - 2

ATTACHMENT 6

PROJECT SIGNAGE

CONTRACTOR shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



“Funding for this Wastewater Treatment Facilities Improvement Project has been provided in full or in part by the Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California’s Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds.”

The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

CONTRACTOR shall include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

ENHANCING PUBLIC AWARENESS OF SRF ASSISTANCE AGREEMENTS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 3 2015

OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidelines for Enhancing Public Awareness of SRF Assistance Agreements

FROM: Andrew D. Sawyers, Ph.D., Director
Office of Wastewater Management (4201M) *[Signature]*
Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M) *[Signature]*

TO: Water Management Division Directors
Regions I-X

Last year, the Environmental Protection Agency (EPA) implemented an agency-wide initiative to enhance public awareness of EPA assistance agreements nationwide. The Office of Water has developed guidelines to inform states how this initiative should be implemented in the State Revolving Fund (SRF) Programs.

The guidelines were developed with input from EPA and state SRF staff. The guidelines recognize that each of the state SRF programs and the projects they fund are different and that one implementation method will not work for everyone. Therefore, as a result of input from the states, the guidelines offer a number of options that can be used to enhance public awareness of SRF assistance agreements.

Implementation of these guidelines will begin with the awarding of the FY 2015 SRF capitalization grants. A term and condition on compliance with the guidelines is to be included in all new SRF grants.

Please have your staff provide copies of the guidelines to your states. Questions regarding the guidelines should be directed to Sheila Platt (202/564-0686) or Howard Rubin (202/564-2051).

Attachment

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ATTACH 6 - 2

Enhancing Public Awareness of SRF Assistance Agreements

Introduction

The Environmental Protection Agency (EPA) is currently implementing an agency-wide initiative focused on signage to enhance public awareness of EPA assistance agreements nationwide. The intention of this effort is to communicate the positive impact and benefits of EPA funding around the country and increase awareness surrounding the improvements communities receive as a result of State Revolving Fund (SRF) assistance. Projects implemented with Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) monies are included in this initiative, as many CWSRF and DWSRF assistance agreements have direct and tangible benefits to populations around the country.

EPA's Office of Water developed these guidelines as a way to inform states of this directive and how it should be implemented in the SRF programs. The primary objective is to enhance public understanding of the positive benefits of CWSRF and DWSRF funding to towns, cities, municipalities and water systems. To that end, states are presented with a range of options for implementing these guidelines. All of these options achieve the ultimate goal of communicating to a broad audience the positive role EPA funding of the state CWSRF and DWSRF programs plays in communities across the country.

The information in the guidelines was developed with input from EPA and state staff across the country as well as the members of the State-EPA Workgroup. The guidelines recognize the wide range of project types, varied locations and different institutional approaches among states and communities. Therefore, providing states and SRF assistance recipients maximum flexibility is optimal. The guidelines allow selection of the implementation method which best balances two goals. First, it should satisfy the overall objective of communicating EPA's role in funding assistance agreements that achieve positive benefit. Second, the implementation method should be practically and financially viable for states and communities and avoid any overly burdensome investment of time and resources. In some cases, it might be appropriate for a state to select a combination of options listed below, provided this does not result in excessive cost to communities.

Project Selection Requirements

Signage requirements will not be required to apply to all SRF projects. Signage will be considered an equivalency requirement for SRF programs. States should select a set of borrowers and/or projects totaling a funding amount equivalent to the amount of their federal capitalization grant to satisfy the signage requirement. There are no other requirements or restrictions on which projects should or should not participate in this initiative. Therefore, it is at the discretion of the state SRF program to select projects most able to efficiently and effectively comply in a way that

meets the intention to enhance public awareness without significant financial hardship to the state or its borrowers. This can be done either through the selection of specific projects or borrowers, or by setting a threshold within the state for which projects will be requested to meet signage requirements. States should note that they have the option of selecting different implementation options for different borrowers depending on the location, project type and available resources. Borrowers and/or projects complying with the signage requirement must ensure limited English proficient individuals have meaningful access to activities receiving EPA funds, consistent with Executive Order 13166 and EPA Order 1000.32.

In this regard, to increase public awareness of projects serving communities where English is not the predominant language, States should encourage recipients when implementing a particular signage option to translate the language used (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

Although the signage requirement does not apply to all SRF projects, we recommend that states encourage all borrowers/projects to notify the public of the benefits of the projects and the role of the SRF, using one of the options below.

Summary of Options

The guidelines present a number of options which communities can explore to implement EPA's signage policy. The option selected should meet all of the above basic requirements while remaining cost-effective and accessible to a broad audience. The guidelines describe the following strategies as acceptable options for communities to follow:

- Standard signage
- Posters or wall signage in a public building or location
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
- Online signage placed on community website or social media outlet
- Press release

Each of these options is described in more detail in the sections below.

Implementation Option: Standard Signage

EPA recommends that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades. Some facilities will not find this an appropriate or cost-effective solution. For example, investing in a large road sign for a facility that is located in a rural area or where access is limited to a smaller service road would likely not be an optimal solution.

Signs can also be located away from the project site if there is another reasonable alternative. For example, a community may elect to place a sign advertising the project near a body of water that receives discharge from a particular facility.

States selecting projects that will implement this requirement through use of a traditional sign should ensure the following are included:

- The name of the facility, project and community
- Project cost
- The State Agency/SRF administering the program
- The EPA and State Agency logos (EPA logo may only be used on a sign)

If the EPA logo is displayed along with logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from the EPA Office of Public Affairs (OPA), the EPA logo is the identifier for assistance agreement projects. States are required to ensure that recipients comply with the sign specifications provided by the OPA, available at http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf. To obtain the appropriate EPA logo graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication.

Implementation Option: Posters or Brochures

Smaller projects, projects located in rural areas, and other efforts may find that it is more cost-effective and practical to advertise efforts through creation of a poster or smaller sign. If the project involves nonpoint source or green infrastructure components, those can be described at the discretion of the state or community.

The poster or brochure and acknowledgement should be visible, as well as a website or other source of information for individuals that may be curious about the SRF program. The community could also implement this option as a short pamphlet or brochure that is placed in one of these locations for community members to read.

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members. This can include, but is not limited to:

- Town or City Hall
- Community Center
- Locally owned or operated park or recreational facility
- Public Library
- County/municipal government facilities
- Court house or other public meeting space

Given the low cost for producing multiple copies of the same poster, pamphlet, or brochure, communities can explore options for displaying these posters in several locations simultaneously. This would achieve the overall objective of reaching a broad audience and publicizing the project.

States have the option of creating a template verbiage and layout to provide to borrowers, particularly smaller or disadvantaged communities. This could reduce the burden on small municipalities which may or may not have the staffing capacity to meet signage requirements on their own.

States selecting projects that will implement this requirement through use of posters or brochures should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of project
- Brief description of the water quality benefits the project will achieve

Implementation Option: Newsletter, Periodical or Press Release

For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, projects can be advertised in a community newsletter or similar periodical. States can use guidelines from their standard public notice practices. For new construction, if a groundbreaking ceremony is to be held, an announcement could publicize or accompany publicity for this event.

In some cases, it may be appropriate for the state agency to issue a formal press release announcing construction of a new facility. Distributing a single prepared statement concisely summarizing the project purpose and the joint funding from EPA and state resources can reach a wide audience as the statement goes through multiple news outlets. Programs should consider whether or not this is an option that is likely to effectively publicize the CWSRF or DWSRF program in local news sources.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction as a result of EPA support, EPA must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate in the event.

States selecting projects that will implement this requirement through use of a newsletter, periodical or press release should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program

- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Insert or Pamphlet in Water/Sewer Bill

Utilities can consider including a single-page insert within water and sewer bills that are mailed to residents and users in the area. This approach would effectively publicize the project to those individuals directly benefitting from the project. The flyer or insert could emphasize the interest rate and financial savings that the community achieved by taking advantage of SRF funds as well as the environmental and public health benefits to the community.

States selecting projects that will implement this requirement through use of an insert or pamphlet in water/sewer bill should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Online & Social Media Publicity

Many communities are increasingly finding that the online forum is the most cost-effective approach to publicizing their SRF programs and reaching a broad audience of stakeholders. Online “signage” should follow the minimum information guidelines above and may appear on the town, community or facility website if available. In some cases, communities may be active on social media sites such as Facebook or Twitter. These can be used as an opportunity for publicizing projects and information about how SRF funds are being used in the community. These online announcements/notices may be appropriate for settings where physical signage would not be visible to a wide audience. They can be a more cost-effective option than traditional signs or publicity in print media outlets. This option may be most useful where the community’s website is a well-recognized source of information for its residents.

In the case of some projects, such as nonpoint source or sponsorship projects, there might be additional opportunities for online publicity through partner agencies or organizations. This could take place either on the organization’s website or again through social media outlets.

States selecting projects that will implement this requirement through use of online & social media publicity should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project was wholly or partially funded with EPA funding
- Brief description of the project

- Brief listing of water quality benefits to be achieved

Suggested Language for Alternate Options

For any of the alternate implementation options listed above, SRF programs have discretion to structure their signage as they see appropriate. The language below is offered as an option for use in posters, pamphlets, brochures, press releases, or online materials. States may consider using the following:

“Construction of upgrades and improvements to the [Name of Facility, Project Location, or WWTP] were financed by the [Clean Water/Drinking Water] State Revolving Fund. The [CWSRF/DWSRF] program is administered by [State Agency] with joint funding from the U.S. Environmental Protection Agency and [State Name]. This project will (description of project) and will provide water quality benefits [details specifying particular benefits] for community residents and businesses in and near [name of town, city, and/or water body or watershed to benefit from project.] [CWSRF/DWSRF] programs operate around the country to provide states and communities the resources necessary to maintain and improve the infrastructure that protects our valuable water resources nationwide. “

For projects in certain areas, states should consider whether or not it is appropriate to include additional details about the projects. Specific benefits, such as reduction of CSO events, lessening of nutrient pollution, reducing contaminant levels or water pumping costs, or improvements to a particular water body, may be of interest to community residents. In these cases, including them would further serve to showcase positive efforts financed by the SRF programs. Additionally, for projects with components that meet Green Project Reserve (GPR) criteria, States may elect to detail these particular improvements. For example, the state could include quantitative improvements in energy efficiency or water conservation achieved by project upgrades. If the project includes green infrastructure components such as rain gardens and green roofs that have environmental and aesthetic benefits to the community, these can be described briefly as well. Again, this additional information can be included at the discretion of the state when it is appropriate, given the project type, location, and the type of signage or publicity effort selected.

END OF SECTION

ATTACH 6 - 9

ATTACHMENT 7
PREVAILING WAGES

ATTACH 7 - 1

END OF SECTION

ATTACH 7 - 2