Bidding Documents and Request for Technical Proposals

Route 9 Sewer Project

Bids Opening: January 21, 2020 at 3:00 p.m.
Charles Town Utility Board
Attn: “Route 9 Sewer Project”
661 South George Street, Suite 101
Charles Town, West Virginia 25414

Mandatory Pre-Bid Meeting: January 6, 2020 at 11:00 a.m.
Charles Town Utility Board
661 South George Street, Suite 101
Charles Town, West Virginia 25414

Bid Bond: 10% of Bid Amount

Performance Bond: 100% of Contract Amount

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ADVERTISEMENT FOR BIDS
ADVERTISEMENT FOR BIDS

Sealed Bids for the construction of the Route 9 Infrastructure Project will be received, by the Charles Town Utility Board, at 661 South George Street, Suite 101, Charles Town, WV 25414; until 3:00 p.m. local time on January 21, 2020, at which time the Bids received will publicly opened and read. The Route 9 Sewer Project element generally includes:

1. Mobilization and survey stakeout;
2. Installation of erosion and sediment control, measures, preparing a Stormwater Pollution Prevention Plan (SWPPP), and filing a National Pollutant Discharge Elimination System (NPDES) Notice of Intent (NOI);
3. Coordination with concurrent water and roadway construction;
4. Coordination with concurrent manufacturing plant construction;
5. Coordination with concurrent roadway construction;
6. Coordination with adjacent private utility installation (natural gas, communications, and electric power);
7. Traffic control during construction, including developing traffic control and maintenance of traffic plans, and obtaining permits from the authorities having jurisdiction;
8. Trenching; installation of force main and gravity sewer lines, manholes, valves and appurtenances; and trench backfill (~16,000 feet of force main sewers, 4”-8” and ~9,400 feet of gravity sewer, 6”-15”);
9. Installation of steel casing pipes at roadway and railroad crossings (~700 feet of 24”-34” casing);
10. Obtaining utility encroachment permits from CSX Transportation and Norfolk Southern railroads;
11. Providing for rail protective services for work within and adjacent to railroad rights-of-way;
12. Providing rail protective liability and other insurance coverage in the amounts required by the railroads;
13. Construction of the Northport sewage pumping station (Bid Alternate No. 1), including construction of associated earthwork, driveway, vaults and wet wells, pumps and ancillary equipment, controllers, lighting, water service, fencing and gates, and providing electric power service;
14. Construction of the War Admiral sewage pumping station, including construction of associated earthwork, driveway, vaults and wet wells, controllers, lighting, water service, fencing and gates, and providing electric power service;
15. Utility adjustment and relocation as necessary to construct proposed sewer system infrastructure;
16. Fine grading and site stabilization/restoration; and
17. Providing startup, testing, and operator training for all equipment;

Bids will be received from a single prime Contractor. Bids shall be on a lump sum and unit price basis, as indicated in the Bid Form, including Bid Alternate(s).

Work must be substantially complete within 210 days from Notice to Proceed (NTP), and fully completed ready for final payment within 270 days of NTP. Liquidated damages will be $1,000.00 per day.
The Issuing Office for the Bidding Documents is:

Hatch
704 Quince Orchard Road, Suite 310
Gaithersburg, MD 20878

Rick Travers, PE
Sr. Project Manager
richard.travers@hatch.com

Prospective Bidders may examine the Bidding Documents online at https://wvlegals.com. Hardcopies of the Solicitation Documents and Addenda on file will be available upon request for a cost of $260 per set. If there is any conflict between the electronic format and hard copies of any Bidding Documents or Addenda, the hard copies on file shall control.

A two-envelope system will be used. Envelope No. 1 must have the following information presented on the front:

Name and address of Bidder
Bid on Route 9 Sewer
Charles Town Utility Board

Envelope No. 2 must be labeled “Bid Proposal,” and shall be placed inside of Envelope #1.

Envelope No. 1 will be opened first and the Bid Opening Requirement items checked for compliance as outlined on the Bid Opening Checklist included in Article 23 of the Instructions to Bidders. If such documents are found to be in order, Envelope No. 2 “Bid Proposal”, will then be opened and will be publicly read aloud. If the documents required to be contained in Envelope No. 1 are not in order, Envelope No. 2 “Bid Proposal” will not be opened and the Bid will be considered non-responsive and will be returned to the Bidder.

A bidder may not withdraw its bid for a period of ninety (90) days after the bid opening date.

Bids shall be accompanied by a certified check or bid bond payable to Charles Town Utility Board 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.

This contract is subject to the requirements of the West Virginia Jobs Act. Contractor shall provide the West Virginia Jobs Act Certification in accordance with Chapter 21 Article 1C of the West Virginia Code.

Contractor shall provide Bidders Certification Regarding Equal Employment Opportunity and Certification of Non-Segregated Facilities in accordance with President’s Executive Order 11264 (30 FR 12319-25). The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure the applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

Contractor is required to provide the Drug Free Workplace Certification in accordance with WV Code 21-1D-5.

All Bidders are required to have a West Virginia Contractor’s License per Section §21-11-11 of the West Virginia Code.

This project is located within the City or Ranson. All bidders are required to have a City of Ranson Business License in accordance with Section 6-2 of the Ranson City Code.
Contractors and subcontractors debarred pursuant to Chapter 5A Article 3, Section 33 of the West Virginia Code are not eligible to bid on this project. The Contractor shall certify the contracting team’s eligibility to bid on the contract by including and executed copy of the Certification of Eligibility form, and by requiring each proposed Subcontractor to provide an executed Certification Regarding Debarment, Suspension, Ineligibility, or Voluntary Exclusion – Lower Tiered Covered Transaction form. Both forms are attached to the Bid Opening Checklist provided in the Instructions to Bidders. A pre-bid conference will be held at 11:00 A.M. local time on January 6, 2020 at Charles Town Utility Board 661 South George Street, Suite 101, Charles Town, West Virginia 25414. Attendance at the pre-bid conference is mandatory.

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.

+ + END OF ADVERTISEMENT FOR BIDS + +
INSTRUCTIONS TO BIDDERS
# INSTRUCTIONS TO BIDDERS

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ARTICLE 1 – DEFINED TERMS

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

A. Bidder -- The individual or entity who submits a Bid directly to OWNER.
B. Contract Administrator – Charles Town Utility Board
C. Issuing Office -- The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
D. Owner -- The City of Charles Town, WV (the City).
E. Successful Bidder -- The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER’s evaluation as hereinafter provided) makes an award.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in electronic format, as stated in the advertisement or invitation to bid.

2.02 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.

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

2.04 Documents may also be examined at:

A. The issuing Office
B. Contractor’s Association of WV
   2114 Kanawha Blvd. East
   Charleston, WV 25311
C. Construction Employers Association
   2794 White Hall Blvd.
   White Hall, WV 26554
D. Construction connect
   (web-based documents at https://www.constructconnect.com/)
E. Dodge Data and Analytics
   (web-based documents at https://www.construction.com/)

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder’s qualifications to perform the Work, Bidder shall submit with its Bid a Technical Proposal establishing its qualifications such as financial data, previous experience, present commitments, including the following information:

3.02 General
A. The Technical Proposal submission is intended to enable Bidders to demonstrate their qualifications to perform the Project, and to enable the Evaluation Team to evaluate those qualifications. Bidders are advised that the Technical Proposal should include specific information that will demonstrate the qualifications and experience required by this solicitation. Bidders should note that it is not the intent of the City to receive Project-specific design or engineering recommendations as part of the Technical Proposal.

B. The Technical Proposal shall consist of all information required under this Section. Bidders shall complete the Technical Proposal Checklist, included in Appendix B, and include it in their Technical Proposals. The purpose of the Technical Proposal Checklist is to aid the Bidder in ensuring all submittal requirements have been included in the Bidder’s Technical Proposal and to provide a page reference indicating the location of each submittal requirement in the Technical Proposal.

C. Bidders shall be aware that the City reserves the right to conduct an independent investigation of any information, including prior experience, identified in a Technical Proposal by contacting project references, accessing public information, contacting independent parties, or any other means. The City also reserves the right to request additional information from a Bidder during the evaluation of that Bidder’s Technical Proposal.

D. Bidders should be aware that any information provided in response to this solicitation becomes public record because it is being submitted to a public agency. If a Bidder has concerns about information included in its Technical Proposal that may be deemed confidential or proprietary, the Bidder shall mark those items within the Technical Proposal as “Confidential,” and shall delineate the extent of the confidential information by circling it or otherwise marking locations where confidential information begins and ends. Information contained in Bidders’ Sealed Price Proposals may not be considered confidential or proprietary.

3.03 Letter of Submittal

A. The Letter of Submittal shall be on the Bidder’s letterhead and identify the full legal name and address of the Bidder, the Bidder’s West Virginia Business and Contractor’s License numbers, and City of Ranson Business License number. The Bidder is defined as the legal entity who will execute the Contract with the Owner. The Letter of Submittal shall be signed by an authorized representative of Bidder’s organization. All signatures on the original Letter of Submittal shall be original and signed in ink. Copies or facsimiles will not be accepted.

B. Identify the name, title, address, phone and fax numbers, and e-mail address of an individual who will serve as the Point of Contact for the Bidder.

C. Identify the name, address and telephone number of the individual who will serve as the Principal Officer of the Bidder. (e.g., President, Treasurer, Chairperson of the Board of Directors, etc.).

D. Identify whether theBidder will be structured as a corporation, limited liability company, general partnership, joint venture, limited partnership or other form of organization. Identify the team members who will undertake financial responsibility for the Project and describe any liability limitations. If the Bidder is a limited liability company, partnership or joint venture, describe the bonding approach that will be used and the members of such organizations who will have joint and several liabilities for the performance of the work.
required for the Project. A single 100% performance bond and a single 100% payment bond shall be provided regardless of any co-surety relationship.

E. Joint ventures formed solely for the pursuit of this solicitation will not be considered. Prior established Joint Venture entities shall be properly established with a federal tax ID number.

F. Identify the full legal name of the Prime Contractor for this Project. The Prime Contractor is defined as the business entity that will serve as the prime/general contractor responsible for overall construction of all project elements and will serve as the legal entity who will execute the Contract with the Owner.

G. Provide the full legal name and address of all affiliated and/or subsidiary companies of the Bidder in the form provided in Appendix B. Indicate which companies are affiliates and which companies are subsidiaries. An affiliate shall be considered as any business entity which is closely associated to another business entity so that one entity controls or has power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in joint ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving, are not considered to be affiliates.

H. If the Bidder does not have any affiliated and/or subsidiary companies, other than the Bidder’s legal business entity, indicate such on the form.

I. If applicable, state the Bidder’s WVDOH prequalification number and current prequalification status (active, inactive, etc.) in the Letter of Submittal.

J. Include a letter from a surety or insurance company (with a Best’s Financial Strength Rating of A minus and Financial Size Category VIII or better by A.M. Best Co.) in the appendix of the Technical Proposal stating that the Bidder is capable of obtaining a performance and payment bond valued at 100% of the Bidder’s estimated contract value, which will cover the Project and any warranty periods. The letter of surety shall clearly state the rating categorization noted above and reference the estimated contract value in a manner similar to the notation provided below:

K. “As surety for [the above named Contractor], [XYZ Company] with A.M. Best Financial Strength Rating [rating] and Financial Size Category [Size Category] is capable of obtaining 100% Performance Bond and 100% Labor and Materials Payment Bond in the amount of the anticipated cost of construction, and said bonds will cover the Project and any warranty periods as provided for in the Contract Documents on behalf of the Contractor, in the event that such firm be the successful bidder and enter into a contract for this Project.”

L. All business entities on the Bidder’s proposed team must comply with the law with regard to their organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, commercial, individual, or professional in nature, and nothing herein is intended to contradict, nor to supersede, Federal, State, and local laws and regulations regarding the same. All business entities on the Bidder’s proposed team shall be eligible at the time of their Technical Proposal submittal, under the law and relevant regulations, to offer and to provide any services proposed or related to the Project. All business entities on the Bidder’s proposed team shall satisfy all commercial and professional registration requirements, including, but
not limited to those requirements of the West Virginia State Tax Department, West Virginia Secretary of State, West Virginia Division of Labor, and the City of Ranson. Full size copies of business licenses and registrations for the Bidder and all subcontractors and consultants, or evidence indicating the same, should be included in the appendix of the Technical Proposal. Additionally, the following information should be provided for each business entity on the Bidders proposed team:

M. The business registration information for each business entity on the Bidder’s proposed team. Provide the name, registration number, type of corporation and status.

N. The City of Ranson Business License information for each business entity on the Bidder’s proposed team. Provide the business name, address, registration number and expiration date.

O. The West Virginia Division of Labor license information for each office practicing or offering to practice any professional services in West Virginia. Provide the business name, address, classification, registration number and expiration date.

P. The West Virginia Division of Labor license for each Key Personnel practicing or offering to practice professional services in West Virginia. Provide the name, the address, type, the registration number, expiration date and the office location where each Key Personnel member is offering to practice professional services in West Virginia.

Q. The businesses offering services not regulated by the West Virginia Division of Labor. Provide the name, address, type, the registration number, and the expiration date of the individual offering services in West Virginia.

R. Failure to comply with the law with regard to those legal requirements in West Virginia (whether federal or state) regarding your organizational structure, any required registration with governmental agencies and/or entities, and any required governmental licensure, whether business, individual, or professional in nature may render your Proposal, in the reasonable discretion of the Evaluation Team, non-responsive and in that event your Proposal may be returned without any consideration or evaluation.

3.04 Experience of Bidder’s Team

A. Provide sufficient information to enable the Evaluation Team to understand and assess the experience of the Bidder’s team on projects of similar scope and complexity. The Department intends to select a Bidder which best demonstrates previous experience in the following parameters:

B. Provide details of three (3) relevant projects of similar size and complexity completed by the Prime Contractor for this Project. For each project, provide the following:

1. Project description;

2. Owner or Project Sponsor’s organization name and Project Manager’s name and phone and email contact information; and

3. Evidence of on-time and on-budget completion, or an explanation of any deviations from approved schedule and budget.

C. Evaluation Criteria: Extent to which the experience provided by the Bidder demonstrates the successful delivery of relevant projects with similar scope and complexity, successful on-time and on-budget performance, and past experience with Key Personnel and subcontractors.
3.05 Project Risks

A. Provide a narrative for Project Risk 1 identified below that describes why the risk is critical, indicates the impact the risk will have on the Project and discuss the mitigation strategies the Bidder’s team may implement to address the risk. Describe the role that the Bidder expects the City or other agencies may have in addressing this risk.

B. Project Risk 1: Adjacent and Concurrent Projects

1. Work on the Jefferson Orchards site, and portions of the sewer and water line construction along WV Route 9 and War Admiral Blvd. will be performed within a shared construction zone. In addition, the successful Bidder must maintain access for contractor’s forces to access the new manufacturing facility project site, and to allow concurrent construction of private utilities along the project corridor.

C. Evaluation Criteria: Extent to which Bidder has addressed the Project Risks, explained the impact of the risk, and developed an appropriate mitigation strategy that will ensure the successful delivery of the Project and will minimize the likelihood of additional efforts needed by the City.

3.06 Required Forms

A. Bidders shall include the Technical Proposal and executed copies of the following required forms provided in the Bid Opening Checklist included in Article 21 of these Instructions to Bidders:

1. Contractor’s Bid Form
2. Copy of WV Contractor’s License
3. Certification of Bidder Regarding Compliance with the WV Jobs Act
4. Certification of Receipt of Addenda
5. Non-Collusion Affidavit
6. Disclosure of Interested Parties to Contracts
7. Certification of Eligibility
8. Equal Opportunity Employment Certificate
9. Certification of Non-Segregated Facilities
10. Drug and Alcohol-Free Workplace Affidavit

B. In addition to the forms listed above, Bidders shall include executed copies of the following required forms in the Technical Proposal for each subconsultant, subcontractor, or any other person or entity on the Bidder’s organizational chart included in the Technical Proposal:

1. Copy of WV Contractor’s License
2. Non-Collusion Affidavit
3. Disclosure of Interested Parties to Contracts
4. Certification Regarding Debarment, Suspension, Ineligibility, or Voluntary Exclusion – Lower Tiered Covered Transaction
5. Equal Opportunity Employment Certificate
6. Certification of Non-Segregated Facilities
7. Drug and Alcohol-Free Workplace Affidavit

C. If the Bidder and any subcontractor, or any other person or entity are unable to execute the Certification of Eligibility or Certification Regarding Debarment (as applicable), then the prospective participant shall attach an explanation to its Letter of Submittal. Failure to execute the certification will not necessarily result in denial of award, but will be considered in determining the Bidder’s responsibility. Providing false information may result in federal criminal prosecution or administrative sanctions.

3.07 A Bidder’s failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

3.08 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder’s qualifications.

3.09 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.

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

4.01 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 Contractor.

4.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:

   a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

   b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

   c. reports and drawings known to 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 electronic copies of reports and drawings referenced above available with the bidding documents. 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.


The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, Bidders cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.

Nothing in the GBR is intended to relieve Bidders of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

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.

4.03 Site Visit and Testing by Bidders

A. Bidder shall conduct the required Site visit during normal working hours, 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.

4.04 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.

4.05 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

5.01 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;

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;

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; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; 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; and

J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder 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

6.01 A pre-Bid conference will be held at the time and location stated in the invitation or advertisement to bid. Representatives of Owner, Contract Administrator, 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

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to the Owner 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 seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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

ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of ten percent (10%) of Bidder’s maximum Bid price (determined by adding all individual bid items in the base bid) 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.

8.02 The Bid security of the apparent 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.
8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 90 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

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

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, 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

11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

11.02 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.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

12.03 The apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to OWNER a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by OWNER. If OWNER or ENGINEER, after due investigation, has reasonable
objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.

12.04 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 a 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.

12.05 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other 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 as provided in Paragraph 7.06 of the General Conditions.

12.06 Contractor shall not subcontract more than 50% of the work.

ARTICLE 13 – PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents.

A. All blanks on the Bid Form shall be typed and the Bid Form signed in ink. The Schedule of Bid Items shall not show any alteration of format, additions or amendments not called for, errors or omissions in units of measure, or erasures.

B. Bids which propose exceptions to contract terms and conditions, or fail to provide pricing for any individual bid item or portion thereof will be deemed as non-responsive, and will be dismissed from further consideration.

C. Bids which contain unauthorized additions, conditional or alternate bids, altered Schedule of Bid Items, or irregularities of any kind which make the proposal incomplete, indefinite, or ambiguous as to its meaning will also be dismissed from further consideration.

D. A Bid price shall be indicated for each section, Bid item, adjustment unit price item, and unit price item listed therein.

13.02 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.

13.03 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.

13.04 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.
13.05 A Bid by an individual shall show the Bidder’s name and address for receiving notices.

13.06 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. Joint ventures formed solely for the pursuit of this solicitation will not be considered. Prior established Joint Venture entities shall be properly established with a federal tax ID number.

13.07 All names shall be printed in ink below the signatures.

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

13.09 Postal and e-mail 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.

13.11 If the Bidder is a limited liability company, partnership or joint venture, describe the bonding approach that will be used and the members of such organizations who will have joint and several liabilities for the performance of the work required for the Project. A single 100% performance bond and a single 100% payment bond shall be provided regardless of any co-surety relationship.

**ARTICLE 14 – BASIS OF BID**

14.01 Unit Price Base Bid

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form and include a separate price for each alternate described in the Bidding Documents and as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the “Bid Price” if Owner selects the alternate.

B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity” (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

C. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form.

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

E. Bidders shall submit a Bid on a fixed unit price basis for the base Bid and include separate unit prices for each bid item described in the Bidding Documents and as provided for in the Bid Form.
14.02 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

15.01 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation “BID ENCLOSED.” A mailed Bid shall be addressed to:

City of Charles Town
C/o Project Administrator: Charles Town Utility Board
Attn: “Route 9 Sewer Project”
661 South George Street, Suite 101
Charles Town, West Virginia 25414

Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

16.01 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.

16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.

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

ARTICLE 17 – OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids will be made available to Bidders after the opening of Bids.

17.02 A two-envelope system will be used. Envelope No. 1 must have the following information presented on the front:
Envelope No. 2 must be labeled “Bid Proposal,” and shall be placed inside of Envelope #1.

Envelope No. 1 will be opened first and the Bid Opening Requirement items checked for compliance as outlined on the Bid Opening Checklist included in Article 21 of the Instructions to Bidders. If such documents are found to be in order, Envelope No. 2 “Bid Proposal”, will then be opened and will be publicly read aloud. If the documents required to be contained in Envelope No. 1 are not in order, Envelope No. 2 “Bid Proposal” will not be opened and the Bid will be considered non-responsive and will be returned to the Bidder.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner 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.

19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.

19.03 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 qualifications, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form.

C. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.

19.04 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 Bidding Documents.

19.05 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.
ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 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 22 – SALES AND USE TAXES

22.01 Owner is exempt from West Virginia State Sales and Use taxes on materials and equipment to be incorporated in the work. Said Taxes should not be included in the bid. Owner will furnish exemption information to contractor as part of Agreement.

ARTICLE 23 – BID OPENING CHECKLIST

23.01 Bidder shall include all information listed in the following Bid Opening Requirements Checklist (page BOC-3) in the two-envelope bid package.

23.02 Bidder shall include all required forms and certifications (pages BOC-4 through BOC-12) for Bidder and all Subcontractors in Envelope No. 1.
ROUTE 9 SEWER PROJECT

A two-envelope system will be used. Envelope No. 1 must have the following information presented on the front:

Name and address of Bidder
Bid on Route 9 Sewer
City of Charles Town, c/o Project Administrator: Charles Town Utility Board

Envelope No. 2 must be labeled “Bid Proposal,” and shall be placed inside of Envelope #1.

Envelope No. 1 will be opened first and the Bid Opening Requirement items checked for compliance as outlined on the Bid Opening Checklist included below. If such documents are found to be in order, Envelope No. 2 “Bid Proposal”, will then be opened and will be publicly read aloud. If the documents required to be contained in Envelope No. 1 are not in order, Envelope No. 2 “Bid Proposal” will not be opened and the Bid will be considered non-responsive and will be returned to the Bidder.

BID OPENING REQUIREMENTS CHECKLIST

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<th>Item</th>
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<td>1. Bid submitted on time</td>
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<td>2. Bid Bond</td>
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<td>3. Contractor’s Bid Form (enclosed in sealed Envelope No. 2)</td>
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<td>4. Copy of WV Contractor’s License (Contractor and all Subcontractors)</td>
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<td>5. Certification of Bidder Regarding Compliance with the WV Jobs Act</td>
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<td>6. Certification of Receipt of Addenda (Contractor and all Subcontractors)</td>
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<td>7. Non-Collusion Affidavit (Contractor and all Subcontractors)</td>
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<td>8. Disclosure of Interested Parties to Contracts (Contractor and all Subcontractors)</td>
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<td>10. Certification of Non-Segregated Facilities (Contractor and all Subcontractors)</td>
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<td>11. Certification of Eligibility (Contractor)</td>
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<td>12. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions (Contractor)</td>
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<td>13. Drug Free Workplace Conformance (Contractor and all Subcontractors)</td>
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<td>14. Qualification Statement</td>
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WV JOBS ACT REQUIREMENTS

(a) Contractors shall hire at least 75% of employees for the project from the local labor market.
   - At least two employees from outside local labor market permissible for each employer
   - Employees shall have resided in the local labor market

(b) Any employer unable to employ the minimum number of employees from the local labor market shall provide the nearest office of the Division of Employment Services, Bureau of Employment Programs the following:
   (1) the number of qualified employees needed; and
   (2) a job description of positions to be filled

(c) If, within 2 business days following the placing of the job order with the Division of Employment Services (the "Division"), the Division is unable to refer any qualified applicants to the employer or refers less qualified job applicants than the number requested, then the Division shall issue a waiver to the employer stating the unavailability of applicants and permit the employer to fill any positions by the waiver from outside the local labor market.

CONTRACTOR REQUIREMENTS

The contractor hereby agrees to the following:

(a) The contractor will comply with the Act and will file or cause to be filed with the WV Division of Labor and the Infrastructure Council copies of waiver certificates and certified payrolls as required by the Act, or other comparable documents that include the number of employees, the county and state where the employees reside and their occupation

(b) the contractor will follow the procedure established by the Division of Labor for efficient collection of the data;

(c) the contractor will provide with each pay requisition a certification that he contract is in compliance with the Act

Name & Title of Signer (Please type) 

Signature: ___________________________ Date: ___________________________
ROUTE 9 SEWER PROJECT

CERTIFICATION OF RECEIPT OF ADDENDA

In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that Bidder has examined copies of all the Contract Documents and the following addenda:

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________________________________________
Signature                                    Date

________________________________________
Name and Title of Signer
(Please Type)

This document is a MODIFIED version of EJCDC® C-200, Copyright © 2013 by the National Society of Professional Engineers, American Society of Civil Engineers, and American Council of Engineering Companies, or is based in part on excerpts from EJCDC documents. Those portions of the text that originated in published EJCDC documents remain subject to the copyright.
NON-COLLUSIVE AFFIDAVIT

By submission of this bid or proposal, the bidder certifies that:

a) This bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor or potential competitor;

b) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids or proposals for this project, to any other bidder, competitor, or potential competitor;

c) No attempt has been or will be made to induce any other person, partnership, or corporation to submit or not to submit a bid or proposal or to fix overhead, profit, or cost element of said bid price, or that of any other or to secure any advantage against the Housing Authority;

d) The person, signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing on its behalf;

e) That attached hereto (if a corporate bidder) is a certified copy of the resolution authorizing the execution of this certificate by the signator of this bid or proposal in behalf of the corporate bidder.

_________________________________________, deposes and says that he is ____________________________________________

the party making the foregoing proposal or bid for ___________________________________________ (Project description), that such proposal or bid is genuine and not collusive and that all stats herein are true.

Signature:

__________________________________________

Bidder (if the bidder is an Individual)

__________________________________________

Partner (if the bidder is a Partnership)

__________________________________________

Officer (if bidders is a Corporation)

Subscribed and sworn to before me this ______ day of ________, ________

My commission expires: ______________________

_____________________________________

Notary Public

(Seal)
Disclosure of Interested Parties to Contracts

Pursuant to W. Va. Code § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of $100,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

"Interested party" or "Interested parties" means:

(1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
(2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
(3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

"State agency" means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education; Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: ethics@wv.gov; website: www.ethics.wv.gov.
Disclosure of Interested Parties to Contracts
(Required by W. Va. Code § 6D-1-2)

Contracting Business Entity: ___________________________ Address: ___________________________

Authorized Agent: ___________________________ Address: ___________________________

Contract Number: ___________________________ Contract Description: ___________________________

Governmental agency awarding contract: ___________________________

☐ Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (attach additional pages if necessary):

1. Subcontractors or other entities performing work or service under the Contract
   ☐ Check here if none, otherwise list entity/individual names below.

2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)
   ☐ Check here if none, otherwise list entity/individual names below.

3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)
   ☐ Check here if none, otherwise list entity/individual names below.

Signature: ___________________________________________ Date Signed: ___________________________

Notary Verification

State of ___________________________, County of ___________________________

I, ___________________________________________, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this ___________ day of __________________________, ______.

________________________________________
Notary Public’s Signature

To be completed by State Agency:
Date Received by State Agency: ___________________________
Date submitted to Ethics Commission: ___________________________
Governmental agency submitting Disclosure: ___________________________

Revised October 7, 2017
BIDDER CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract, whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions. Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidders shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

<table>
<thead>
<tr>
<th>Bidder Name</th>
<th>Address</th>
<th>Zip Code</th>
</tr>
</thead>
</table>

1. Bidder has participated in previous contract or subcontract subject to the Equal Employment Opportunity Clause. (If yes, identify the most recent contract)
   - Yes  [ ] No  [ ] Contract

2. Compliance reports were required to be filed in connection with such contract or subcontract. (If yes, identify the most recent contract)
   - Yes  [ ] No  [ ] Contract

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100. If “No”, please explain in detail on a separate sheet.
   - Yes  [ ] No  [ ] None Required

4. Have you ever been, or are you being considered, for sanctions due to the violation of Executive Order 11246, as amended?
   - Yes  [ ] No  [ ]

Certification – The information above is true and complete to the best of my knowledge and belief.

________________________________________
Name and Title of Signer – (please type)

________________________________________
Signature

________________________________________
Date
CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts, subcontracts, and agreements with Applicants who are themselves performing federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certificate, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation and entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontract exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files, and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

______________________________________________________________________________

(Signature)        (Date)

______________________________________________________________________________

(Name and Title of Signer — Please Type)
ROUTE 9 SEWER PROJECT

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

PRIMARY COVERED TRANSACTIONS

Contractors and subcontractors debarred pursuant to Chapter 5A Article 3, Section 33 of the West Virginia Code are not eligible to bid on this project. The Contractor shall certify the contracting team’s eligibility to bid on the contract by including an executed copy of the Certification of Eligibility form, and by requiring each proposed Subcontractor to provide an executed Certification Regarding Debarment, Suspension, Ineligibility, or Voluntary Exclusion – Lower Tiered Covered Transaction form.

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
   a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any State or Federal department or agency;
   b. Have not within a three-year period preceding this application 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;
   c. 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 (1)(b) of this certification; and
   d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

____________________________________________________________________________________

Business Name        Date

By

______________________________________   ______________________________________
Name and Title of Authorized Representative  Signature of Authorized Representative

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ROUTE 9 SEWER PROJECT

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

Contractors and subcontractors debarred pursuant to Chapter 5A Article 3, Section 33 of the West Virginia Code are not eligible to bid on this project. The Contractor shall certify the contracting team’s eligibility to bid on the contract by including an executed copy of the Certification of Eligibility form, and by requiring each proposed Subcontractor to provide an executed Certification Regarding Debarment, Suspension, Ineligibility, or Voluntary Exclusion – Lower Tiered Covered Transaction form.

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

____________________________________   ______________________________________
Name and Title of Authorized Representative  Signature of Authorized Representative
STATE OF WEST VIRGINIA,

COUNTY OF ________________, TO-WIT:

I, _______________________, after being first duly sworn, depose and state as follows:

1. I am an employee of _______________________; and,
   (Company Name)

2. I do hereby attest that _______________________
   (Company Name)

   maintains a written plan for a drug-free workplace policy and that such plan and policy are in compliance with West Virginia Code §21-1D.

The above statements are sworn to under the penalty of perjury.

Printed Name: __________________________________________

Signature: __________________________________________

Title: ________________________________________________

Company Name: ______________________________________

Date: ________________________________________________

Taken, subscribed and sworn to before me this _____ day of ____________ , ________.

By Commission expires _______________________

(Seal)

________________________________________
(Notary Public)
BID FORM
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</tbody>
</table>
ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Charles Town Utility Board
661 South George Street, Suite 101
Charles Town, WV 25414

1.02 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

2.01 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.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 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:

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Addendum, Date</th>
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<tbody>
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</tr>
</tbody>
</table>

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.

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.

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 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.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

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

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
   1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
   2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of 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

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

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Unit</th>
<th>Estimated Quantity</th>
<th>Bid Unit Price</th>
<th>Bid Price</th>
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<td>3</td>
<td>EROSION AND SEDIMENT CONTROL</td>
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<td>51</td>
<td>ALLOWANCE - SINKHOLE REPAIR, CLASS 1 AGGREGATE BASE</td>
<td>CY</td>
<td>25</td>
<td>$50.00</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>52</td>
<td>ALLOWANCE - SINKHOLE REPAIR, SPECIAL ROCK FILL</td>
<td>CY</td>
<td>25</td>
<td>$50.00</td>
<td>$1,250.00</td>
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<td>53</td>
<td>ALLOWANCE - SINKHOLE REPAIR, RIP-RAP</td>
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<td>$75.00</td>
<td>$1,875.00</td>
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<tr>
<td>54</td>
<td>ALLOWANCE - SINKHOLE REPAIR, IMPERVIOUS CORE</td>
<td>SF</td>
<td>500</td>
<td>$10.00</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

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.

Total of All Unit Price Bid Items $  

Bid Alternate No. 1 (described in Section 01151)

<table>
<thead>
<tr>
<th>Alternate No.</th>
<th>Description</th>
<th>Unit</th>
<th>Estimated Quantity</th>
<th>Bid Unit Price</th>
<th>Bid Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PUMP STATION, NORTHPORT</td>
<td>LS</td>
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</table>

Total Bid Price, including Bid Alternate No. 1 $  

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ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete within 210 days from Notice to Proceed (NTP), and fully completed ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 270 days of NTP.

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

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:
   
   A. Required Bid security;
   B. List of Proposed Subcontractors;
   C. List of Proposed Suppliers;
   D. List of Project References;
   E. 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;
   F. Contractor’s License No.: __________;
   G. Required Bidder Technical Proposal with supporting data; and

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.
ARTICLE 9 – BID SUBMITTAL

BIDDER: [Indicate correct name of bidding entity]

By:
[Signature]  

[Printed name]  
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature]  

[Printed name]  

Title:

Submittal Date:

Address for giving notices:

Telephone Number:  

Fax Number:  

Contact Name and e-mail address:  

Bidder’s License No.:  

(where applicable)
BID BOND
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.
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.

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.
TECHNICAL PROPOSAL

THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS

1. **SUBMITTED BY:**

   Official Name of Firm: ________________________________

   Address: __________________________________________

   __________________________________________________

   __________________________________________________

2. **SUBMITTED TO:**

   __________________________________________________

3. **SUBMITTED FOR:**

   Owner: _____________________________________________

   Project Name: ______________________________________

   __________________________________________________

   __________________________________________________

   TYPE OF WORK: _____________________________________

   __________________________________________________

   __________________________________________________

4. **CONTRACTOR’S CONTACT INFORMATION**

   Contact Person: ____________________________________

   Title: _____________________________________________

   Phone: ___________________________________________

   Email: ___________________________________________
5. **AFFILIATED COMPANIES:**

   Name: __________________________________________

   Address: _________________________________________

               _________________________________________

               _________________________________________

6. **TYPE OF ORGANIZATION:**

   □ **SOLE PROPRIETORSHIP**

   Name of Owner: __________________________________

   Doing Business As: ________________________________

   Date of Organization: ______________________________

   □ **PARTNERSHIP**

   Date of Organization: ______________________________

   Type of Partnership: _______________________________

   Name of General Partner(s): _________________________

               _________________________________________

   □ **CORPORATION**

   State of Organization: ______________________________

   Date of Organization: ______________________________

   Executive Officers:

   - President: ______________________________________

   - Vice President(s): ________________________________

   - Treasurer: ______________________________________

   - Secretary: ______________________________________

   □ **LIMITED LIABILITY COMPANY**
Joint Venture

State of Organization: ________________________________

Date of Organization: ________________________________

Members:

- Name: ____________________________________________
- Address: __________________________________________

- Name: ____________________________________________
- Address: __________________________________________

- Name: ____________________________________________
- Address: __________________________________________

Joint Venture Managing Partner

- Name: ____________________________________________
- Address: __________________________________________

Joint Venture Managing Partner

- Name: ____________________________________________
- Address: __________________________________________

Joint Venture Managing Partner

- Name: ____________________________________________
- Address: __________________________________________
7. LICENSING

Jurisdiction: __________________________________________

Type of License: ______________________________________

License Number: ______________________________________

Jurisdiction: __________________________________________

Type of License: ______________________________________

License Number: ______________________________________

8. BONDING INFORMATION

Bonding Company: ______________________________________

Address: ______________________________________________

Bonding Agent: _________________________________________

Address: ______________________________________________

Contact Name: __________________________________________

Phone: _________________________________________________

Aggregate Bonding Capacity: ______________________________

Available Bonding Capacity as of date of this submittal: __________
9. **FINANCIAL INFORMATION**

Financial Institution: __________________________________________________________

Address: ________________________________________________________________

Account Manager: __________________________________________________________

Phone: _________________________________________________________________

INCLUDE AS AN ATTACHMENT AN AUDITED BALANCE SHEET FOR EACH OF THE LAST 3 YEARS

10. **CONSTRUCTION EXPERIENCE:**

Current Experience:

List on **Schedule A** a minimum of three (3) completed projects of similar size and complexity to the proposed Work. (If Joint Venture list each participant’s projects separately).

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

11. **SAFETY PROGRAM:**

Name of Contractor’s Safety Officer: _____________________________________________

Include the following as attachments:
Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) OSHA No. 500- Log & Summary of Occupational Injuries & Illnesses for the past 5 years.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all OSHA Citations & Notifications of Penalty (monetary or other) received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide as an Attachment Contractor's (and Contractor's proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) list of all safety citations or violations under any state all received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide the following for the firm listed in Section V (and for each proposed Subcontractor furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) the following (attach additional sheets as necessary):

Workers' compensation Experience Modification Rate (EMR) for the last 5 years:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>EMR</th>
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Total Recordable Frequency Rate (TRFR) for the last 5 years:

<table>
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<th>YEAR</th>
<th>TRFR</th>
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Total number of man-hours worked for the last 5 Years:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>TOTAL NUMBER OF MAN-HOURS</th>
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Provide Contractor’s (and Contractor’s proposed Subcontractors and Suppliers furnishing or performing Work having a value in excess of 10 percent of the total amount of the Bid) Days Away From Work, Days of Restricted Work Activity or Job Transfer (DART) incidence rate for the particular industry or type of Work to be performed by Contractor and each of Contractor’s proposed Subcontractors and Suppliers) for the last 5 years:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>DART</th>
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</table>
I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HERewith, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: ______________________________

BY: ____________________________________________

TITLE: __________________________________________

DATED: _________________________________________

NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME

THIS ___________ DAY OF __________, 20___

NOTARY PUBLIC - STATE OF _______________________

MY COMMISSION EXPIRES: _______________________

REQUIRED ATTACHMENTS

Technical Proposal including:

1. Letter of Submittal
2. Resumes of Key Personnel
3. Experience of Bidder’s Team (include Schedule A - Current and Previous.)
4. Assessment of Project Risk
5. Required Forms for Bidder and Subcontractors.
6. Audited balance sheet for each of the last 3 years for firm named in Section 1.
7. Evidence of authority for individuals listed in Section 6 to bind organization to an agreement.
8. Required safety program submittals listed in Section 11.
## SCHEDULE A

### CURRENT AND PREVIOUS EXPERIENCE

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Owner's Contact Person</th>
<th>Design Engineer</th>
<th>Contract Date</th>
<th>Type of Work</th>
<th>Status</th>
<th>Cost of Work</th>
</tr>
</thead>
<tbody>
<tr>
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NOTICE OF AWARD

Date of Issuance:

Owner: City of Charles Town c/o Charles Town Utility Board

Engineer: Hatch Associates Consultants, Inc.

Project: Route 9 Sewer Project

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:

Construction of the Route 9 Sewer Project

The Contract Price of the awarded Contract is: $ __________

Five (5) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents has been transmitted or made available to Bidder electronically.

☐ a set 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 five (5) 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): None.

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.

Authorized Signature

By:

Title:

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

THIS AGREEMENT is by and between The Charles Town Utility Board ("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:

2.02 The Route 9 Infrastructure project comprises construction of approximately 6 miles of gravity and forcemain sewer lines, including manholes, casing pipes, and appurtenances, and as well as two sewer pumping stations.

2.03 The sewer project extends from the northern boundary of the Jefferson Orchard property, under the CSX Transportation railroad south within the WVDOH Route 9 right-of-way to Wiltshire Road, then along War Admiral Boulevard and Mildred Street. The sewer alignment then departs from Mildred Street, crossing private property and the Norfolk Southern railroad to connect to an existing sewer manhole along the Baker Place right-of-way within the Potomac Town Center development.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Hatch Associates Consultants, Inc. 704 Quince Orchard Road, Suite 310, Gaithersburg, Maryland 20878.

3.02 The Owner has retained Hatch Associates Consultants, 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: Dates
   A. The Work will be substantially completed within 210 days from Notice to Proceed (NTP), and fully completed ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 270 days of NTP.

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 $1,000.00 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 $1,000.00 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.

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, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

ARTICLE 6 – COST OF THE WORK

6.01 Cost of the Work shall be determined as provided in Paragraph 13.01 of the General Conditions.

ARTICLE 7 – PAYMENT PROCEDURES

7.01 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.

7.02 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 20th 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

   1) 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

   2) 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

7.03 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 8 – INTEREST

8.01 All amounts not paid when due shall bear interest at the rate of one percent per annum.

ARTICLE 9 – CONTRACTOR’S REPRESENTATIONS

9.01 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.

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 10 – ACCOUNTING RECORDS

10.01 Contractor shall keep such full and detailed accounts of materials incorporated and labor and equipment utilized for the Work consistent with the requirements of Paragraph 13.01.E of the General Conditions and as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Contractor’s records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor’s fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner.

ARTICLE 11 – CONTRACT DOCUMENTS

11.01 Contents

A. The Contract Documents consist of the following:

   1. This Agreement (pages 1 to 12, inclusive).
   2. Performance bond (pages 1 to 3, inclusive).

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3. Payment bond (pages 1 to 3, inclusive).
4. General Conditions (pages i to 65, inclusive).
5. Supplementary Conditions (pages 1 to 23, inclusive).
7. Drawings (not attached but incorporated by reference) consisting of 83 sheets with each sheet bearing the following general title: Route 9 Sewer Project.
8. Addenda (numbers ___ to ___, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
   a. Contractor’s Bid (pages ___ to ___, inclusive).
10. 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 12 – MISCELLANEOUS

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

12.02 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.

12.03 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.
12.04 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.

12.05 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 any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

12.06 Other Provisions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.
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:

______________________________________________________________

______________________________________________________________

______________________________________________________________

(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.
NOTICE TO PROCEED
**NOTICE TO PROCEED**

<table>
<thead>
<tr>
<th>Owner:</th>
<th>City of Charles Town c/o Charles Town Utility Board</th>
<th>Owner's Contract No.:</th>
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</thead>
<tbody>
<tr>
<td>Contractor:</td>
<td></td>
<td>Contractor's Project No.:</td>
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<tr>
<td>Engineer:</td>
<td>Hatch Associates Consultants, Inc.</td>
<td>Engineer’s Project No.:</td>
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<tr>
<td>Project:</td>
<td></td>
<td>Contract Name: Route 9 Sewer Project</td>
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<tr>
<td></td>
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<td>Effective Date of Contract:</td>
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**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, Substantial Completion is within 210 days from Notice to Proceed (NTP), and fully completed ready for final payment within 270 days of NTP.

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

*All permit conditions.*

---

Owner:  

Authorized Signature  

By:  

Title:  

Date Issued:  

Copy:  Engineer

---

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PERFORMANCE BOND

CONTRACTOR (name and address): 

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

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount:
Description (name and location):

BOND

Bond Number:
Date (not earlier than the Effective Date of the Agreement of the Construction Contract):
Amount:
Modifications to this Bond Form:  None  See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

______________________________ (seal)
Contractor’s Name and Corporate Seal

By: ____________________________
Signature

Print Name

Title

Attest: _________________________
Signature

Title

SURETY

______________________________ (seal)
Surety’s Name and Corporate Seal

By: ____________________________
Signature (attach power of attorney)

Print Name

Title

Attest: _________________________
Signature

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.
1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

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

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

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

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

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

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

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

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

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

   5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Definitions

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

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

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

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

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

16. Modifications to this Bond are as follows:
PAYMENT BOND
PAYMENT BOND

CONTRACTOR (name and address):

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

OWNER (name and address):

CONSTRUCTION CONTRACT
   Effective Date of the Agreement:
   Amount:
   Description (name and location):

BOND
   Bond Number:
   Date (not earlier than the Effective Date of the Agreement of the Construction Contract):
   Amount:
   Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

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

CONTRACTOR AS PRINCIPAL

Contractor’s Name and Corporate Seal

By: ____________________________________
   Signature

Print Name

Title

Attest: ____________________________________
   Signature

Title

SURETY

Surety’s Name and Corporate Seal

By: ____________________________________
   Signature (attach power of attorney)

Print Name

Title

Attest: ____________________________________
   Signature

Title
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.
1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

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

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

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety’s expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety’s obligations to a Claimant under this Bond shall arise after the following:

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

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

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

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

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

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

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

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

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Modifications to this Bond are as follows:
CONTRACTOR’S APPLICATION FOR PAYMENT
## Contractor's Application for Payment No.

<table>
<thead>
<tr>
<th>Application No.</th>
<th>Application Date</th>
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**To:**  
Charlottesville Utility Board  
661 South George Street, Suite 101  
Charlottesville, VA 22911  

**From (Contractor):**  
Tina (Engineer):  
704 Casual Orchard Road, Suite 301  
Gaithersburg, MD 20878  

**Project:**  

**Owner's Contract No.**  
Contractor's Project No.  
Engineer's Project No.  

### Application Fee Payment

#### Change Order Summary

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<th>Approved Change Orders</th>
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<td>Number</td>
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#### 1. ORIGINAL CONTRACT PRICE

|  
|  

#### 2. Net change by Change Orders

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#### 3. Current Contract Price (Line 1 + 2)

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|  

#### 4. TOTAL COMPLETED AND STORED TO DATE

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#### 5. RETAINAGE:

<table>
<thead>
<tr>
<th>a</th>
<th>Work Completed</th>
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<tr>
<td>b</td>
<td>Stored Material</td>
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<tr>
<td>c</td>
<td>Total Retainage (Line 5a + Line 5b)</td>
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</table>

#### 6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)

|  
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#### 7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)

|  
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#### 8. AMOUNT DUE THIS APPLICATION

|  
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#### 9. BALANCE TO FINISH, PLUS RETAINAGE

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**Contractor’s Certification**

The undersigned Contractor certifies, to the best of its knowledge, the following:

1. All previous 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 and delivery of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner and satisfactory to 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 of:**  

|  
|  

is recommended by:  
(Engineer)  
(Date)

**Payment of:**  

|  
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is approved by:  
(Owner)  
(Date)

**Approved by:**  

(Staffing or Financing Entity (if applicable))  
(Date)
<table>
<thead>
<tr>
<th>Specification Section No.</th>
<th>Description</th>
<th>A: SCHEDULED VALUE ($)</th>
<th>B: FROM PREVIOUS APPLICATION (C+D)</th>
<th>C: THIS PERIOD</th>
<th>D: MATERIALS PRESENTLY STORED (NOT IN C OR D)</th>
<th>E: TOTAL COMPLETED AND STORED TO DATE (C+D+E)</th>
<th>F: % (E/B)</th>
<th>G: BALANCE TO FINISH (B - E)</th>
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## Progress Estimate - Unit Price Work

### Contractor's Application

For (Contract): Route 9 Sewer Project  

**Application Period:**

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<td>Item</td>
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<td>Item Quantity</td>
<td>Units</td>
<td>Unit Price</td>
<td>Total Value of Item ($)</td>
<td>Estimated Quantity Installed</td>
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### Stored Material Summary

**Contractor's Application**

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<thead>
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<th>Bid Item No.</th>
<th>Supplier Invoice No.</th>
<th>Submittal No. (with Specification Section No.)</th>
<th>Storage Location</th>
<th>Description of Materials or Equipment Stored</th>
<th>Stored Previously</th>
<th>Subtotal Amount Completed and Stored to Date (D + E)</th>
<th>Incorporated in Work Date (Month Year)</th>
<th>Amount Stored this Month ($)</th>
<th>Amount in Storage ($)</th>
<th>Materials Remaining in Storage ($) (D + E - F)</th>
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# STANDARD GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term’s singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Addenda—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. Agreement—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Bid—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. Bidder—An individual or entity that submits a Bid to Owner.

6. Bidding Documents—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. Bidding Requirements—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. Claim—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer’s decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance
with the procedural requirements set forth herein, contesting Engineer’s decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. Contract—The entire and integrated written contract between the Owner and Contractor concerning the Work.

13. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.

14. Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. Contract Times—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. Contractor—The individual or entity with which Owner has contracted for performance of the Work.

17. Cost of the Work—See Paragraph 13.01 for definition.

18. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. Effective Date of the Contract—The date, indicated in the Agreement, on which the Contract becomes effective.

20. Engineer—The individual or entity named as such in the Agreement.

21. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

22. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. **Liens**—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

25. **Milestone**—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.

26. **Notice of Award**—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.

27. **Notice to Proceed**—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

28. **Owner**—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

29. **Progress Schedule**—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.

30. **Project**—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

31. **Project Manual**—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.

32. **Resident Project Representative**—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.

33. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

34. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.

35. **Schedule of Values**—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.

36. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and
submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

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

38. **Specifications**—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

39. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

40. **Substantial Completion**—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

41. **Successful Bidder**—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.

42. **Supplementary Conditions**—The part of the Contract that amends or supplements these General Conditions.

43. **Supplier**—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

44. **Technical Data**—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

45. **Underground Facilities**—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

46. **Unit Price Work**—Work to be paid for on the basis of unit prices.

47. **Work**—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the
result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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

### 1.02 Terminology

A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. **Intent of Certain Terms or Adjectives:**

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. **Day:**

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

D. **Defective:**

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
   a. does not conform to the Contract Documents; or
   b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
   c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. Bonds: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. Evidence of Contractor’s Insurance: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

C. Evidence of Owner’s Insurance: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

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

2. a preliminary Schedule of Submittals; and

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

2.04 Preconstruction Conference; Designation of Authorized Representatives

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor’s full responsibility therefor.

2. Contractor’s Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor’s Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient’s use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

A. Standards Specifications, Codes, Laws and Regulations

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

2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.
3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

1. Contractor’s Verification of Figures and Field Measurements: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

   a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Contract Documents

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract
Documents. Engineer’s written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 Reuse of Documents
A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner’s express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed
A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

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 01 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 considered the proposed item as a substitute pursuant to Paragraph 
7.05.

7.05 Substitutes

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

1. Contractor shall submit sufficient information as provided below to allow Engineer to 
determine if the item of material or equipment proposed is functionally equivalent to 
that named and an acceptable substitute therefor. Engineer will not accept requests 
for review of proposed substitute items of material or equipment from anyone other 
than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as 
supplemented by the Specifications, and as Engineer may decide is appropriate under 
the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed 
substitute item of material or equipment that Contractor seeks to furnish or use. The 
application:
a. shall certify that the proposed substitute item will:
   1) perform adequately the functions and achieve the results called for by the general design,
   2) be similar in substance to that specified, and
   3) be suited to the same use as that specified.

b. will state:
   1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
   2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
   3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

c. will identify:
   1) all variations of the proposed substitute item from that specified, and
   2) available engineering, sales, maintenance, repair, and replacement services.

d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. Engineer’s Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer’s review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer’s determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. Special Guarantee: Owner may require Contractor to furnish at Contractor’s expense a special performance guarantee or other surety with respect to any substitute.

D. Reimbursement of Engineer’s Cost: Engineer will record Engineer’s costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. Contractor’s Expense: Contractor shall provide all data in support of any proposed substitute at Contractor’s expense.
F. **Effect of Engineer’s Determination:** If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer’s denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 **Concerning Subcontractors, Suppliers, and Others**

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.

B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor’s Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner’s requirement of replacement.

G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions.
J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.

L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:
   1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
   2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 **Patent Fees and Royalties**

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

7.08 Permits

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

7.09 Taxes

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

7.10 Laws and Regulations

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor’s responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor’s obligations under Paragraph 3.03.

C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor’s Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.
7.11 Record Documents

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

7.12 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

C. Contractor shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor’s safety program with which Owner’s and Engineer’s employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of
Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly
employed by any of them).

F. Contractor’s duties and responsibilities for safety and protection shall continue until such
time as all the Work is completed and Engineer has issued a notice to Owner and
Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as
otherwise expressly provided in connection with Substantial Completion).

G. Contractor’s duties and responsibilities for safety and protection shall resume whenever
Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or
correction obligations, or to conduct other tasks arising from the Contract Documents.

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

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

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

7.16 Shop Drawings, Samples, and Other Submittals
A. Shop Drawing and Sample Submittal Requirements:
   1. Before submitting a Shop Drawing or Sample, Contractor shall have:
      a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings
         and Samples and with the requirements of the Work and the Contract
         Documents;
      b. determined and verified all field measurements, quantities, dimensions, specified
         performance and design criteria, installation requirements, materials, catalog
         numbers, and similar information with respect thereto;
      c. determined and verified the suitability of all materials and equipment offered
         with respect to the indicated application, fabrication, shipping, handling, storage,
         assembly, and installation pertaining to the performance of the Work; and
      d. determined and verified all information relative to Contractor’s responsibilities
         for means, methods, techniques, sequences, and procedures of construction, and
         safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor’s obligations under the Contract Documents with respect to Contractor’s review of that submittal, and that Contractor approves the submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

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

1. Shop Drawings:
   a. Contractor shall submit the number of copies required in the Specifications.
   b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. Samples:
   a. Contractor shall submit the number of Samples required in the Specifications.
   b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

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

C. Other Submittals: Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. Engineer’s Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer’s review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer’s review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer’s review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer’s review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

5. Engineer’s review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.

6. Engineer’s review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer’s receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

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

E. Resubmittal Procedures:

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

2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer’s time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer’s charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer’s charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 Contractor’s General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor’s warranty and guarantee.
B. Contractor’s warranty and guarantee hereunder excludes defects or damage caused by:
   1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
   2. normal wear and tear under normal usage.

C. Contractor’s obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor’s obligation to perform the Work in accordance with the Contract Documents:
   1. observations by Engineer;
   2. recommendation by Engineer or payment by Owner of any progress or final payment;
   3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
   4. use or occupancy of the Work or any part thereof by Owner;
   5. any review and approval of a Shop Drawing or Sample submittal;
   6. the issuance of a notice of acceptability by Engineer;
   7. any inspection, test, or approval by others; or
   8. any correction of defective Work by Owner.

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

7.18 Indemnification

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

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for...
Contractor or any such Subcontractor, Supplier, or other individual or entity under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer’s officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 Delegation of Professional Design Services

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.

B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this paragraph, Engineer’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer’s review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner’s employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
B. If Owner performs other work at or adjacent to the Site with Owner’s employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner’s employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others’ work with the written consent of Engineer and the others whose work will be affected.

D. If the proper execution or results of any part of Contractor’s Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor’s Work. Contractor’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor’s Work except for latent defects and deficiencies in such other work.

8.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner’s employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. an itemization of the specific matters to be covered by such authority and responsibility; and

3. the extent of such authority and responsibilities.

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

8.03 Legal Relationships

A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner’s employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable
adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor’s rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner’s contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.

C. When Owner is performing other work at or adjacent to the Site with Owner’s employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor’s failure to take reasonable and customary measures with respect to Owner’s other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

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

ARTICLE 9 – OWNER’S RESPONSIBILITIES

9.01 Communications to Contractor

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

9.02 Replacement of Engineer

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.
9.03 **Furnish Data**  
A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 **Pay When Due**  
A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

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

9.06 **Insurance**  
A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 **Change Orders**  
A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.

9.08 **Inspections, Tests, and Approvals**  
A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

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

9.10 **Undisclosed Hazardous Environmental Condition**  
A. Owner’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

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

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

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

10.01 **Owner’s Representative**

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

10.02 **Visits to Site**

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 **Project Representative**

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 **Rejecting Defective Work**

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

10.05 **Shop Drawings, Change Orders and Payments**

A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
B. Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.

C. Engineer’s authority as to Change Orders is set forth in Article 11.

D. Engineer’s authority as to Applications for Payment is set forth in Article 15.

10.06 Determinations for Unit Price Work

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

10.07 Decisions on Requirements of Contract Documents and Acceptability of Work

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

10.08 Limitations on Engineer’s Authority and Responsibilities

A. Neither Engineer’s authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer’s review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.
10.09 Compliance with Safety Program

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

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

11.01 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. Change Orders:
   a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
   b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. Work Change Directives: A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive’s effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 Owner- Authorized Changes in the Work

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

11.03 Unauthorized Changes in the Work

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

11.04 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 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, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor’s fee.

2. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.

3. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. **Contractor’s Fee**: When the Work as a whole is performed on the basis of cost-plus, Contractor’s fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor’s fee shall be determined as set forth in Paragraph 11.04.C.

E. **Documentation**: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 **Allowances**

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

B. **Cash Allowances**: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor’s costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
C. **Contingency Allowance**: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 **Unit Price Work**

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor’s overhead and profit for each separately identified item.

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

E. Within 30 days of Engineer’s written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

14.01 **Access to Work**

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor’s safety procedures and programs so that they may comply therewith as applicable.
14.02 Tests, Inspections, and Approvals

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
   1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
   2. to attain Owner’s and Engineer’s acceptance of materials or equipment to be incorporated in the Work;
   3. by manufacturers of equipment furnished under the Contract Documents;
   4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
   5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor’s purchase thereof for incorporation in the Work.

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

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

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

14.03 Defective Work

A. Contractor’s Obligation: It is Contractor’s obligation to assure that the Work is not defective.

B. Engineer’s Authority: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
C. **Notice of Defects**: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. **Correction, or Removal and Replacement**: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. **Preservation of Warranties**: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Work.

F. **Costs and Damages**: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 **Acceptance of Defective Work**

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

14.05 **Uncovering Work**

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

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer’s observation, and then replace the covering, all at Contractor’s expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer’s request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor’s full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

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

14.07 Owner May Correct Defective Work

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor’s services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner’s representatives, agents and employees, Owner’s other contractors, and Engineer and Engineer’s consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor’s defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner’s rights and remedies under this Paragraph 14.07.
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
c. the conditions precedent to Contractor’s being entitled to such payment appear to have been fulfilled in so far as it is Engineer’s responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer’s review of Contractor’s Work for the purposes of recommending payments nor Engineer’s recommendation of any payment, including final payment, will impose responsibility on Engineer:
   a. to supervise, direct, or control the Work, or
   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
   c. for Contractor’s failure to comply with Laws and Regulations applicable to Contractor’s performance of the Work, or
   d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer’s opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer’s opinion to protect Owner from loss because:
   a. the Work is defective, requiring correction or replacement;
   b. the Contract Price has been reduced by Change Orders;
   c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
   d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
   e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
D. **Payment Becomes Due:**

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

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

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

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction
imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

15.02 Contractor’s Warranty of Title

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

15.03 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor’s notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner’s use or occupancy of the Work following Substantial Completion, review the builder’s risk insurance policy with respect to the end of the builder’s risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner’s use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor
may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor’s performance of the remainder of the Work, subject to the following conditions:

1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.

2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder’s risk or other property insurance.

15.05 Final Inspection

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

15.06 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of
inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
   a. all documentation called for in the Contract Documents;
   b. consent of the surety, if any, to final payment;
   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
   d. a list of all disputes that Contractor believes are unsettled; and
   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. Engineer’s Review of Application and Acceptance:

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

C. Completion of Work: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer’s written recommendation of final payment.

D. Payment Becomes Due: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer
(less any further sum Owner is entitled to set off against Engineer’s recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor’s failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor’s continuing obligations under the Contract Documents.

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

15.08 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

1. correct the defective repairs to the Site or such other adjacent areas;
2. correct such defective Work;
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner’s written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with
respect to such Work will be extended for an additional period of one year after such
correction or removal and replacement has been satisfactorily completed.

E. Contractor’s obligations under this paragraph are in addition to all other obligations and
warranties. The provisions of this paragraph shall not be construed as a substitute for, or a
waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

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

16.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will constitute a default by
Contractor and justify termination for cause:

1. Contractor’s persistent failure to perform the Work in accordance with the Contract
Documents (including, but not limited to, failure to supply sufficient skilled workers or
suitable materials or equipment or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the
Contract Documents;

3. Contractor’s disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor’s repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving
Contractor (and any surety) ten days written notice that Owner is considering a declaration
that Contractor is in default and termination of the contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) notice that
the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has
terminated the Contract for cause, Owner may exclude Contractor from the Site, take
possession of the Work, incorporate in the Work all materials and equipment stored at the
Site or for which Owner has paid Contractor but which are stored elsewhere, and complete
the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if
Contractor within seven days of receipt of notice of intent to terminate begins to correct its
failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to
receive any further payment until the Work is completed. If the unpaid balance of the
Contract Price exceeds the cost to complete the Work, including all related claims, costs,
losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

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

16.04 Contractor May Stop Work or Terminate

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

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

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

A. Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this Article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

B. Final Resolution of Disputes: For any dispute subject to resolution under this Article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
2. agree with the other party to submit the dispute to another dispute resolution process; or
3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

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

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

18.02 Computation of Times

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

18.03 Cumulative Remedies

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

18.04 **Limitation of Damages**

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

18.05 **No Waiver**

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

18.06 **Survival of Obligations**

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

18.07 **Controlling Law**

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

18.08 **Headings**

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
# STANDARD SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). 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

Delete Paragraph 1.01.A.20 in its entirety and insert the following in its place:


Delete Paragraph 1.01.A.44 in its entirety and insert the following in its place:

44. Technical Data—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities. 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.

Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

Geotechnical Data Report (GDR) — The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR’s content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

Project Administrator – Charles Town Utility Board.
Resident Project Representative – The employee or agent of the Engineer having the
day-to-day responsibility for on-site monitoring of construction activities.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02 Copies of Documents

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

A. Owner shall furnish to Contractor one copy of the Contract Documents in electronic
portable document format (PDF), and shall furnish one fully executed counterpart of the
Agreement in hard copy format, and one fully executed counterpart of the Agreement
in electronic PDF.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 Intent

Delete Paragraph 3.01.C in its entirety.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.05 Delays in Contractor’s Progress

Delete Paragraph 4.05.G in its entirety and insert the following:

G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or
Contract Times under this paragraph within 15 days of the commencement of the
delaying, disrupting, or interfering event.

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

SC-5.03 Subsurface and Physical Conditions

Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:

A. Reports and Drawings: A Geotechnical Data Report, entitled, “Subsurface Investigation and
Geotechnical Evaluation, Proposed Infrastructure Improvements Serving Rockwool
Manufacturing Facility” dated August 8, 2018 has been prepared for this project and has
been made available to the Contractor.

B. Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the
accuracy of the Technical Data contained in the Geotechnical Data Report with respect to
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-5.04 Differing Subsurface or Physical Conditions**

Delete Paragraph 5.04.D.4 in its entirety and insert the following:

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 15 days after Owner’s issuance of the Owner’s written statement to Contractor regarding the subsurface or physical condition in question.

**SC-5.05 Underground Facilities**

Delete Paragraph 5.05.E.3 in its entirety and insert the following:

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 15 days after Owner’s issuance of the Owner’s written statement to Contractor regarding the Underground Facility in question.

**SC-5.06 Hazardous Environmental Conditions**

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.

B. Not Used.

Delete Paragraph 5.06.G in its entirety and insert the following:

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 15 days of Owner’s written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.

**ARTICLE 6 – BONDS AND INSURANCE**

**SC-6.02 Insurance—General Provisions**

Add the following paragraph immediately after Paragraph 6.02.B:

1. 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**

Add the following new paragraph immediately after Paragraph 6.03.J:
K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers’ Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:
   - State: Statutory
   - Federal, if applicable (e.g., Longshoreman’s): Statutory
   - Employer’s Liability:
     - Bodily injury, each accident: $1,000,000
     - Bodily injury by disease, each employee: $1,000,000
     - Bodily injury/disease aggregate: $1,000,000

2. Contractor’s Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:
   - General Aggregate: $2,000,000
   - Products - Completed Operations Aggregate: $2,000,000
   - Personal and Advertising Injury: $1,000,000
   - Each Occurrence (Bodily Injury and Property Damage): $1,000,000*

   *Each Occurrence limit shall be $2,000,000 when performing any operations on or in proximity to the railroad right-of-way, as described in Article ??, Railway-Highway Provisions, below.

3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:
   - Combined Single Limit of: $1,000,000

4. Excess or Umbrella Liability:
   - Per Occurrence: $5,000,000
   - General Aggregate: $5,000,000

5. Contractor’s Pollution Liability:
   - Each Occurrence: N/A
   - General Aggregate: N/A

☐ If box is checked, Contractor is not required to provide Contractor’s Pollution Liability insurance under this Contract
6. Additional Insureds: In addition to Owner and Engineer, include as additional insureds the following: City of Ranson, West Virginia Division of Highways and Specialized Engineering.

**SC-6.05 Property Insurance**

Add the following to the list of requirements in Paragraph 6.05.A, as a numbered item:

14. be subject to a deductible amount of no more than $1,000 for direct physical loss in any one occurrence.

Add the following new subparagraph after subparagraph 6.05.A.1:

a. In addition to Owner, Contractor, and all Subcontractors, include as insureds the following: City of Ranson, West Virginia Division of Highways, Hatch Associates Consultants, Inc., and Specialized Engineering.

Add the following to the list of items in Paragraph 6.05.A, as numbered items:

15. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorneys’ fees and engineering or other consultants’ fees, if not otherwise covered;

16. include by express endorsement coverage of damage to Contractor’s equipment.

**ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

**SC-7.02 Labor; Working Hours**

Delete Paragraph 7.02.B in its entirety and insert the following paragraphs:

B. All work must be performed between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, and 8:00 a.m. to 5:00 p.m. on Saturdays. Blasting is expressly prohibited on Saturday and Sunday. No work may be performed on legal holidays.

C. Work may be performed outside of the specified days and hours only with the advanced notice to and approval by the City of Charles Town. Night work will not be allowed in residential areas.

**SC-7.06 Concerning Subcontractors, Suppliers, and Others**

Delete Paragraph 7.06.F in its entirety and insert the following paragraph:

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 15 days of Owner’s requirement of replacement.

**SC-7.09 Taxes**

Delete Paragraph 7.09.A in its entirety and insert the following paragraphs

A. Tax Exempt Status. The Owner is exempt from all Federal and State Taxes. The bid shall not include a tax for work/supplies/materials being bid.
Delete Paragraphs 8.02.A and 8.02.B in their entirety and replace with the following:

A. This Project will be constructed concurrently with construction of roadway improvements on the Jefferson Orchard property, construction of the ROXUL plant, and construction of various private utilities at multiple locations along the sewer alignment. In addition, work on the Jefferson Orchard site, and portions of the sewer and water line construction along WV Route 9 and War Admiral Blvd. will be performed within a shared construction zone. The following entities are expected to be performing concurrent work:

1. A.L.L. Construction and Clayco, Inc.: Construction of a manufacturing facility adjacent to Jefferson Orchard property. Contractor shall maintain access to the manufacturing facility site at all times, and shall coordinate with the manufacturing contractors to ensure that delivery of construction materials and critical plant equipment will not be hindered by the Contractor’s operations.

2. Jefferson Utilities, Inc.: Construction of water mains on the Jefferson Orchard site, across WV Route 9, and along Charles Town Road and Wiltshire Road to serve the manufacturing facility site and future development on the Jefferson Orchard site.

3. Potomac Edison/First Energy: Construction of underground electrical power transmission and distribution lines on the Jefferson Orchard Site to serve the manufacturing facility site and future development on the Jefferson Orchard site.

4. Mountaineer Gas: Construction of high-pressure gas lines to serve the manufacturing site, future development on the Jefferson Orchard site, and future development along the WV Route 9 and War Admiral Blvd. corridors.

5. Frontier Communications: Construction of underground communications lines on the Jefferson Orchard Site to serve the manufacturing facility site and future development on the Jefferson Orchard site.

B. The contractor shall provide access at all times within and through the construction site for all contractors, subcontractors, utility companies, and A.L.L./Clayco’s construction forces to their respective areas of the construction site. The contractor shall also coordinate with the A.L.L./Clayco construction manager to ensure that delivery of critical plant equipment and construction materials are not delayed by the contractor’s activities.

C. It is anticipated that some utilities will be in place prior to the sewer, water, and roadway construction. As a result, those utilities will require protection from the contractor’s activities. It is the contractor’s responsibility to protect all finished work within the project limits from damage due to their construction activities. Any damages shall be repaired at the contractor’s expense.

D. The Contractor is responsible to coordinate its work with adjacent ongoing projects to ensure proper sequencing of the work.

E. The Owner will not entertain claims for damages or delays related to poor or improper coordination with adjacent ongoing construction projects.
ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

SC-10.03  Project Representative

Add the following new paragraphs immediately after Paragraph 10.03.A:

B. The Resident Project Representative (RPR) will be Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

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

4. Liaison:
   a. Serve as Engineer’s liaison with Contractor. Working principally through Contractor’s authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
   b. Assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s on-Site operations.
   c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

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

6. Shop Drawings and Samples:
   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
   b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. Modifications: Consider and evaluate Contractor’s suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR’s recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
   a. Conduct on-Site observations of Contractor’s work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
   
b. Report to Engineer whenever RPR believes that any part of Contractor’s work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:
   a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner’s personnel, and that Contractor maintains adequate records thereof.
   
b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:
    a. Prepare a daily report or keep a diary or log book, recording Contractor’s hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
    
b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
    
c. Maintain records for use in preparing Project documentation.

11. Reports:
    a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor’s compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
    
b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
    
c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment
requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:
   a. Participate in Engineer’s visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
   b. Participate in Engineer’s final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
   c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

C. The RPR shall not:
   1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
   2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
   3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
   4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work.
   5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
   6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
   7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
   8. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 10 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

SC-11.06 Change Proposals

Delete Paragraphs 11.06.A.1 and 11.06.A.2 in their entirety and insert the following in their place:

1. Procedures: Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 15 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 7 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 15 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.

ARTICLE 11 – CLAIMS

SC-12.01  Claims

Delete Paragraph 12.01.B in its entirety and insert the following in its place:

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 15 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 15 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.

Delete Paragraphs 12.01.E and 12.01.F in their entirety and insert the following in their place:

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 15 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 60 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 15 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

Delete Paragraph 13.03.E in its entirety and insert the following in its place:

E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

1. if the extended price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and

2. if there is no corresponding adjustment with respect to any other item of Work; and

3. if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may submit a Change Proposal, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, Owner may make a Claim, seeking an adjustment in the Contract Price.

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

Delete Paragraph 14.05.C.2 in its entirety and insert the following in its place:

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 15 days of the determination that the Work is not defective.

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

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

1. 30 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.

Add the following paragraph immediately after Paragraph 6.02.B.1.

f. Documents required for Final Payment.

1) Final change order shall be updated and reflect the changes to correlate with the as-built drawings.
2) Consent to Surety as to Final Payment is required.

3) A statement signed by the Engineer stating that the work has been inspected and that the construction was completed in accordance with the approved contract documents.

4) Release from the West Virginia Department of Tax and Revenue.

5) Any other documents required by State or agency funding sources.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

SC-16.01 Owner May Suspend Work

Delete Paragraph 16.01.A in its entirety and insert the following in its place:

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 15 days after the date fixed for resumption of Work.

SC-16.04 Contractor May Stop Work or Terminate

Delete Paragraphs 16.04.A and 16.04.B in their entirety and insert the following in their place:

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 45 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 45 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 18 – MISCELLANEOUS

Add the following additional Supplementary Conditions after paragraph 18.08
**SC-18.09 Adherence to Applicable Codes**

A. Contractors doing business within the City of Ranson shall adhere to City Codes § 9-80 through § 9-94 Contract, Purchases and Competitive Bidding Regulations for Bidders and § 6-90 Additional Administrative Provisions Concerning Contracting.

B. Contractors shall also comply with the West Virginia Contractor Licensing Act (Chapter 21, Article 11 of the Code of West Virginia).

**SC-18.10 Standard Specifications**

A. All work shall comply with the Charles Town Utility Board Sewer System Specifications, 2016 edition.

B. All work within West Virginia Division of Highways roadway pavements or shoulders shall comply with the West Virginia Department of Transportation, Division of Highways Standard Specifications for Roads and Bridges, 2017 edition and 2018 Supplemental Specifications.

**SC-18.11 Permits**

A. The Engineer has obtained certain design-phase permits necessary to facilitate construction of the project and future operation by the City of Charles Town. Permits and approvals already received include the following with copies of permits incorporated by reference into these Supplementary Conditions:

1. WVDOH, Charles Town Utility Board, and the City of Ranson approval.
2. WV Office of Environmental Health Services Permit No. 20,372, dated 7-1-2019
3. WV Department of the Environmental Protection National Pollutant Discharge Elimination System (NPDES) General Permit WV0115924. (Site registration number, General Permit Registration No. WVR109958 (letter dated 8/31/2018).

B. The contractor shall comply with all permit conditions and requirements.

**SC-18.12 Environmental Considerations**

A. Sensitive environmental features identified on or near the project site include federally-listed threatened species, floodplains, sinkholes and Karst terrain, and historic resources. No wetlands or Waters of the US were identified within the project limits. The contractor shall comply with all agency requirements, permit conditions, and geotechnical recommendations; and shall make every effort to avoid negative impacts to sensitive environmental features.

B. No impacts to environmental features are planned as a part of the project. However, the presence of Karst terrain and potential presence of Madison Cave Isopods that dwell in fissures and caves in Karst areas require that the contractor take specific measures to protect groundwater. A sinkhole repair detail, which applies to newly-formed sinkholes has been included in the plans. A Karst and Groundwater Protection Plan is incorporated by reference into these Supplementary Conditions.

C. Any damage to environmental features caused by the contractor’s operations shall be restored or mitigated at the contractor’s expense.

D. Supplemental information is incorporated by reference into these Supplementary Conditions.
a. Route 9 sewer Environmental Correspondence, including the Karst and Groundwater Protection Plan referenced above
b. Geotechnical Engineering Evaluation
c. Geophysical Survey
d. Air-track Drilling Exploration

**SC-18.13 Maintenance of Traffic**

A. The Project, while undergoing improvement, shall be kept open to all traffic by the Contractor in such condition that both local and through traffic will be adequately and safely accommodated. All construction operations shall be scheduled to keep traffic delay to a minimum. The Contractor shall follow the Standard, "Traffic Control for Street and Highway Construction and Maintenance Operations," published by the West Virginia Division of Highways.

B. All expenses for the following items shall be borne by the Contractor without extra compensation:

1. The construction and maintenance of temporary detours, temporary structures, temporary approaches, crossings and intersections with streets and roads, including the furnishing and application of aggregates for maintenance of traffic and liquid asphalt oil, calcium chloride, or water for use as dust palliative.
2. The furnishing of flaggers and pilot trucks and drivers.
3. The furnishing, erection, and maintenance of warning devices, such as signs, auxiliary barriers, channelizing devices, hazard warning lights, barricades, flares and reflective markers.

C. If actual field conditions are not illustrated in the Plans, engineering judgment and discretion shall be exercised to select devices that will be adaptable, but the general policies prescribed shall be adhered to. Final responsibility for the installation of adequate safety devices for the protection of the traveling public, personnel traversing the Contractor’s worksite to access concurrent projects, and employees, as well as for the safeguard of the work in general, shall rest with the Contractor.

D. During any suspension of work, the Contractor shall make passable and shall open to traffic such portions of the project and temporary roadways or portions thereof as may be agreed upon between the Contractor and the Owner for the temporary accommodation of necessary traffic during the anticipated period of suspension. Thereafter, and until an issuance of an order for the resumption of construction operations, the maintenance of the temporary route or line of travel agreed upon will be by and at the expense of the Contractor. When work is resumed, the Contractor shall replace or renew any work or materials lost or damaged because of such temporary use of the project and shall remove, to the extent directed by the Owner, any work or materials used in temporary maintenance thereof, and shall complete the project in every respect as though its prosecution had been continuous and without interference.

E. The WV DOH will provide all necessary snow removal on State roads adjacent to the project site. There are no City-maintained roads adjacent to the project site.
SC-18.14  Funding Source Identification Signs

A. General: Funding Source Identification Signs shall be furnished by the Contractor if the Total Contract Bid Amount of the construction exceeds $500,000 or otherwise noted on the plans, and shall be erected during mobilization of the project. The cost of furnishing, erecting, maintaining, and removal of these signs shall be incidental to the cost of construction of the project.

B. Location: Funding Source Identification Signs shall be located as directed by the Owner. The Contractor shall promptly remove each sign at the completion of the project for which the sign was erected.

C. Sign Content: The content of each sign and the size of letters and the size of board shall be as required by the Owner. The funding agencies and the dollar amounts involved will be furnished to the Contractor by the Owner.

D. Sign Construction: The materials for Funding Source Identification Signs, such as for the sign panels, their supports, and for the legend and background, are to be of a type and method of fabrication that will be consistent with the conditions and estimated period of use. Signs shall have black letters for the legend on a white background. Reflective sheeting will be permitted, but not required. Mounting, transverse location, height, and similar features for Funding Source Identification Signs shall be consistent with practices used for the installation of other informational signs either on wooden or steel U-channel supports to comply with small sign support safety practices. The sign shall be mounted as directed by the Owner.

SC-18.15  Noise

A. The Contractor shall be subject to the City of Ranson noise ordinance, as delineated in Chapter 14, Article 1, Section 14-13 through 14-15 of the City of Ranson Code of Ordinances, and to the restrictions on noise levels as indicated therein, except as permitted by a variance. The City will support the Contractor’s efforts in applying for a variance permitting reasonable day and nighttime noise levels. The City of Ranson has provided a letter (shown on the next two pages) describing the terms under which variances will be granted. It is the contractor’s responsibility to obtain the City of Ranson’s written approval of any variance requests prior to commencing extended working hours.

B. Any request for variance to the City of Ranson Noise Ordinance shall include:
   1. Geographic limits where extended working hours are proposed;
   2. Proposed days of week and hours to be worked;
   3. Date extended working hours are expected to begin;
   4. Date extended working hours are expected to end; and
   5. Statement of reason for extended working hours.
August 6, 2018

Ms. Kristen Stolipher
Assistant Utility Manager
Charles Town Utility Board
832 South George Street
Charles Town, WV 25414

Dear Ms. Stolipher:

This letter confirms the City of Ranson's intent to allow extended working hours within Ranson City limits for construction of the Route 9 Sewer Project.

Section 14-13 of the City Code limits construction activities to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 5:00 p.m. on Saturdays. Subject to a written request from the construction contractor, the City of Ranson will approve the following extended working hours:

- 12:00 a.m. to 11:59 p.m. for work on the Jefferson Orchard property, and work occurring at greater than 1,000 feet from the nearest boundary of any occupied residential property.

- 7:00 a.m. to 9:00 p.m. Monday through Saturday for work occurring less than 1,000 feet from the boundary of any occupied residential property.

All other provisions of Section 14-13 remain in effect. Further, approval of extended working hours does not relieve the contractor of the requirement to comply with time-of-day restrictions on lane closures imposed by the West Virginia Division of Highways.

This letter is not intended as a blanket approval of extended working hours for the duration of the contract. Requests must be made on an as-needed basis and should be limited to the additional working hours necessary to meet key schedule milestones and ensure the project's timely completion.

The City of Ranson desires to be a good neighbor to its residents and holds the same expectation for contractors working within City limits. Therefore, please be advised that repeated noise complaints received from adjacent residential landowners may result in modification or withdrawal of approval(s) for extended working hours.
All requests for extended working hours should be directed to Matt Piepenburg, Assistant Public Works Director at MPiepenburg@ransonwv.us.

Sincerely,

Andrew P. Blake
City Manager

cc: Bill Herold/WVDHHR
    Thomas Cazad/WVDHHR
    Matt Piepenburg/City of Ranson
    Edward Erfurt/City of Ranson
SC-18.16 Work and Storage Space

A. All materials shall be stored at approved locations or within the limits of construction to the extent that they do not interfere with access to adjacent and concurrent projects within the limits of construction. Storage of materials in adjacent utility easements is not allowed.

SC-18.17 Project Security

A. The Contractor shall secure the worksite and shall implement appropriate measures to prevent access by unauthorized personnel or the public at all times.

SC-18.18 West Virginia Jobs Act

A. If the Contract Bid Amount is equal to or greater than $500,000 the West Virginia Jobs Act (Chapter 21 Article 1C of the West Virginia Code) and the following shall apply:

1. The Contractor and all Subcontractors are required to hire at least 75% of the workers for the project from the local labor market. The local labor market as defined by the Act includes all counties in West Virginia and any county outside of West Virginia if any portion of that county is within fifty (50) miles of the West Virginia border. Each employer is permitted to have at least two workers from outside the local labor market. If workers are not available from inside the local labor market, the contractor shall obtain an employment waiver certificate from the local office of the West Virginia Job Service.

2. The Contractor and all Subcontractors who work onsite shall provide to the Owner a certified payroll and all employment waiver certificates for each week worked. The certified payroll must contain the County and State of residence for each employee.

3. All subcontracts shall contain provisions conforming to the requirements of this Act. Any contractor or subcontractor found to be in violation of any provision of the Act will be subject to a civil penalty of one hundred dollars per day of violation. The West Virginia Division of Labor is responsible for establishing procedures for the collection of civil penalties.

SC-18.19 Debarment

A. Contractors and subcontractors debarred pursuant to Chapter 5A Article 3, Section 33 of the West Virginia Code shall not be eligible to bid on this project. The Contractor shall certify the contracting team’s eligibility to bid on the contract by including and executed copy of the Certification of Eligibility form, and by requiring each proposed Subcontractor to provide an executed Certification Regarding Debarment, Suspension, Ineligibility, or Voluntary Exclusion – Lower Tiered Covered Transaction form. Both forms are included in The Bidding Document.

SC-18.20 Conflict of Interest/Disclosure of Interested Parties

A. Pursuant to Chapter 6D, Article 1 of the West Virginia Code, each business entity who is a member of the Bidder’s contracting team who is expected to perform work under this contract that has an actual or estimated value of $100,000.00 shall fill out a Disclosure of Interested Parties Form, included in Appendix B. In addition, the business entity awarded a contract is obligated to submit a supplemental disclosure form listing any new or differing interested parties within 30 days following the completion or termination of the contract.
SC-18.21 Protests

A. Protest of a bid solicitation or contract award must be submitted no later than five (5) working days after the award. The Bidder is responsible for knowing the bid opening and award dates. Protests received after these dates may be rejected at the option of the Owner.

B. All protests shall be submitted in writing to the Owner, and shall contain the following information:
   1. Name and address of the protestor;
   2. Requisition, purchase order or contract numbers;
   3. A statement of the grounds of protest;
   4. Supporting documentation, if necessary; and
   5. A description of the resolution or relief sought.

C. Failure to submit this information shall be grounds for rejection of the protest.

SC-18.22 Approval of Subcontractors

A. Pursuant to Chapter 21, Article 11, Section 11 of the West Virginia Code, the Bidder’s Technical Proposal shall contain a listing of all subcontractors anticipated to perform work on the project. Each subcontractor shall furnish his or her contractor’s license number to the Bidder for inclusion in the Technical Proposal. If an apparent low bidder for a public improvement project, as defined in Chapter 21, Article 1D of the West Virginia Code fails to submit a license number in accordance with this section, the Owner, shall promptly request by telephone and electronic mail that the low bidder and the second low bidder provide the license number within one business day of the request. Failure of the bidder to provide the license number within one business day of receiving the request shall result in disqualification of the bid.

SC-18.23 Railway Provisions

A. The Contractor shall comply with the provisions of the CSX and Norfolk-Southern Railways when performing any operations within or adjacent to the existing rights-of-way of the Railroad, including securing insurance. All such policies of insurance name the City of Ranson, the City of Charles Town and the West Virginia Division of Highways as an additional insured and shall be occurrence policies and the Certificate of Insurance provided to all parties. Copies of the executed agreements with the Charles Town Utility Board are included in Appendix A – Supplemental Information.
WORK CHANGE DIRECTIVE

<table>
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<th>Date of Issuance:</th>
<th>Effective Date:</th>
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<table>
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<th>Contract Name:</th>
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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):

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<th>Contract Price ($)</th>
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</table>

<table>
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<tr>
<th>Contract Time days</th>
<th>[increase] [decrease].</th>
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</table>

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

Description:

Attachments: [List documents supporting change]

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| Contract Price incorporating this Change Order: | $__________________________
| Contract Times with all approved Change Orders: | ___________________________
| Substantial Completion: | ___________________________
| Ready for Final Payment: | ___________________________
| days or dates | ___________________________

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<td>By:</td>
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Approved by Funding Agency (if applicable)

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Prepared and published 2013 by the Engineers Joint Contract Documents Committee.
Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Conditions Paragraph 11.01, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference:

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Description:

Attachments:

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Copy to: Owner
CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: Charles Town Utility Board

Contractor:

Engineer: Hatch Associates Consultants, Inc.

Project: Route 9 Sewer Project

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

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.

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APPENDIX A – SUPPLEMENTAL INFORMATION

** 467 Pages - provided electronically only **

FOR INFORMATION ONLY – Route 9 Sewer Environmental Correspondence
FOR INFORMATION ONLY – Geotechnical Engineering Evaluation
FOR INFORMATION ONLY – Geophysical Survey
FOR INFORMATION ONLY – Air-track Drilling Exploration
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