

CITY OF  
CASA GRANDE  
STRONGER UNITED

**BID SOLICITATION PACKET**

FOR

**CASA GRANDE CITY HALL  
LANDSCAPE IMPROVEMENTS**

**July 2024**

**SOLICITATION NUMBER – IFB 1019-24-CG**

**CITY OF CASA GRANDE, ARIZONA**

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

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**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**NOTICE OF BID**

Plans with specifications and other bid document forms can be obtained from the following location:

Gloria Leija, City Clerk  
City of Casa Grande  
510 E Florence Boulevard  
Casa Grande, Arizona 85122  
(520) 421-8600

Plans with specifications and other bid and contract document forms can be downloaded by visiting our web site at [www.casagrandeaz.gov](http://www.casagrandeaz.gov) or calling the City Clerk Department (520) 421-8600 for instructions.

All bids must be submitted by **August 21, 2024, at 1:30 p.m.**, local time to the City Clerk, Gloria Leija, 510 East Florence Boulevard, Casa Grande, Arizona, 85122. The bid opening will take place on **August 21, 2024, at 1:30 p.m.** in the Main Conference Room (2<sup>nd</sup> Floor), 510 East Florence Boulevard, Casa Grande, Arizona, 85122.

**PRE-BID CONFERENCE / SITE VISIT DATE:** **July 23, 2024**  
9:30 a.m. Local AZ Time  
City Hall Council Chambers  
510 E Florence Boulevard.  
Casa Grande, AZ 85122

Bids must be addressed to:

**Gloria Leija, City Clerk  
City of Casa Grande  
510 East Florence Boulevard,  
Casa Grande, Arizona 85122**

The envelope must be boldly marked:

**BID FOR: CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS  
IFB 1019-24-CG  
BID OPENING: August 21, 2024, AT 1:30 p.m.**

The City of Casa Grande reserves the right to waive any informalities or irregularities in this Request for Bids, or to reject any or all bids; to be the sole judge of the suitability of the materials offered, and to award a contract or contracts for the furnishing of one or more items of the services and construction work it deems to be in the best interest of the City. Additionally, award of this contract shall be contingent upon the full availability of allocated funds.

Gloria Leija  
City Clerk

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**INFORMATION TO BIDDERS**

BID DUE DATE:

**August 21, 2024**

1:30 p.m. Local AZ Time

SUBMITTAL LOCATION:

City of Casa Grande Clerk's Office  
510 East Florence Blvd.  
Casa Grande, AZ 85122

PRE-BID CONFERENCE / SITE VISIT DATE:

**July 23, 2024**

9:30 a.m. Local AZ Time  
City Hall Council Chambers  
510 E Florence Boulevard.  
Casa Grande, AZ 85122

Any requests for procedural clarification or additional information regarding the submission of this Invitation to Bid shall be directed to:

City of Casa Grande Clerk's Office  
510 East Florence Blvd.  
Casa Grande, AZ 85122

Requests for project or other information shall be directed to city project manager:

Daniel E. Gallegos Jr  
Community Services Director  
Email: [Daniel\\_gallegos@casagrandeaz.gov](mailto:Daniel_gallegos@casagrandeaz.gov)  
Phone: (520) 421-8614

Interested bidders may obtain a copy of this solicitation by visiting our web page at [www.casagrandeaz.gov](http://www.casagrandeaz.gov) or calling the City Clerk's Office (520) 421-8600.

Competitive sealed bids for the specified material or service shall be received by the City of Casa Grande Clerk's Office, 510 E. Florence Boulevard, Casa Grande, Arizona 85122, until the time and date cited. Bids received by the correct time and date shall be publicly recorded. The City of Casa Grande takes no responsibility for informing recipients of changes to the original solicitation documents. Failure to submit amendments with the solicitation response shall be grounds for deeming bid non-responsive.

Bids must be in the actual possession of the Clerk's Office at the location indicated, on or prior to the exact time and date indicated above. Late proposals shall not be considered. The prevailing clock shall be the City of Casa Grande City Clerk's office clock.

Bids must be submitted in a sealed envelope. The Bidder's name and address should be clearly indicated on the outside of the envelope. All bids must be completed in blue or black ink or typewritten. Questions must be addressed to the persons listed above.

## **1. SECURING BID DOCUMENTS**

Plans, specifications, and other bid document forms are available at the following locations:

Gloria Leija, City Clerk  
City of Casa Grande City Clerk's Office  
510 East Florence Boulevard  
Casa Grande, Arizona 85122  
Phone: (520) 421-8600

Or Bid Documents can be accessed on the City web site at: [www.casagrandeaz.gov](http://www.casagrandeaz.gov).

## **2. CITY PROJECT MANAGER**

Daniel E. Gallegos Jr., CPRE, Community Services Director  
City of Casa Grande  
449 N Drylake Street, Casa Grande, AZ 85122  
Phone: (520) 421-8600 Ext. 4514 /Email: [daniel\\_gallegos@casagrandeaz.gov](mailto:daniel_gallegos@casagrandeaz.gov)

## **3. CONTENT OF BID SUBMITTAL**

The Bid Package submitted for this project shall contain the following:

- Bidder Qualifications
- Bid Proposal Form – completely executed and signed
- Certification of Bid
- Bid Security – Acceptable Surety Bond, Certified Check, or Cashier's Check in the amount of not less than ten percent (10%) of the total bid price
- Affidavit of Non-Collusion
- Two (2) USB Drives including pdf copies of the entire Bid Package

## **4. INTERPRETATION OF DOCUMENTS**

If any person contemplating submitting a bid is in doubt as to the true meaning of any part of this Request for Bids, or finds discrepancies or omissions in the specifications, the bidder should submit to the City Clerk, a written request for an interpretation or correction thereof no later than one (1) week prior to the receipt of bids. The person submitting the request will be responsible for its prompt delivery.

Any interpretation or correction of the proposed documents will be made only by written Addendum duly issued by the City. Bidder shall be responsible to monitor the City of Casa Grande web site for any addendums. All Addendums will be posted by the City Clerk's Office and become a part of the Original Contract Documents and Technical Specifications Bid Packet. The City will not be responsible for any other explanation or interpretation of the Request for Bids.

## **5. ADDENDA**

Any addenda issued by the City during the time of bidding shall be posted to the city's website and shall form a part of the contract documents and technical specifications bid package provided to the bidder for the preparation of the bid and shall be acknowledged in the bid and shall be made part of the contract. No addenda will be issued less than five (5) days prior to the bid opening.

## **6. WITHDRAWAL OF BIDS**

Any bidder may withdraw their bid, either personally or by a written request, at any time prior to the scheduled time for the opening of bids.

## **7. ECONOMY OF PREPARATION**

Bids should be prepared simply and economically and provide a straightforward and concise description of the bidder's capabilities to satisfy the requirements of these guidelines. The bidder is responsible for all costs incurred in the proposal and bid preparation and delivery.

## **8. SCHEDULE**

The following is an estimated schedule of events. The City, however, reserves the right to alter this schedule of events as necessary and as may be in the best interest of the City.

Call For Bids Advertisement Date	<b>July 11, 2024</b>
Pre-Bid Conference	<b>July 23, 2024 at 9:30 a.m.</b>
Contractor Question Deadline	<b>July 30, 2024 at 4:00 p.m.</b>
Last Date for Addenda Issued	<b>August 08, 2024</b>
<b>Bid Submittal Deadline</b>	<b>August 21, 2024 at 1:30 p.m.</b>
<b>Bid Opening</b>	<b>August 21, 2024 at 1:30 p.m.</b>

## **9. EVALUATION PROCESS**

Bids that are judged by the City to be unresponsive or materially incomplete will be immediately rejected.

The City will perform whatever research it deems necessary into the bidder's history, financial viability, and references. The bidder shall cooperate with the City's Project Manager or his designated representative by providing appropriate and requested information.

## **10. EVALUATION**

Award of this contract will be to the most responsive, responsible, and qualified bidder with the lowest total bid amount.

## **11. MULTIPLE BIDS**

Bidders may submit multiple bids if they desire. Such multiple bids will be evaluated separately on their own merits.

## **12. REQUIREMENTS**

The City has established certain requirements as specified in the General Requirements and Technical Specifications sections. None of these requirements are designed to give any bidder an advantage or disadvantage in the bidding process. Bidders are encouraged to submit a bid if they feel they are qualified to do so. If the bidder does not meet any of the stipulated requirements, the bidder must state specifically which requirements are not met, how the same function may be otherwise performed, and why this deviation should not be considered material. The City's determination that a deviation is not material does not excuse the bidder from full compliance with all other specifications if the contract is awarded to the firm or company.

### **13. METHOD OF PAYMENT**

The Contractor shall submit monthly billing statements to the attention of the City Project Manager. The Contractor shall include the percent complete on the progress application that is authorized and approved by the City Project Manager. The contractor shall reference on the billing statement the purchase order number or the City contract number.

The City of Casa Grande makes every effort to generate payment for claims within 30-days from the initial request.

### **14. DELIVERY OF PRODUCT/COMPLETION OF WORK**

Upon receiving the Notice-to-Proceed and Contract Number (or Purchase Order Number), the Contractor shall mobilize and commence construction activities within 10 calendar days.

### **15. EXECUTION OF AGREEMENT**

Successful bidder will be required to execute the contract provided for the project incorporating the plans (construction drawings), contract documents, general conditions, special provisions, and technical specifications. The Notice to Proceed will not be issued and a project preconstruction kick-off meeting shall not be conducted until the City's Community Services Department is in receipt of an executed and recorded contract from the City Clerk's Office.

The bidder to whom the Contract is awarded by the City shall, within 15 days after notice of award and receipt of agreement forms from the City, sign and deliver to the City all required copies of the agreement. A sample Form of Contract (Agreement) is included in this bid packet, and the contract language specifics may change to comply with the bid specifications or to meet the needs of the City for this project.

### **16. MISCELLANEOUS INFORMATION**

- A. All prices quoted will reflect the total to the City for the project's construction work, equipment, items of work, installations, materials, and services, and shall include all applicable taxes, fees, and other charges.
- B. Invoices for work done in a prior fiscal year will not be honored if tendered more than sixty (60) days after the close of that fiscal year for work completed unless adequate funds have been allocated by the City in the budget for the following fiscal year.
- C. The City is not responsible for any bidder's errors or omissions.
- D. All bids submitted to the City are to remain firm for a minimum period of one hundred twenty (120) calendar days from the date the bids are officially opened.
- E. The apparent successful bid is not officially accepted until such time as the bidder receives written notice of award from the City Clerk.
- F. The Contractor is required to obtain a City of Casa Grande business license and number to perform the work on this project.
- G. Where the bidder is a corporation or other type of legal entity, bids must be signed in the legal name of the entity followed by the name of the state of incorporation or place of formation and signed by the legal signature of an officer authorized to bind the entity to a contract.

*End of Information for Bidders Section*

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS  
GENERAL REQUIREMENTS**

**1. PROJECT DESCRIPTION**

A. This project is located in the City of Casa Grande, Arizona, at the City Hall grounds at 510 East Florence Boulevard. The project includes the following construction: earthwork, removal of turf and other landscape materials, relocation of light fixtures, segmental block retaining wall, segmental block seat walls, concrete rill wall, riprap, headers, decomposed granite, decorative rock, river rock, landscape boulders, bark mulch, bench on concrete pad, trash receptacles, trees, shrubs, accent plants, relocation of existing irrigation heads, new drip irrigation system, and related and contingent items of work.

**2. PRE-BID CONFERENCE**

A. The optional pre-bid conference for this project is on August 13, **2024 at 9:30 a.m.**

**3. SUBMITTING BIDS**

A. No bid will be considered unless it is made upon the proposal form contained herein and submitted with the project bid proposal package containing all required supplemental information as described herein. No project bid proposal package shall be disassembled. All blank spaces for proposal prices must be filled in (in blue or black ink, typewritten, or printed) and the total base bid must be in numeric figures.

B. A bid may be withdrawn prior to the time set for opening of bids.

C. Bids received after the time and date specified in the NOTICE OF BID will not be considered and may be returned unopened to the bidder.

**4. SURETY (BID) BOND REQUIREMENTS**

A. No proposal will be read unless accompanied by a proposal guarantee in the form of a certified or cashier's check, or surety bond, in the amount of 10% of the bid amount. The guarantee shall be made payable to and shall be acceptable to the City of Casa Grande.

B. Such bonds shall be executed solely by a surety company or company holding a certificate of authority to transact surety business in the State of Arizona as issued by the Director of the Arizona Department of Insurance. Such bonds are not to be limited as to the time in which action may be instituted against the surety company. The bond(s) shall be made payable to and shall be acceptable to the City of Casa Grande and shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State, as required by law.

C. The surety (bid) bond(s) shall have attached thereto a certified copy of Power of Attorney of the signing official.

D. All proposal guarantees, except those of the three lowest qualified bidders, will be returned upon request following the opening and checking of the bid proposals. The proposal guarantees of the three lowest qualified bidders will be returned upon request after the contract documents have been executed.

## **5. AWARD AND EXECUTION OF THE CONTRACT**

- A. The contract will be awarded, or all bids rejected, as soon as practical after the date of the opening of bids. The contract will be awarded within 120 days after the bid opening date, unless otherwise agreed upon in writing by both parties to the contract.
- B. Award of this contract will be to the most responsive, responsible, and qualified bidder with the lowest qualified total bid price for the project. It is the intention of the City to award one contract for the entire project.
- C. Protest Policy: Pursuant to Section 3.04.170 of the Casa Grande City Code, all protests shall be in writing and be filed with the City Clerk of the City of Casa Grande, 510 East Florence Boulevard, Casa Grande, AZ 85122. To be considered timely, a protest of a solicitation must be filed within three (3) days after the date and time of the bid opening. Protests must contain at a minimum the name, address and telephone number of the protester, the signature of the protester or its representative and evidence of authority to sign, a detailed statement of the legal and factual grounds of the protest including copies of relevant data, and the form of relief requested. Within three (3) business days of receipt, and after consultation with legal counsel, Project Manager, and/or others, the City will respond to the protest. The City of Casa Grande reserves the right to reject any or all bids, to waive irregularities of information in any bid, and/or to take any steps determined prudent in order to resolve the protest.
- D. Bonds in the following amounts will be required to be submitted by the lowest qualified bidder within ten (10) working days after the notice of award and receipt of contract:
  - i. Bond for benefit of labor and material suppliers at 100 percent of the bid price.
  - ii. Bond for performance of contract at 100 percent of the bid price.
- E. Information relative to execution of the contract documents may be obtained from the City Clerk, City of Casa Grande, 510 East Florence Boulevard, Casa Grande, Arizona 85122.

## **6. CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS TO THE SUCCESSFUL BIDDER**

- A. Electronic files of the Plans (Construction Drawings) and this Bid Solicitation Packet (bid and contract documents including technical specifications) will be provided to the successful bidder in PDF format. The plans can be provided in AutoCAD dwg format upon request.

## **7. STANDARD DETAILS AND SPECIFICATIONS**

- A. Except as otherwise required in the technical specifications, construction of this project shall be in accordance with all applicable requirements of the Uniform Standard Specifications and Details for Public Works Construction as sponsored and distributed by the Maricopa Association of Governments (MAG), latest edition, et. seq.

## **8. START AND COMPLETION OF WORK**

- A. Work shall start within ten (10) calendar days after the starting date set forth in the "Notice to Proceed" (NTP date) issued to the Contractor. The construction work shall be completed in full within one hundred twenty (120) calendar days after the NTP date. The time allowed for completion of the work includes "lead time" for obtaining necessary materials and/or equipment.

- B. The completion time (or date) will be stipulated in the Notice to Proceed. It is the Bidder's responsibility to review the number of calendar days listed to complete this work. If the Bidder believes that the number of days listed is not sufficient, the Bidder must notify the City in writing, a minimum of ten (10) calendar days prior to the Bid Opening, of the number of additional days the company would require to complete the Work. Any and all requests will be reviewed by the City. If the City determines that additional days should be allowed, an addendum will be issued stating the new number of calendar days required to complete the project work.
- C. Liquidated damages in the amount of twenty-five hundred dollars (\$2,500.00) per calendar day may be assessed for each day the work remains incomplete after the scheduled and agreed upon completion date.

## **9. QUANTITIES**

- A. All quantities on the Bid Proposal Form are subject to adjustment dictated by City requirements. Quantities at variance with the stated bid quantities may be purchased as required during the term of the agreement at the quoted unit prices, except as otherwise noted herein.

## **10. MEASUREMENT AND PAYMENT**

- A. Measurement and payment for all pay items in the proposal shall be as indicated in the Technical Specifications section.
- B. Measurement of the various items in the proposal shall be for each item of completed work, with no allowance for waste.
- C. Payment for the various items in the bid proposal will be made at the unit price bid in the proposal and shall be considered compensation in full for furnishing all materials, labor, tools, taxes, equipment, and appurtenances necessary to complete the work in a satisfactory manner as shown on the plans/drawings and as required in the standard and technical specifications, complete with all connections, testing, and related work to make the work fully functional for the purpose intended. Each unit, item, fixture, piece of equipment, etc., shall be completed with all necessary connections and appurtenances, for the satisfactory use and operation of said item, unless specifically called for otherwise in these bid and contract documents.
- D. Total quantities indicated in the bid proposal are approximate and for bidding purposes only. Contractor will be paid for the quantity of items actually constructed as measured on the ground by the City Inspector or as otherwise agreed to by the City and the Contractor.
- E. Partial payments may be made no more than once a month based upon satisfactory completion of work in progress. No payment will be made for amounts less than Five Hundred Dollars (\$500.00), except to close out the project.
- F. A retainage of 10 percent shall be deducted from all payment requests up through completion of fifty percent of the scheduled construction activities. After completion of 50% of the scheduled construction, and provided that the Contractor is making satisfactory progress on the project, a retainage of 5 percent will be subtracted from all subsequent partial payment requests to insure satisfactory completion of the work by the

Contractor. The entire retainage shall be released to the Contractor upon final acceptance of the project and as part of the Contractor's final invoice.

In accordance with State statutes, the Contractor may post securities in an escrow account in lieu of the 10% retention. The worth of the securities shall be of an amount equal to or greater than 10% retention.

## **11. INSURANCE REQUIREMENTS**

**A. Contractor Liability Insurance.** Upon signing of the Agreement and so long as it shall remain in effect, the contractor, at its sole cost and expense, shall purchase and maintain the insurance described in the Form of Contract for this project.

- i. The insurance shall be purchased and maintained with companies duly licensed or otherwise approved by the State of Arizona, with forms acceptable to the City of Casa Grande, and shall be primary with no right of contribution.
- ii. The contractor's insurer shall have a minimum A.M. Best's rating of A-VIII.
- iii. Use of alternative insurers requires prior approval for the City of Casa Grande.

**B. Insurance Coverages.** The insurance coverages to be purchased and maintained are:

- i. **Workers' Compensation.** Contractor shall provide workers' compensation insurance as required by state and federal laws having jurisdiction over Contractor's employees engaged in the performance of the Services within this Agreement.
- ii. **General Liability.** Contractor shall maintain a Commercial General Liability (Occurrence) policy that includes coverage for premises and operations, products and completed operations, contractual liability, broad form property damage, and personal injury liability. The policy shall have limits of not less than:
  - \$1,000,000 for each occurrence of bodily injury and property damage; and
  - \$1,000,000 for personal injury
- iii. **Automobile Liability.** Contractor shall maintain an Automobile Liability policy with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each accident. The policy shall cover all owned, hired, and non-owned automobiles used in connection with the Agreement for the performance of Contractor's services.
- iv. **Property Insurance.** A policy or policies of fire and extended coverage property damage insurance covering the full insurable value of all tools and equipment used by contractor from time to time on the lands of City of Casa Grande pursuant to the Agreement, including mobile equipment. Contractor shall also require its agents, contractors, licensees, and others performing the obligations, or exercising the rights, of Contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.
- v. **Adjustment of Liability Limits.** If the initial term of the Agreement shall exceed ten years, or if the aggregate term of the Agreement, including any extension or renewal terms agreed to by the parties or provided for in the Agreement, shall exceed ten years, on each tenth anniversary of the date of the Agreement, the liability limits provided for in sections 14.1.2 and 14.1.3 shall be increased by an amount

proportional to the increase in the US consumer price index occurring since the date of the Agreement or the date of the last such increase as appropriate.

**C. Insurance Certificate.** Contractor shall not exercise any of its rights under the Agreement until it delivers to City of Casa Grande's designated recipient certificates from contractor's insurers showing that the coverage required above has been obtained.

- i. The insurance certificates must show City of Casa Grande, its subsidiaries, affiliates directors, officers, employees, and agents as additional insured parties in respect of all liability coverage except workers' compensation. The policy shall provide, and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
- ii. The insurance certificate shall provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without 30 days prior written notice to City of Casa Grande.
- iii. Failure of City of Casa Grande to demand the insurance certificate or other evidence of full compliance with these insurance requirements or failure of City of Casa Grande to identify a deficiency from any certificate provided to it shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

**D. Severability of Interests.** The policies referenced herein shall contain a severability of interests clause, generally providing, "the insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's insurance."

**E. Waiver of Subrogation.** Contractor hereby waives any and all rights that it might have against City of Casa Grande, its employees, officers and directors, to recover all or part of any loss or damage insured or insurable by the insurance policies carried or required to be carried by it pursuant to the Contract Documents. Contractor shall require each of its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to provide a similar waiver for City of Casa Grande's benefit.

**F. Deductibles.** Contractor may purchase the required insurance policies with deductibles which are reasonable in light of the contractor's financial condition; provided that any loss not covered due to the deductible will be paid by Contractor. Contractor shall also require its agents, contractors, licensees, and others performing the obligations, or exercising the rights, of contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

## **12. AFFIDAVIT FORMS**

A. The Affidavit of Non-Collusion form in this proposal must be filled out completely by each bidder prior to the time set for opening of bids and included with their bid package.

## **13. CONSTRUCTION LAYOUT AND STAKING**

A. The Contractor shall provide, at their sole expense, all construction and control staking for the project construction that establishes the alignments and grades for the roadway or pipe centerlines, limits of work, location, and extent equipment installations, bore pits, sleeves, and inverts of all piping, manholes, catch basins valves, and all appurtenances

and miscellaneous items of work. Alignment and elevation stakes shall be furnished by an Arizona Registered Land Surveyor at 25-foot intervals, at grade and/or alignment changes, at equipment installation locations, and at other locations as needed and as deemed necessary and required by the City Engineer through the City's Construction Inspector. The Contractor shall furnish all additional intermittent stakes for the layout and construction of the work.

- i. Upon request by the Contractor, the City shall furnish horizontal and vertical survey control information in hard copy and/or electronic format.
- B. The Contractor shall perform the work in accordance with the Surveyor's stakes and marks and shall be charged with full responsibility for conformity and agreement of the work with such stakes and marks to the project plans and specifications.
- C. The Contractor shall be held responsible for the preservation of all stakes and marks. If the construction stakes or marks have been damaged, destroyed, or disturbed for any reason, the cost of replacing them will be borne by the Contractor at no cost to the City.
- D. The Contractor shall give notice to the City Project Manager and/or City Inspector not less than three (3) working days in advance of when the survey construction staking services will be completed in connection with any portion of the work to facilitate the City's checking of the completeness of the construction staking layout.

## **14. CONSTRUCTION TESTING**

- A. The cost of source materials, quality control, or any other tests that are required to certify that the materials comply with the specifications prior to the placement of work, shall be borne by the contractor. Results of such tests will be submitted to the City Project Manager for approval prior to placement of the material within the work.
- B. The cost of initial compliance testing for quality control of the materials placed during the prosecution of the work shall be provided by the contractor at no cost to the owner or his representative. The City Engineer will approve the laboratory which will accomplish the testing.
- C. Additional tests, required due to failure of the initial compliance testing, shall be paid for by the Contractor.
- D. Contractor shall give notice to the City Project Manager and/or the City Inspector not less than three (3) working days in advance of when he will perform construction testing services in connection with any portion of the work.

## **15. PERMITS AND FEES**

- A. The Contractor shall be required to obtain all required permit(s) from the City's Development Center. Payment of fees for permits issued by the City of Casa Grande for work conducted within the City of Casa Grande right-of-way normally requiring a permit from the City will be waived for this City project.
- B. Payment of fees for permits issued by the Pinal County Department of Public Works for work conducted within the County right-of-way normally requiring a permit from the County will be paid by the Contractor.
- C. A City business license will be required of the prime contractor and all subcontractors performing work within the City of Casa Grande.

- D. Payment of City sales tax has not been waived and all applicable taxes, City or otherwise, shall be incorporated in the bid.
- E. Payment of City landfill tipping fees for clean fill/milled material has been waived by the City. All other construction debris and waste disposal is subject to standard City of Casa Grande landfill tipping fees and shall be incorporated in the bid.

## **16. CONTRACTORS LICENSE LAW**

- A. Contractor shall comply with, and require all subcontractors to comply with, State and City Contractors License Law, and shall be duly registered and licensed thereunder. Contractors shall comply with the provisions of "An Act to Regulate the Business of the Contracting", Title 32, Chapter 10, Arizona Revised Statutes, and "Rules and Regulations for Contractors", dated March 1969, or the latest revision thereof adopted under the provisions of A.R.S. Title 32, Chapter 10.

*End of General Requirements Section*

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS  
BIDDER QUALIFICATIONS**

**1. General Qualifications**

A. Bidder shall provide the City with a general description of the firm and its qualifications to complete the work shown in the Contract Documents.

**2. Project Specific Experience:**

A. Provide a minimum of three landscape improvement construction projects for municipalities within the last five years. Each reference project is to be similar in nature with similar construction elements and of equal or greater value to this project.

*Reference Project 1 of 3:*

Name of Organization			Project Name	
Project Owner (municipality)				
General Description of Project				
Project Cost			Project Dates	
Key personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager
Name				
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)				
	Name	Title	Telephone	Email
Owner				
Construction Manager				

*Reference Project 2 of 3:*

Name of Organization			Project Name	
Project Owner (municipality)				
General Description of Project				
Project Cost			Project Dates	
Key personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager
Name				
<b>Reference Contact Information</b> (listing names indicates approval to contacting the names individuals as a reference)				
	Name	Title	Telephone	Email
Owner				
Construction Manager				

*Reference Project 3 of 3:*

Name of Organization			Project Name	
Project Owner (municipality)				
General Description of Project				
Project Cost			Project Dates	
Key personnel	Project Manager	Project Superintendent	Safety Manager	Quality Control Manager
Name				
<b>Reference Contact Information</b> (listing names indicates approval to contacting the names individuals as a reference)				
	Name	Title	Telephone	Email
Owner				
Construction Manager				

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**BID PROPOSAL FORM**

Place \_\_\_\_\_

Date \_\_\_\_\_

City of Casa Grande  
Casa Grande, Arizona

In compliance with your invitation for bids and all conditions of the Contract Documents, the undersigned \_\_\_\_\_, a corporation organized under the laws of the State of Arizona: \*

\_\_\_\_\_, a partnership: \_\_\_\_\_; \_\_\_\_\_;

or an individual: \_\_\_\_\_, having examined the Contract Documents, site of work, and being familiar with conditions to be met, hereby proposes and agrees to furnish and provide all materials, labor, construction equipment, and everything necessary for completion of the work described in the "Notice for Bids for the City of Casa Grande", and to construct the same and install the material therein for the Owner in a good and workmanlike manner and to the satisfaction of the Owner, through its Representatives and Consultants, and under the direction and supervision of its Project Manager, or their properly authorized agents, and strictly pursuant to and in conformity with the Specifications and Plans prepared by the Registered Landscape Architect for the Owner, and with such modification of same and other documents that may be made by the Owner through its professional consultant or their properly authorized agents, as provided herein, at the following unit prices for the work described in the Bid Schedule that follows.

\*Insert name and title of a corporate officer with authority to submit bids and execute a contract on behalf of the corporation.

The bidder hereby acknowledges receipt of and agrees their proposal is based on the preceding Addenda issued (line-out non-issued addendum number as appropriate):

Addendum Number	Issue Date	Acknowledgement Signature
ADDENDUM NO. 1		
ADDENDUM NO. 2		
ADDENDUM NO. 3		
ADDENDUM NO. 4 (thru 10)		

## BID SCHEDULE

The contractor shall bid the work, as specified in the contract documents, in its entirety. Itemized bid items are not comprehensive for construction and were selected for specific unit price purposes only. The contractor is required to complete the Bid for both the Base and the Alternative schedules and include all other costs to complete the work in an applicable bid schedule line item of work to sum up to the Total Bid Price for the project.

Bidder's Name: \_\_\_\_\_

CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS PROJECT					
ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
1	MOBILIZATION	1	LS	\$	\$
2	EARTHWORK	1	LS	\$	\$
3	REMOVE AND DISPOSE OF EXISTING TURF	26,954	SF	\$	\$
6	REMOVE EXISTING CONCRETE HEADER	53	LF	\$	\$
7	REMOVE AND SALVAGE CONCRETE PAVER HEADER	49	LF	\$	\$
9	CONSTRUCT SINGLE SEGMENTED BLOCK SEAT WALL	99	LF	\$	\$
10	CONSTRUCT DOUBLE SEGMENTED BLOCK SEAT WALL	41	LF	\$	\$
11	CONSTRUCT CONCRETE RILL WALL	80	LF	\$	\$
12	INSTALL RIPRAP AT RILL WALL	127	SF	\$	\$
13	RE-INSTALL SALVAGED CONCRETE PAVER HEADER	18	LF	\$	\$
14	INSTALL STEEL HEADER	540	LF	\$	\$
15	CONSTRUCT CONCRETE HEADER	1,647	LF	\$	\$
16	CONSTRUCT STABILIZED DECOMPOSED GRANITE PATH	2,546	SF	\$	\$
17	INSTALL DECORATIVE ROCK TYPE 1	30,505	SF	\$	\$

**CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS PROJECT**

<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>QTY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>TOTAL PRICE</i>
18	INSTALL DECORATIVE ROCK TYPE 2	11,269	SF	\$	\$
20	INSTALL BARK MULCH	1,391	SF	\$	\$
21	INSTALL BENCH WITH CONCRETE PAD	4	EA	\$	\$
22	INSTALL TRASH RECEPTACLE	3	EA	\$	\$
23	PLANT 36" BOX TREE	4	EA	\$	\$
24	PLANT 24" BOX TREE	12	EA	\$	\$
25	PLANT 5 GALLON SHRUB	430	EA	\$	\$
26	PLANT 5 GALLON AGAVE/ALOE	160	EA	\$	\$
27	PLANT 5' TALL OCOTILLO	2	EA	\$	\$
28	INSTALL LANDSCAPE BOULDERS	1	LS	\$	\$
29	RELOCATE EXISTING IRRIGATION HEADS	1	LS	\$	\$
30	INSTALL DRIP IRRIGATION SYSTEM	1	LS	\$	\$
31	60 DAY LANDSCAPE MAINTENANCE	1	LS	\$	\$
32	TRAFFIC CONTROL	1	LS	\$	\$
<b>TOTAL BASE BID PRICE FOR ITEMIZED WORK (SUM OF EXTENDED BID PRICES FOR BID ITEMS 1 – 32)</b>					\$

\*Note: Payment of sales tax has not been waived and all applicable taxes, City or otherwise, shall be incorporated in the bid. Additionally, payment of any and all permit fees, business license fees, landfill tipping fees for refuse disposal, and all other fees shall be incorporated in the bid.

## Alternatives to Project Bid

The bidder shall complete the following "Alternatives to Bid Schedule" by inserting the exact same unit price and total price for each respective line.

### ALTERNATIVES TO BID SCHEDULE

<b>CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS PROJECT</b>					
<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>QTY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>TOTAL PRICE</i>
4	REMOVE AND SALVAGE EXISTING RIVER ROCK	1,411	SF	\$	\$
19	RE-INSTALL SALVAGED RIVER ROCK	1,411	SF	\$	\$
5	RELOCATE EXISTING LIGHT FIXTURES	1	EA	\$	\$
8	CONSTRUCT SEGMENTED BLOCK RETAINING WALL	243	LF	\$	\$
<b>TOTAL ALTERNATIVES BID PRICE (SUM OF EXTENDED BID PRICES FOR BID ITEMS 1 – 32)</b>					\$

The City of Casa Grande reserves the right to decrease the scope of the project, at the bid unit prices, with the awarded Contractor, if and as deemed necessary, to adjust the overall construction cost of the project to fully use, but be within, the available funds for the project. By submitting a bid, the Bidder agrees to this scope adjustment and change in the total contract amount for award of the project.

### QUANTITIES

The estimated quantities are approximate only and actual quantities may vary from these amounts. Variances from actual quantities will be adjusted per the unit bid price.

### ACCEPTANCE OF BID PROPOSAL

The City may elect to award from this solicitation to the Bidder (Contractor) in the following manner:

- Award to the lowest bid with the lowest qualified total bid price for the scope of work in the base bid.
- Award to the lowest bid with the lowest qualified total bid price for the scope of work in the base bid, plus the selected alternatives bid.

The undersigned hereby declares that representatives of the Bidder have visited the site and have carefully examined the Plans, Bid and Contract Documents, and Technical Specifications relating to the work covered by the above bid.

The undersigned understands that any quantities stated or implied in the bid schedule, specifications, or elsewhere in the Contract Documents are approximate only, and are subject to increase or decrease, and hereby proposes to perform all quantities of work, as either increased or decreased, in accordance with the provisions of the technical specifications for the unit bid prices stipulated in the Bid Schedule.

The undersigned understands that all work associated with CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS project as specified for this contract shall be in accordance with the bid and contract documents, technical specifications, and bid documents identified for the CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS, all applicable Maricopa Association of Government's Uniform Standard Specifications and Details; and all applicable requirements of the Manual on Uniform Traffic Control Devices; except as otherwise required by the Project Plans, Bid and Contract Documents, and Technical Specifications.

The undersigned understands that this Bid Proposal Form and the included Bid Schedule shall be submitted with a Proposal Guarantee of Certified Check, Cashier's Check, or Surety (Bid) Bond for an amount not less than 10 percent of the amount bid, along with the fully completed Bidder Qualification Form, Certification of Bid Proposal Form, and a completed Affidavit of Non-Collusion.

The undersigned agrees that upon receipt of the Notice of Award from the City of Casa Grande, the Bidder/Contractor will execute the contract documents and furnish the required bonds and certificates of insurance.

*Note: Bid Proposal Form includes the signature page that follows.*

Respectfully submitted,

Contractor's Firm Name (Bidder) \_\_\_\_\_

By:

\_\_\_\_\_  
Officer Name & Title

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

Name & Title

\_\_\_\_\_  
Witness (if Bidder is an Individual)

Bidder's Full Address:

\*Provide addresses of corporate officers or partners if different than business address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor's/Bidder's Signature\_\_\_\_\_

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

License No.\_\_\_\_\_

Contracting License Classification\_\_\_\_\_

*End of Bid Proposal Form*

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**CERTIFICATION OF BID**

Bidder hereby certifies by signing and submitting this bid, which includes Notice of Bid, Information to Bidders, Technical Specifications, Bid Proposal Form, Issued Addenda, and Certification of Bid, that they have read, fully understand, and will comply with said invitation for bids and all associated bid documents.

Please complete the following form in its entirety.

Corporate/Entity Name

Address

City, State, and Zip

Type of Entity

State of Incorporation

Phone Number

Casa Grande Business  
License Number

Signature of Authorized Officer

Print Name of Authorized Officer

Title of Authorized Signatory

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**AFFIDAVIT OF NON-COLLUSION**

STATE OF ARIZONA ) ss  
COUNTY OF )

\_\_\_\_\_  
(NAME)

BEING FIRST DULY SWORN, DEPOSES AND SAYS:

That he/she is \_\_\_\_\_  
(Title)

of \_\_\_\_\_  
(Name of Business)

That pursuant to Section 44-1404 of the Arizona Revised Statutes, he/she certifies as follows:  
That neither he/she nor anyone associated with the said

\_\_\_\_\_  
(NAME OF BUSINESS)

has, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise  
taken any action in restraint of free competitive bidding in connection with the Project:

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(NAME OF BUSINESS)

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2024

\_\_\_\_\_  
(NOTARY PUBLIC)

My Commission Expires:

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**SURETY (BID) BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we,

\_\_\_\_\_,  
as Principal, (hereinafter called the Principal), and the

\_\_\_\_\_, a corporation duly organized under the laws of the State of \_\_\_\_\_,  
as Surety, (hereinafter

called the Surety), are held and firmly bound unto the City of Casa Grande as Obligee, in the sum of Ten Percent (10%) of the total amount of the bid of Principal, submitted to the City of Casa Grande for the work described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S.

WHEREAS, said Principal is herewith submitting its proposal for the City of Casa Grande project:  
**CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

NOW, THEREFORE, if the City of Casa Grande shall accept the proposal and give such Bonds and Certificates of Insurance as specified in the Contract Documents and Technical Specifications with good and sufficient Surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such contract and give such Bond and Certificate of Insurance, if the Principal shall pay to the City of Casa Grande the sum of money set forth above as liquidated damages for failure of the Principal to enter into the contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Witness:

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS  
PERFORMANCE BOND**

**STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES**

(Amount of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PREMISES:

That, \_\_\_\_\_ (hereinafter called the Principal),

as Principal, and

\_\_\_\_\_, a

corporation organized and existing under the laws of the State of

\_\_\_\_\_,

with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Casa Grande, State of Arizona (hereinafter call the Obligee) in the amount of:

\_\_\_\_\_  
Dollars

(\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to enter into a certain written contract with the Obligee for the construction and installation of the "CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS" project which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal is awarded said contract and shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the court.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2024

---

PRINCIPAL

SEAL

---

AGENCY OF RECORD

BY

---

SURETY

SEAL

---

AGENCY ADDRESS

BY

*End of Performance Bond Form – 2<sup>nd</sup> page*

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**LABOR AND MATERIALS BOND**

**STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,  
CHAPTER 2, ARTICLE 2 OF THE ARIZONA REVISED STATUTES**

(Amount of this bond must be 100% of the contract amount)

KNOW ALL MEN BY THESE PREMISES:

That, \_\_\_\_\_ (hereinafter called the Principal),  
and \_\_\_\_\_

\_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_,  
with its principal office in the City of \_\_\_\_\_, (hereinafter  
called the Surety), as Surety, are held and firmly bound unto the City of Casa Grande, State of  
Arizona (hereinafter call the Obligee) in the amount of:

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_), for the payment whereof, the said  
Principal and Surety bind themselves and their heirs, administrators, executors, successors and  
assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to enter into a certain written contract with the Obligee for the  
construction and installation of the "CASA GRANDE CITY HALL LANDSCAPE  
IMPROVEMENTS" project which contract is hereby referred to and made a part hereof as fully  
and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said  
Principal is awarded said contract and shall promptly pay all monies due to all persons supplying  
labor or materials to him or his subcontractors in the prosecution of the work provided for in said  
contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to  
comply with the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, all  
rights and remedies on this bond shall inure solely to such persons and shall be determined in  
accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to  
the same extent as if they were copies at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the court.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2024

---

PRINCIPAL

SEAL

---

AGENCY OF RECORD

BY

---

SURETY

SEAL

---

AGENCY ADDRESS

BY

*End of Labor and Materials Bond Form - 2<sup>nd</sup> page*

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**FORM OF CONTRACT**

On the following pages is a “sample” contract from the City of Casa Grande that provides the likely terms and conditions of the contract for this project.

Contract No. XXXXX

## **CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

Project No. XXXXXXXX

**XXXXX Department**

City of Casa Grande

CONTACT NAME

PHONE

**CONTRACTOR**

CONTACT NAME

PHONE

**THIS CONTRACT** made and entered into by and between the City of Casa Grande, a Municipal Corporation (the "City") and \_\_\_\_\_, (the "Contractor").

The City and the Contractor for the consideration named agree as follows:

**SECTION 1.** The complete Contract includes all of the Contract Documents as if set forth in full herein. The Contract and all Contract Change Orders issued after the execution of the Contract, Addendum No(s). \_\_\_\_\_ issued prior to the opening of the bids, the Special Provisions, the Project Plans (Exhibit(s) \_\_\_\_\_), the Standard Plans, the Standard Specifications, the Waterworks Standards, Reference Specifications, the Bidder's Proposal, the Notice Inviting Bids, the A.R.S §35-393 and 35-393.01 Certification Form, the Performance Bond and the Payment Bond all of which are essential parts of this Contract as defined in Attachment 1. In the event of any conflict in these provisions, the terms of the Contract Documents shall control, each over the other, in the order provided.

**SECTION 2.** The Contractor shall furnish all materials, except as otherwise provided in the Plans or Specifications, and will perform all the work for the

**PROJECT NO.** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_  
\_\_\_\_\_

necessary to complete in a good, workmanlike, and substantial manner the work in accordance with the Contract Documents for this Project. The Contract documents are specifically referred to and made a part hereof this Contract.

**SECTION 3.** The City will pay the Contractor the amount of \_\_\_\_\_ (Dollars) (\$\_\_\_\_\_) for a base contract,

subject to change of materials and work orders. The Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the City subject to additions and/or reductions of the quantities of the various bid items at the unit prices bid for furnishing all labor and materials and for doing all the work contemplated and embraced under this Contract. The Contractor further agrees that:

- a. The City will not pay any claim submitted to the City by the Contractor unless the claim is SUBMITTED IN WRITING to the City and APPROVED BY THE CITY IN WRITING BEFORE any such work is started.
- b. The City will not pay for any cost increases for labor and materials outside the original prices as set forth in the Bid Schedule unless SUBMITTED IN WRITING to the City and AGREED TO IN WRITING by the City IN ADVANCE.
- c. In the event of unforeseen difficulties or obstructions arising out of the nature of the work to be performed are encountered by the Contractor, the Contractor SHALL NOT MOVE FORWARD with any additional work until that work is APPROVED IN WRITING by the City's Project Manager.
- d. The Contractor shall be responsible for all expenses incurred by or in consequence of the suspension and/or discontinuance of work CAUSED BY Contractor.

- e. The Contractor shall faithfully complete the work in the manner and in accordance with the Contract Documents and the requirements of the City's Project Manager under them.
- f. Any additional charges incurred without WRITTEN CONSENT of the City shall be considered incidental costs to the Contract with NO COST to the City.

**SECTION 4.** Time is of The Essence for this Contract. The Contractor agrees to commence work pursuant to this Contract within \_\_\_\_\_ calendar days after the date of authorization specified in the Notice to Proceed and to diligently prosecute the same, day to day, to completion within \_\_\_\_\_ calendar days after the date provided except as adjusted by subsequent Contract Change Order(s). All additional work, when authorized by executed Change Order(s) shall be compensated for by a fee as mutually agreed upon by the City and Contractor.

When a contractor submits a request for a date extension for which work must be completed in a contract, a written Contract Change Order shall be initiated outlining the reason for applying for the extension and the drop-dead date the work will be completed. If the extension is agreed to and signed by the City and the Contractor, it binds the Contractor to complete the work by the extended date designated in the amendment unless the delay in completion of the work by the Contractor results from an unforeseeable cause beyond the control and without the fault or negligence of the Contractor. It is agreed the City's only liability for delay from any cause shall be limited to granting a time extension to the Contractor. There is no other obligation, expressed or implied, on part of the City to the Contractor for delay from any cause.

**SECTION 5.** If the work to be performed by Contactor for this Contract is not timely completed, the Contractor shall pay to the City \$\_\_\_\_\_ as liquidated damages for each day the work remains incomplete after the scheduled completion date. The scheduled completion date for determining liability for liquidated damages shall be \_\_\_\_\_ consecutive days from the effective date of City's Notice to Proceed to the Contractor.

For the purpose of determining applicability of liquidated damages, completion time shall be extended only if delay in completion of the work by the Contractor results from an unforeseeable cause beyond the control and without the fault or negligence of the Contractor per Section 6.

**SECTION 6.** Force Majeure: Notwithstanding any other term, condition, or provision hereof to the contrary, in the event any party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such party by the terms hereof due to labor strikes, nationwide material shortages, war, civil disturbances, unusual weather conditions, natural disasters, acts of God, or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events and must be agreed to IN WRITING BY BOTH PARTIES.

**SECTION 7.** The Contractor agrees to indemnify, defend, and save harmless the City, its Mayor and Council, appointed boards and commissions, officials, officers, and employees, individually and collectively from all losses, claims, suits, demands, expenses, subrogation, attorney's fees, or actions of any kind and nature arising out of the Contractor's negligence or any subcontractor employed by the Contractor including bodily injury and death, damages to any property or any other losses, claims, suits, demands, and/or expenses, arising or alleged to have arisen out of the work performed, except any injury or damages

arising out of the sole negligence of the City, its officers, agents or employees. The amount and type of insurance coverage requirements set forth in Section 8 will in no way be construed as limiting the scope of indemnity in this paragraph.

## **SECTION 8. Insurance.**

**8.1 Contractor Liability Insurance.** Upon signing of the Agreement and so long as it shall remain in effect, contractor, at its cost and expense, shall purchase and maintain the insurance described in this section. The insurance shall be purchased and maintained in companies duly licensed or otherwise approved by the State of Arizona, with forms acceptable to the City of Casa Grande, and shall be primary with no right of contribution. The contractor's insurer shall have a minimum A.M. Best's rating of A-VIII. Use of alternative insurers requires prior approval for the City of Casa Grande.

The insurance coverages to be purchased and maintained are:

**8.1.1 Workers' Compensation.** Contractor shall provide workers' compensation insurance as required by state and federal laws having jurisdiction over Contractor's employees engaged in the performance of the Services within this Agreement.

**8.1.2 General Liability.** Contractor shall maintain a Commercial General Liability (Occurrence) policy that includes coverage for premises and operations, products and completed operations, contractual liability, broad form property damage, and personal injury liability. The policy shall have limits of not less than:

- \$1,000,000 for each occurrence of bodily injury and property damage; and
- \$1,000,000 for personal injury;

**8.1.3 Automobile Liability.** Contractor shall maintain an Automobile Liability policy with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each accident. The policy shall cover all owned, hired, and non-owned automobiles used in connection with the Agreement for the performance of Contractor's services.

**8.1.4 Property Insurance.** A policy or policies of fire and extended coverage property damage insurance covering the full insurable value of all tools and equipment used by contractor from time to time on the lands of City of Casa Grande pursuant to the Agreement, including mobile equipment. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

**8.1.5 Adjustment of Liability Limits.** If the initial term of the Agreement shall exceed ten years or if the aggregate term of the Agreement, including any extension or renewal terms agreed to by the parties or provided for in the Agreement shall exceed ten years, on each tenth anniversary of the date of the Agreement, the liability limits provided for in sections

8.1.2 and 8.1.3 shall be increased by an amount proportional to the increase in the US consumer price index occurring since the date of the Agreement or the date of the last such increase as appropriate.

**8.1.6 Professional Liability.** The Contractor retained by the City to provide the engineering services required by the Agreement will maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by the Contractor or any person employed by him, with an unimpaired limit of not less than \$1,000,000 each claim and \$2,000,000 all claims, or 10% for the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

**8.2 Insurance Certificate.** Contractor shall not exercise any of its rights under the Agreement until it delivers to City of Casa Grande's designated recipient certificates from contractor's insurers showing that the coverage required above has been obtained.

**8.2.1** The insurance certificates must show City of Casa Grande, its subsidiaries, affiliates directors, officers, and employees as additional insured parties in respect of all liability coverage except workers' compensation. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

**8.2.2** The insurance certificate shall provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without 30 days prior written notice to City of Casa Grande.

**8.2.3** Failure of City of Casa Grande to demand the insurance certificate or other evidence of full compliance with these insurance requirements or failure of City of Casa Grande to identify a deficiency from any certificate provided to it shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

**8.3 Severability of Interests.** The policies referenced in 8.1.2 and 8.1.3 shall contain a severability of interests clause, generally providing, "the insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's insurance."

**8.4 Waiver of Subrogation.** Contractor hereby waives any and all rights that it might have against City of Casa Grande, its employees, officers, and directors, to recover all or part of any loss or damage insured or insurable by the insurance policies carried or required to be carried by it pursuant to the Contract Documents. Contractor shall require each of its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to provide a similar waiver for City of Casa Grande's benefit.

**8.5 Deductibles.** Contractor may purchase the required insurance policies with deductibles which are reasonable in light of the contractor's financial condition; provided that any loss not covered due to the deductible will be paid by Contractor. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

**SECTION 9.** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. If this Contract is terminated, the City shall be liable only for payment for services rendered and accepted by the City before the effective date of termination.

The City reserves the right to terminate in whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written notice of default to the Contractor for failing to perform the stipulations, conditions or services/specifications required in this Contract. The Contractor shall have 5 days from receipt of the notice to rectify the failure or establish a plan for remedy. Contractor shall provide documentation of the remedy or proposed plan for approval by the City.

The City may terminate this Contract for cause if:

- A. In the opinion of the City, the Contractor attempts to impose personnel, materials or services of an unacceptable quality;
- B. In the opinion of the City, the Contractor fails to furnish the required services and/or product within the time stipulated in the Contract;
- C. In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;
- D. The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and said failure has not been cured within the times set forth in this Agreement, then the City may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

If funds that are appropriated or allocated for the payment of obligations under this Contract are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event that this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

Upon Notice of Termination the Contractor shall appraise the work the Contractor has completed and submit this appraisal to the City for evaluation.

The Contractor shall receive as compensation for services performed through the date of such termination, a fee for the percentage of work actually completed. This fee shall be a percentage of the Contractor fee described in this Contract and shall be in the amount mutually agreed to between the Contractor and the City. The City shall make this final payment within sixty (60) days after the Contractor has delivered the last of the partially completed items or service.

Notice required under this section shall be in writing and shall be served by certified mail upon the other party. When served by certified mail, services shall be conclusively deemed made five (5) days after posting thereof in the United States mail, postage prepaid.

**SECTION 10.** Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to materially fulfill such a commitment shall result in a breach of this Contract. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

**SECTION 11.** The Contractor agrees that any inspection by the City Representative or by other agents or employees of the City of the work performed is for the purpose of ensuring the technical competence of the work and adherence to other contractual provisions. Inspections are not for the purpose of safeguarding workers on the job, which is the sole responsibility of the Contractor.

The Contractor warrants that he/she is fully familiar with all the safety requirements of the Occupational Safety and Health Act as promulgated by the Federal Government and as implemented by the State of Arizona, and that he/she will be solely responsible for implementing and enforcing the same at all times.

**SECTION 12.** The Contractor agrees to accomplish the work with a minimum of traffic interruption. If it becomes necessary to close any traffic lanes on any street within the City, permission must first be obtained from the City Engineer's Office. Permission shall be requested at least 48 hours in advance for residential streets and 72 hours in advance for arterial streets. The Contractor shall furnish and place all detour signs and any other warning signs in accordance with the SPECIAL PROVISIONS.

**SECTION 13.** All writings, programs, data, public records, or other materials prepared by the Contractor and/or its Contractors or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the City.

**SECTION 14.** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Arizona in and for the County of Pinal. This Agreement shall be governed by the laws of the State of Arizona. Should the City bring any legal or equitable action for the purpose of protecting or

enforcing its rights under this Contract, the City shall recover, in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

**SECTION 15.** It is agreed that the \_\_\_\_\_ or his/her designee is authorized to execute Contract Change Order(s) necessary to the prosecution of the work, all in accordance with the Standard Specifications.

**SECTION 16.** The Contractor agrees that he/she will not proceed with any extra work unless he/she has been authorized in writing to do so by the \_\_\_\_\_ or his/her designee prior to the commencement of any extra work.

**SECTION 17.** The Parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all the provisions herein contained. Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor without prior written consent of the City.

**SECTION 18.** No portion of this contract may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of the Contracting Officer. It will be the responsibility of the Contractor to ensure that any and all subcontractors comply with the terms and conditions of this agreement and that City of Casa Grande is named as express third-party beneficiary of such subcontracts with full rights as such.

**SECTION 19.** The Contractor shall cause the Performance Bond and Payment Bond to remain in full force and effect through the warranty and guarantee period. By my signature hereunder, as Contractor, I agree to keep the Performance Bond and Payment Bond or cashier's check in equivalent of the full Performance Bond and Payment Bond in full force and effect through said period. The cashier's check shall serve the same purposes and fully cover the requirements of a Performance Bond and a Payment Bond.

**SECTION 20.** By my signature hereunder, as Contractor, I certify that I will comply with all provisions of the City of Casa Grande Project No. \_\_\_\_\_.

**SECTION 21.** This contract may be subject to review by any federal or state auditor. The City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the City. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by City Agents or employees, inspection of all records or other materials which the City deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for five (5) years after contract termination in accordance with A.R.S. §35-214 and shall make them available for such review within the City of Casa Grande, State of Arizona, upon request.

**SECTION 22.** Disputes.

**22.1 General.** Differences between the Contractor and the City, arising under and by virtue of the Contract Documents shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions and decisions of the Contracting Officer, shall be final and conclusive.

**22.2 Notice of Potential Claims.** The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and material used, and all costs and additional time claimed to be additional.

**22.3 Detailed Claim.** The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before the final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of supporting documents evidencing the amount or the extension of time claimed to be due.

**SECTION 23.** By my signature hereunder, as Contractor, I agree that even if only one (1) Progress Payment is prosecuted by the City of Casa Grande for this Project, the City will retain ten percent (10%) of the Progress Payment amount. The ten percent (10%) retention will be discharged in accordance with the Standard Specifications.

**SECTION 24.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses that are attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss or use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of

insurance coverage requirement set for the herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

To the fullest extent permitted by law, the City agrees to indemnify and hold the Contractor harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the City is legally liable, and arising from the project that is the subject of this Agreement. The Contractor is not obligated to indemnify the City in any manner whatsoever for the City's own negligence.

**SECTION 25.** Contractor will defend and indemnify the City from any claimed action, cause or demand brought against the City, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the City in any action. Such defense and payments are conditioned upon the following:

- a. That Contractor shall be notified promptly in writing by City of any notice of such claim; and
- b. Contractor shall have the right, hereunder, at its option and expense, to obtain for the City the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the City.

**SECTION 26.** By my signature hereunder, as Contractor, I agree that I am not an employee of the City, and that I am performing the duties as an Independent Contractor, supplying my own employees, and maintaining my own insurance and handling all of my own internal accounting. The City in no way controls, directs, or has any direct responsibility for the actions of the Contractor. The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the City at the present time or in the future.

By my signature hereunder, as Contractor, I understand and acknowledge that the City will not withhold federal or state income. Where required by state or federal law, the Contractor authorizes the City to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the City against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to, Business or Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title.

By my signature hereunder, as Contractor, I agree that I shall be responsible for the compliance with the United States Immigration Reform and Control Act of 1986, and shall indemnify and hold harmless the City for any liability arising from failure of the Contractor to comply with this Act. This indemnification includes the costs of suit.

By my signature hereunder, as Contractor, I agree that I shall be responsible for compliance with the Americans with Disabilities Act of 1990 and shall indemnify and hold harmless the City for any liability arising from failure of the Contractor to comply with this act. This indemnification includes the costs of suit.

**SECTION 27.** By their signatures hereunder, as Contractor and City, the Parties agree to be bound by all applicable Federal and State regulations governing Equal Opportunity and Non-Discrimination.

**SECTION 28.** Pursuant to the requirements of Arizona Revised Statutes, Title 34, the City will require both of the following documents to be completed and submitted before the final payment is made and retainage is released.

1. A certification from the Prime Contractor that all bona fide project claims and bills from his/her subcontractors and suppliers have been paid, and that all his/her project claims against the City have been resolved (CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS).
2. The consent of surety affidavit signed by an authorized representative of the surety (CONSENT OF SURETY TO FINAL PAYMENT AND FULL RELEASE OF CONTRACT RETAINAGE OR SUBSTITUTE SECURITIES).

The City of Casa Grande reserves the right to obtain from the Contractor "satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work".

**SECTION 29.** This Contract is subject to the provisions of A.R.S. § 38-511 which provides in pertinent part that the state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a Contractor to any other party to the Contract with respect to the subject matter of the Contract.

**SECTION 30.** Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989.

**SECTION 31.** To the extent applicable under A.R.S. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-Verify requirements under A.R.S. § 23-214(A). The Contractor's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The Contractor agrees to insert

language similar to this paragraph in all contracts in which they engage with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the above-mentioned statutes. City retains the legal right to randomly inspect the papers and records of the Contractor and its subcontractors who work on the Agreement to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by City. The Contractor and its subcontractors shall cooperate with City's random inspections including granting City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

Neither the Contractor nor any of Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**SECTION 32.** The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the City or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the City Attorney, or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents, or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

**SECTION 33.** In the event of a public records request to the City for the Licensed Program or Licensed Documentation, the City shall promptly provide a copy of such request to Contractor so that it has at least 7 days from Contractor's receipt of such request in which to seek an order restraining the City from disclosing the Licensed Program and Documentation pursuant to such public records request. If Contractor does not obtain a restraining order within such period of time, the City may disclose the Licensed Program and Licensed Documentation pursuant to such public request as the City deems appropriate to comply with Arizona's Public Records Laws.

**SECTION 34.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered and to the City Attorney's Office. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

**SECTION 35.** The provisions of paragraphs 5, 8, 9, 10, 13, 14, 21, 22, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 37, 38, and 39 as well as the provisions of any non-collusion affidavit, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**SECTION 36.** This is the entire Contract between the parties. If any portion(s) of this Contract is (are) later found to be invalid or unenforceable, such portion(s) shall be null and void and without any effect on the rest of the Contract which shall continue in full force and effect.

**SECTION 37.** This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Arizona, and the City of Casa Grande.

**SECTION 38.** Contractor acknowledges and agrees that it is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel and, furthermore, Contractor acknowledges that it has signed the A.R.S §35-393 and 35-393.01 Certification Form, which is attached hereto and incorporated herein, to that effect.

**SECTION 39.** Contractor acknowledges and agrees, through the signed ARS §35-394 Certification Form attached hereto and incorporated herein, that it does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People's Republic of China.
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
3. Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If, during the term of this contract, Contractor becomes aware it is not in compliance with the signed ARS §35-394 Certification Form, Contractor shall notify City within five business days after becoming aware of the noncompliance. If Contractor does not provide City with a written certification that Contractor has remedied the noncompliance within one hundred eighty days after notifying City of the noncompliance, the contract terminates, except that if the contract termination date occurs before the end of the remedy period, the contract terminates on the contract termination date.

**SECTION 40. THIS CONTRACT SHALL BE VALID UPON EXECUTION BY THE PARTIES.**

Each party agrees that this Contract may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical

thereto. The Parties understand and agree that they have the right to execute this Contract through paper or through electronic signature technology, and to the extent they sign electronically, their electronic signature is the legally binding equivalent to their handwritten signature. Signatures sent by electronic means (facsimile, scanned and sent via e-mail, or signed by electronic signature service where legally permitted) shall be deemed original signatures. The Parties expressly waive any objection to the admissibility of this Contract on the grounds that it is an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature. Each Party may sign any number of copies of this Contract, and each signed copy shall be deemed to be an original, but all of them together shall represent one and the same contract.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

City of Casa Grande, an Arizona  
municipal corporation.

By: \_\_\_\_\_  
Larry D. Rains,  
City Manager

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

Attest:

---

Gloria Leija, City Clerk CMC/AAE

Approved as to form:

Brett Wallace, City Attorney

## **Signing Instruction To The Contractor:**

Signature must be from a corporate officer or owner. in the event that another individual is signing, a letter of authorization from a corporate officer or owner indicating signatory authority for that individual must be provided.

## **CORPORATE ACKNOWLEDGEMENT(S)**

State of \_\_\_\_\_ )  
 ) ss

County of \_\_\_\_\_ )

## Acknowledgment

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ personally appeared before the undersigned and acknowledged \_\_\_\_\_ self to be the \_\_\_\_\_ of \_\_\_\_\_, being authorized so to do, executed the Agreement between \_\_\_\_\_ and the City (identified in City of Casa Grande records as C.G. Contract No. \_\_\_\_\_) in the capacity therein stated and for the purposes therein contained by signing his/her name.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

SAMPLE

## A.R.S §35-393 and 35-393.01 CERTIFICATION FORM

Definitions contained in A.R.S. 35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
  - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
  - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
  - (a) together with other investors that are not subject to this section.
  - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

All offerors must select one of the following:

My company does not participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01.

My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this response, Contractor agrees to indemnify and hold the City, its agents and employees, harmless from any claims or causes of action relating to the City's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the City in defending such an action.

---

Company Name

---

Signature of Person Authorized to Sign

---

Company Street Address

---

Printed Name of Signatory

---

City, State, Zip

---

Title of Signatory

## **A.R.S. §35-394 CERTIFICATION**

Definitions contained in A.R.S. §35-394:

1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned Subsidiary, parent company or affiliate, that engages in for-profit Activity and that has ten or more full-time employees.
2. "Public Entity" means this state, a political subdivision of this state or an agency, board, commission or department of this state or a political subdivision of this state.

By signing this certification, Contractor acknowledges and agrees that it does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People's Republic of China.
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
3. Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

By submitting this response, Contractor agrees to indemnify and hold the City, its agents and employees, harmless from any claims or causes of action relating to the City's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the City in defending such an action.

---

Company Name

---

Signature of Person Authorized to Sign

---

Company Street Address

---

Printed Name of Signatory

---

City, State, Zip

---

Title of Signatory

**CONSENT OF SURETY TO FINAL PAYMENT AND  
FULL RELEASE OF CONTRACT RETAINAGE OR SUBSTITUTE SECURITIES**

The undersigned Surety (the "Surety"), having provided the City of Casa Grande the City with a payment bond for the payment of labor and material provided to the Contractor \_\_\_\_\_  
\_\_\_\_\_(the "Contractor") in connection with **Project No.**  
\_\_\_\_\_(the "Project") consents to final payment and full release of all retainage to Contractor held by City in connection with the Project.

Surety further releases City from all claims, past, present, future, known or unknown which it may assert or could have asserted against City as a result of City's final payment and release of the retainage held in connection with the Project.

This release is only intended to relieve City of any liability or responsibility in connection with final payment and full release of retainage to the Contractor in connection with the Project and shall in no way be construed to relieve Surety of any obligation under the payment bond issued for the Project.

**IN WITNESS WHEREOF**, the Surety has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

## SURETY

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### Authorized Representative

## Title

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, on behalf of \_\_\_\_\_

---

## Notary Public

My Commission Expires:

**CONTRACTOR'S AFFIDAVIT  
REGARDING SETTLEMENT OF CLAIMS**

**Project No.:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

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To the City of Casa Grande, Arizona:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above contract project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$ \_\_\_\_\_ as set out in the final pay estimate, as full and complete payment under the terms of the contract, waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described contract.

The undersigned further agrees to indemnify, defend and save harmless the City of Casa Grande against any and all liens, claims of liens, suits, actions, damages and expenses whatsoever, which the City may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of installation.

### Contractor

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

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024,  
by \_\_\_\_\_, on behalf of \_\_\_\_\_

---

## Notary Public

My Commission Expires:

**ATTACHMENT 1**  
**DEFINITION OF TERMS**

<b>Addendum</b>	Written or graphic instrument(s) issued in writing, after advertisement, but prior to the opening of the Bids, which alter, change, clarify, correct, modify or revise the Contract Documents.
<b>Bid</b>	The offer of the bidder, submitted on the prescribed form(s) to perform the Work and/or furnish material(s) and/or furnish labor and/or furnish equipment at the price(s) quoted.
<b>Bidder's Proposal:</b>	The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.
<b>Bidders Bond</b>	The security furnished with a bid to guarantee that the bidder shall enter into the contract if the bid is accepted.
<b>Change Order</b>	A written order, issued and signed by the City Department Director or designee to the Contractor, directing addition(s), deletion(s) or revision(s) in the Work, adjustment in Contract Price(s) or Contract Time, said Change Order(s) is/are issued after the execution of the Contract, all as incidental to the prosecution of the Work as advertised.
<b>Contract</b>	The written agreement between the City and the contractor setting forth the obligations of the parties thereunder including, but not limited to, the performance of the work, the furnishing of labor and materials and the basis of payment.
<b>Liquidated Damages</b>	The monetary damages amount that the parties to the Contract shall be paid to the City by the Contractor for each day the work remains incomplete after the scheduled completion date. The Liquidated Damages amount will be set in accordance except as otherwise required in the project specifications, shall be in accordance with all applicable Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG), latest edition, et seq.
<b>Notice Inviting Bids</b>	The public announcement, as required by law, inviting Bids for work to be performed and/or materials to be furnished and/or labor to be furnished and/or equipment to be furnished.
<b>Payment Bond</b>	The security provided by the contractor solely for the protection of claimants supplying labor and materials to the contractor or to subcontractors of the contractor.

<b>Performance Bond</b>	The security provided by the contractor solely for the protection of the contracting agency and conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof.
<b>Project Manager</b>	The City designee in direct charge of the Project and responsible for the completion of the project according to the provisions of the Contract.
<b>Project Plans</b>	Specific details and dimensions peculiar to the work which are supplemented by the standard details insofar as they may apply.
<b>Reference Specifications</b>	Any specifications referred to in the Contract Documents other than Standard requirements peculiar to an individual project.
<b>Special Provisions</b>	Additions and revisions to the Standard Specifications covering conditions and Specifications, including, but not limited to: bulletins, standards, rules, methods of analysis or tests, codes, other agency specifications, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the latest edition, including amendments in effect and published at the time of advertising the Project or issuing the permit, unless otherwise specifically referred to by edition, volume or date.
<b>Standard Plans</b>	The latest edition of the Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG) including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the Maricopa Association of Governments (MAG) where appropriate.
<b>Standard Specifications</b>	The latest edition of the Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG) including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the Maricopa Association of Governments (MAG) where appropriate
<b>Waterworks Standards</b>	The latest edition of the Uniform Standard Details for Public Works Construction and the Uniform Standard Specifications for Public Works Construction as published by Maricopa Association of Governments (MAG) including all SUPPLEMENTAL AMENDMENTS, as prepared by a joint effort of the Departments of Transportation of the Maricopa Association of Governments (MAG) where appropriate, unless modified within the Plans and/or the Standard Notes and Detail Plan Sheet for the City of Casa Grande and Arizona Water Company Details.

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**EXHIBIT "A"— GENERAL CONDITIONS**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## 1. 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 document prepared by Contractor, in a form acceptable to Engineer, to request 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; 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; 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.

- 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.
- c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
- d. 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), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations 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 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. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *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.
24. *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.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *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.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *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.
30. *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.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *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.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *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.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *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.
37. *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.
38. *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 or areas furnished by Owner which are designated for the use of Contractor.
39. *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.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals,

Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
  - a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

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

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

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: 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*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. 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 Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
  1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means 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. *Contract Price or Contract Times:* References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. 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.

## 2. ARTICLE 2—PRELIMINARY MATTERS

### 2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

- A. *Performance and Payment Bonds:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor's Insurance:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner's Insurance:* After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), 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 signed 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 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 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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will 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.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

#### 2.06 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

### **3. ARTICLE 3—CONTRACT DOCUMENTS – INTENT, REQUIREMENTS, REUSE**

#### 3.01 Intent

- A. The Contract Documents are complementary; what is required by one Contract Document 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 versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will 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.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
  1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. 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.

### 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, means 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, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 or Engineer 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 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 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 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 in writing 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.
- 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 notify Owner and Contractor in writing 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 versions, 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 precludes Contractor from retaining copies of the Contract Documents for record purposes.

#### **4. 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 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

##### **4.02 Starting the Work**

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may 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 must 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 will 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 Contract Price or 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. Such an adjustment will 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 third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
  - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  - 2. Contractor shall not be entitled to an adjustment in Contract Price 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. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  - 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  - 1. The circumstances that form the basis for the requested adjustment;

2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
6. Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. 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, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses 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.

## **5. ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing 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, or to improvements, structures, utilities, or similar facilities located at such adjacent lands 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 7.13, 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 in a court of competent jurisdiction; 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 will 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 of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: 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 Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and 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;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. 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:

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;
2. is of such a nature as to require a change in the Drawings or Specifications;
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 whether it is necessary for Owner to obtain 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; 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. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
  1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, 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 subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  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;

- 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 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, then any such adjustment will 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, 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.

F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

## 5.05 Underground Facilities

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
  1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;
  3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. 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 on the Drawings, or was not shown or indicated on the Drawings 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), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review:* Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; 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
4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
5. 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. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, 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. 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;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. 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, then any such adjustment will 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, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 Hazardous Environmental Conditions at Site

##### A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; 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 on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. 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;
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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, 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. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- 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, 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 obligates 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 obligates 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.

## **6. 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 Contractor's obligations under the Contract. These bonds must 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 terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, 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 must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. 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.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 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. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential

premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. 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, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. 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.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain 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.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) 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 will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, 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 and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, 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;
  - 4. apply with respect to the performance of the Work, whether such performance is 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; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 Builder's Risk and Other 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 Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- 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 advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. 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 6.04, it may do so at Contractor's expense.

## 6.05 Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer 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.
  1. 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, risks, 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 individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater 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.
  2. None of the above waivers extends 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. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, 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, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
  1. 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 all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 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 6.04 shall maintain such proceeds in a segregated account, and 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, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

### 7. ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

#### 7.01 Contractor's Means and Methods of Construction

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 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.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 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 maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will 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.

7.04 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 must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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 must 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.

7.05 "Or Equals"

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, 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

equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that the proposed item:

- 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) 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) has a proven record of performance and availability of responsive service; and
- 4) is not objectionable to Owner.

b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
- 2) the item 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 will result in any change in Contract Price. The Engineer's denial of an “or-equal” request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

## 7.06 Substitutes

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material 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 equipment or material under the circumstances described below. To the extent possible such requests must 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 equipment or material from anyone other than Contractor.
2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.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 equipment or material that Contractor seeks to furnish or use. The application:
  - a. will 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 the item specified; and
    - 3) be suited to the same use as the item 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 the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will 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 will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

#### 7.07 Concerning Subcontractors and Suppliers

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers 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 or Supplier 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 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, 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 or Supplier, whether initially or as a replacement, will 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 solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.08 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 an 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 will be disclosed 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.

#### 7.09 Permits

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. 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.

#### 7.10 Taxes

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

#### 7.11 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. 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 is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written 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 written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 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.

#### 7.13 Safety and Protection

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

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. 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.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.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).

- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. 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.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will 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.

#### 7.14 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer

determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 Submittals

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) 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
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.<sup>4</sup>

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must 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.C.

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.C.
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. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of 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 will 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 or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 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, will 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 or Sample will 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.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
  - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

*F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.*

**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 is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, 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.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

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. The end of the correction period established in Paragraph 15.08;
8. Any inspection, test, or approval by others; or
9. Any correction of defective Work by Owner.

E. 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 will 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 losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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 will 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.

#### 7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals

furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;
2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

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

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **8. 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 third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. 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.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, 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.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 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 for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, 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. 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 will 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, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will 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 or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- 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.
  - 1. 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 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 8.03.B.
  - 2. 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 Contractor.
- C. 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.

## **9. 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 will 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 (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.

## **10. 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 10.07. 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 Resident 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 the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

#### 10.04 Engineer's Authority

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 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.

10.06 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.

10.07 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, will 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 Contractor under 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 10.07 also apply to the Resident Project Representative, if any.

10.08 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 of which Engineer has been informed.

**11. ARTICLE 11—CHANGES TO THE CONTRACT**

11.01 Amending and Supplementing the Contract

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that 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, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

#### 11.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in 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 11.05, (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 that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 Work Change Directives

- A. 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 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 Field Orders

- A. 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.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 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. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work 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 must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates 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.

#### 11.06 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.C.2.

#### 11.07 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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must 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);
  - 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 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will 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 will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 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 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.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 5 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 will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will 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 of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 Change Proposals

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* 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.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.
  - c. The supporting data must 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.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must 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.
5. *Binding Decision:* Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *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 in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion:* Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 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.

### 12. ARTICLE 12—CLAIMS

#### 12.01 Claims

- A. *Claims Process:* The following disputes between Owner and Contractor are subject 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;

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; and
4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

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 rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, 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 will 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 will 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 will 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 will 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 will 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 will 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 will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **13. 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. When needed 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 will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will 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 in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, 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, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, refunds, and returns from sale of surplus materials and equipment will 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, which 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 will 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 or retained for services specifically related to the Work.
5. Other costs consisting of 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, 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.
    - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. *Construction Equipment Rental*
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
    - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling,

and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed 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 builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will 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 does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general 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. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. 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.

6. Expenses incurred in preparing and advancing Claims.
7. 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**

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

**E. Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, 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. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

**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 for any of the foregoing will be valid.

- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  - 3. Adjusted unit prices will apply to all units of that item.

## **14. 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 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 with such procedures and programs 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 will 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.
  6. Such inspections and tests will 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 will 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 written 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 will 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, 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 will 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 defective Work as required by Engineer, then Owner may, after 7 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. ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 Progress Payments**

A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for 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), 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.
- 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) 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.
- 3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
- 4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*C. Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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 (setoffs) 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 based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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 has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other 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; or
  - l. Other items entitle 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 will 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 will be treated as an amount due as determined by Paragraph 15.01.D.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 7 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 will 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 7 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 15.03.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 6.04 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 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must 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 duly pending Change Proposals and Claims; 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 Final Application and Recommendation of Payment:* 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 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will 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. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *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 and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to setoffs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 5.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

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 as a Claim, 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 Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect 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 adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, 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 from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, 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 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. 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.

E. 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.

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

## **16. 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 directly attributable to any such suspension. Any Change Proposal seeking such adjustments must 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) 10 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) written 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 7 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 will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 Owner May Terminate for Convenience

- A. Upon 7 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 for any loss of anticipated profits or revenue, post-termination overhead costs, 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 7 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, 7 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.

## **17. 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, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise 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;
  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.

## **18. ARTICLE 18—MISCELLANEOUS**

### **18.01 Giving Notice**

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
  1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **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 will not constitute a waiver of that provision, nor will 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 of the Contract or 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 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party 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.

#### 18.09 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.

#### 18.10 Headings

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

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**EXHIBIT "B"— SUPPLEMENTARY CONDITIONS**

## **SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT**

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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—for example, "Paragraph SC-4.05."

### **ARTICLE 1---DEFINITIONS AND TERMINOLOGY**

#### **SC-1.01        Defined Terms**

Add the following new paragraphs immediately after paragraph 1.01.A.50

51. Agency – The Project is financed in whole or in part by the City of Casa Grande.
52. Conflicting Requirements – wherever conflicts between the General Conditions (C-700) or these Supplementary Conditions (C-800) and the City of Casa Grande contract documents arise the City of Casa Grande agreements and requirements shall take precedence.

### **ARTICLE 2 ---PRELIMINARY MATTERS**

#### **2.01    Delivery of Bonds and Evidence of Insurance**

##### **SC-2.01    Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:**

- B. Evidence of Contractor's Insurance: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- C. Evidence of Owner's Insurance: requirement deleted.

#### **2.02    Copies of Documents**

##### **SC-2.02    Add the following sentence of Paragraph 2.02.A. after the first sentence.**

Owner shall furnish to Contractor one copy in electronic portable document format (PDF) in addition to printed copies.

#### **2.03    Before Starting Construction**

##### **SC-2.03    Modify the first sentence of item 3 Paragraph 2.03.A to read as follows:**

A preliminary Schedule of Values utilizing the bid items identified in the Bid Form for all of the Work which includes quantities and prices of items which when added together equal

the Contract Price. Subdivide lump sum items into component parts of sufficient detail to serve as basis for progress payment.

## 2.05 Acceptance of Schedules

### SC-2.05 Add the following sentences to Section 2.05.A.2:

Contractor's schedule of submittals shall be limited to only those submittals that are identified in the contract documents or that the contractor deems necessary to facilitate compliance with the specifications. Submittals not on the approved schedule of submittals will be returned marked "Not Reviewed".

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.05 Delays in Contractor's Progress

#### SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

##### 5. Weather-Related Delays

- a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following:
  - 1) that weather conditions were abnormal for the period of time in which the delay occurred,
  - 2) that such weather conditions could not have been reasonably anticipated, and
  - 3) that such weather conditions had an adverse effect on the Work as scheduled. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
  - 1) Every workday on which one or more of the following conditions exist will be considered a "bad weather day":
    - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds 2-inches of precipitation (as rain) within 24 hours.
    - ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: 30 degrees Fahrenheit; or, at 3:00

p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: 120 degrees Fahrenheit.

- 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by the Weather Channel or Weather Underground websites for Casa Grande.
- 3) The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

SC-5.03 No geotechnical investigation was conducted for this project.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 Performance, Payment, and Other Bonds**

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. Required Performance Bond Form: The performance bond that Contractor furnishes will be in the City of Casa Grande format provided in the bid document.
2. Required Payment Bond Form: The payment bond that Contractor furnishes will be in the City of Casa Grande format provided in the bid document.

### **6.03 Contractor's Responsibilities**

Specified in the contract scope of services

## **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

SC-7.17 Delete Paragraph 7.17.E and Replace it with the following new paragraphs immediately after Paragraph 7.17.E:

*E. All services, units, and components shall be guaranteed in accordance with the following clauses:*

1. Guarantee that the services offered is free from defects in design and construction and that it will give continuous and efficient service under normal conditions for a period of 12 months from the date of delivery.
2. Guarantee that the specified equipment or material is the manufacturer's standard design and that no changes or substitutions have been made.
3. Guarantee and agree to replace promptly without cost of any nature to the City during the period of 12 months from the date of delivery any and all parts failing because of

defects in design and/or construction excepting those parts than any fail as a result of accident, fire or negligence on the part of the operating personnel ("Promptly" in this case is defined to mean within 5 business days from time of demands).

## **ARTICLE 8—OWNER'S RESPONSIBILITIES**

Specified in the contract scope of services

## **ARTICLE 9—ENGINEER'S STATUS DURING CONSTRUCTION**

SC-10.03 Delete Paragraph 10.03.B and Replace it with the following new paragraphs immediately after Paragraph 10.03.B:

- B. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
  1. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  2. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
  3. 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 Contractor's proper execution of the Work.
  4. Review of Work; Defective Work
    - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02 if the Work is in general proceeding in accordance with the Contract Documents.
    - b. Observe whether any Work in place appears to be defective.
    - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
  5. Inspections and Tests

- a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
- b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. Payment Requests: Review Applications for Payment with Contractor.
7. Completion
  - a. Participate in Engineer's visits regarding Substantial Completion.
  - b. Assist in the preparation of a punch list of items to be completed or corrected.
  - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work and prepare a final punch list of items to be completed or corrected by Contractor.
  - d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will 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 construction.
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. Authorize Owner to occupy the Project in whole or in part.

## **ARTICLE 10—CHANGES TO THE CONTRACT**

SC-11.07      Change of Contract Price

- C. Mileage costs, where allowed or agreed to by change order, shall not exceed the current Internal Revenue Service (IRS) rate.

## **ARTICLE 11—CLAIMS**

As specified in the agreement.

## **ARTICLE 12—COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

### **13.03 Unit Price Work**

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

#### **E. Adjustments in Unit Price**

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. 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
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

## **ARTICLE 13—TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

No suggested Supplementary Conditions for this Article

## **ARTICLE 14—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

### **15.03 Substantial Completion**

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

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

### **15.08 Suspension of Work and Termination**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 15—FINAL RESOLUTIONS OF DISPUTES**

### **17.02 Arbitration**

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

#### 17.02 Arbitration

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
  1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

- 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings;
- 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
- 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.

- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

#### 17.03 Attorneys' Fees

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02. [Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state "Add the following new Paragraph immediately after Paragraph 17.01" and revise the numbering accordingly].

#### 17.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

### ARTICLE 16—MISCELLANEOUS

No suggested Supplementary Conditions in this Article

#### EXHIBIT A— SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	

a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	CMS or Email	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	CMS or Email	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	CMS or Email	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	CMS or Email	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	CMS or Email w/ Attachment	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	CMS or Email w/ Attachment	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	CMS or Email w/ Attachment	DB	

Notes

(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key

Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
CMS	Construction Management Software (shall be Procore Enhanced Version or approved equal)
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version (current version)
DWG	Autodesk® AutoCAD .dwg format Version (current version)
DOC	Microsoft® Word .docx format Version (current version)
EXC	Microsoft® Excel .xlsx or .xml format Version (current version)
DB	Microsoft® Access .mdb format Version (current version)

**CITY OF CASA GRANDE  
CASA GRANDE CITY HALL LANDSCAPE IMPROVEMENTS**

**EXHIBIT "C"— TECHNICAL SPECIFICATIONS**

## **TECHNICAL SPECIFICATIONS**

These Technical Specifications supplement the Maricopa Association of Governments Uniform Standards and Details for Public Works Construction, and more fully describe the respective line items of construction work involved with the project. All provisions that are not supplemented remain in full force and effect.

### **REFERENCED STANDARDS**

The construction of the project shall be in accordance with the following standards:

- Uniform Standard Specifications and Details for Public Works Construction, 2024 Revision to the 2020 Edition, Maricopa Association of Governments (MAG).
- Arizona Department of Transportation, Standard Specifications for Road and Bridge Construction, 2008 Edition, latest revision.
- City of Phoenix Standard Specifications and Details for Public Works Construction, 2012 Edition, Section 429
- Manual on Uniform Traffic Control Devices (MUTCD), latest revision.
- Arizona Supplement to the MUTCD, ADOT, latest revision.
- Maricopa County Traffic Control Manual, September 2015, latest revision.
- Maricopa County Pavement Marking Manual, April 28, 2020, latest revision.

### **GEOTECHNICAL EVALUATION & REPORT**

No geotechnical investigation or evaluation was conducted for this project. Bidders/contractors shall satisfy themselves as to the local site conditions through close and careful site reconnaissance and performing any testing needed to prepare the bid and for construction of the project.

### **COMPLIANCE WITH NOISE ORDINANCE**

Construction work shall be scheduled to comply with the City's Noise Ordinance and other applicable ordinances, rules, and regulations pertaining to construction activities.

### **LINE ITEMS OF WORK**

The various line items of construction work involved with the project are set forth in the Bid Schedule are hereby described and defined starting on the next page.

## 1. MOBILIZATION

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Part 100, Section 109, and other related sections.

*Description:* The work under this item shall consist of preparatory work and operations, including but not limited to, the movement of personnel, equipment, materials, supplies, and incidentals to the project site; the establishment and maintenance of restroom facilities; and storage/staging facilities necessary for prosecution of the work on the project; and for all other work and operations that must be performed and costs incurred prior to beginning work on the various construction items at the project site. The mobilization/demobilization work shall also include the movement of personnel, equipment, materials, supplies, tools, and other items from the site following completion of construction activities and restoration of any site(s) used for Contractor storage and staging.

*Storage and Staging Facilities:* The Contractor is responsible for locating a suitable storage and staging area for the project. The Contractor shall obtain approval of the property owner and the City when using vacant private property to park and service equipment, and/or to store materials for use on this project.

1. The Contractor shall notify adjacent property owners/residents of this proposed use.
2. Any use of vacant property adjacent to or near the project for parking or servicing equipment and/or storing of material will require the Contractor to obtain written approval from the property owner. This approval shall contain any requirements which are a condition of this approval.
3. A copy of the property owner's approval shall be submitted along with the Contractor's request to the City's Project Manager for approval for the use of the marshaling yard in connection with the project. An appropriate distance from adjacent properties will be set by the City on a case-by-case basis depending on the size and type of equipment to be used on the project.
4. The yard shall be fenced and adequately dust-proofed in a manner such as to preclude dirt and dust blowing off the site and tracking of mud onto paved or unpaved Town streets.
5. Work in the yard shall be scheduled to comply with the City's Noise Ordinance and other applicable ordinances, rules, and regulations pertaining to construction activities.
6. Equipment, materials, supplies, etc. shall be located to minimize impact on adjacent properties.
7. The Contractor shall clean up the staging/storage area site promptly upon completion of use and shall provide a signed property release as a condition of final acceptance.
8. Contractor's request for approval shall specify in detail how they propose to comply with the above requirements.

*Site Use and Clean-up:* Fine grading of landscape and disturbed ground surfaces, returning staging areas and surrounding disturbed areas to their original condition or better, and reseeding, if necessary. Bid/contract price shall include all costs associated with implementation of street sweeping as necessary to eliminate tracked dirt, mud, and debris from the project site onto paved surfaces via construction vehicle traffic and construction traffic as a storm water management, pollution, and sediment control mitigation measure.

Sweeping and dust control shall be monitored and performed daily as needed and as may be directed by the City Inspector. Staging areas shall be provided with security fencing, scrubber pad to keep from tracking dirt/mud onto street surfaces, frequent housekeeping cleanup, and restoration of site to a condition as good if not better than found prior to construction. Dust control measures (including spraying water and/or dust palliatives on disturbed ground surfaces) are to be employed as needed to minimize fugitive dust from project activities.

*Quality Control Testing:* The Contractor is responsible for quality control testing. The Contractor shall provide the testing and inspection services required by the Contract Documents and other such tests necessary to assure the quality of the work.

Contractor shall provide all pre-construction, during-construction, and post-construction testing required by the MAG standards and the project's contract documents.

Testing frequency minimums are governed by the Arizona Department of Transportation Materials Quality Assurance Program manual, Appendix C, Sampling Guide Schedule, latest edition (June 19, 2019).

The Contractor shall provide all test results to the City, the Landscape Architect, and the City Inspector within 48 hours of completion of the testing.

*Measurement:* Mobilization will be measured as a complete lump sum (LS) item of work.

*Payment:* Payment will be made at the lump sum (LS) price indicated on the Bid Schedule. The lump sum amount shall be considered full compensation for the work as described herein and necessary for complete mobilization to the site and demobilization and clean-up when leaving the site.

The lump sum amount shall be considered full compensation for all work associated with this bid item, whether specifically stated or not. Include in the lump sum price all costs to mobilize for the project such as moving equipment, trucks, and personnel, both to the site and off the site upon completion of the work. Also include expenses for bonds, licenses, permits, project insurance, project coordination, materials, quality control testing, testing coordination, submittals, storage of materials, removal and disposal of construction debris, and the temporary restroom facilities, supplies, power, and telephone, all necessary for the execution of the work.

Payment will be made in two equal portions:

1. The first payment shall be made with the Contractor's initial billing invoice and shall be 70% of the contract lump sum amount for mobilization.
2. The second and final payment for mobilization shall be made as part of the Contractor's final close-out billing invoice once the project has been fully completed and accepted by the Town and shall be the remaining 30% of the contract lump sum amount for mobilization and site restoration.

The second and final payment for mobilization shall only be paid once the project is 100% complete and accepted by the City.

## **2. EARTHWORK**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 201 – Clearing and Grubbing, Section 205 – Roadway Excavation, Section 211 – Fill Construction, Section 430 – Landscaping, and other related earthwork sections.

*Description:* The Contractor shall perform any minor clearing and grubbing work needed on the site prior to conducting grading and earthwork operations for the proposed improvements. Clearing and grubbing work shall be completed in accordance with Section 201, Clearing and Grubbing, of the MAG Standard Specifications.

Site earthwork, in addition to finish grading of disturbed earth surfaces, shall be conducted in the areas of retaining wall construction and within the oval area at the stormwater detention basin.

Site earthwork shall be completed to the extent required to:

- a. Grade the landscape area surfaces to receive planting and landscape surface treatments to meet design intent as depicted on the project plans and details/sections.
- b. Grade the stabilized decomposed granite surface areas to the required subgrade elevations.

*Note:* The excavation and backfill required for the construction of the retaining walls is not included in this bid item. Earthwork for the construction of the retaining walls is included in Bid Item 8, Construct Segmented Block Retaining Wall.

Site excavation earthwork shall be completed generally in accordance with Section 205, Roadway Excavation, of the MAG Standard Specifications.

Site embankment fills shall be compacted to 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C. Site embankment shall be completed generally in accordance with Section 211, Fill Construction, of the MAG Standard Specifications.

The Contractor shall provide the required earthwork, excavation, embankment, compaction, grading, and shaping of the excavation areas and fill embankment areas to ensure positive drainage throughout the project site.

The Contractor shall determine the extent and amount of earthwork required to be completed for the project for bidding purposes. Earthwork for this project is expected to balance onsite and should not require import of borrow material nor generation of excess material to be hauled and disposed of offsite.

The work for this bid item shall include all materials, equipment, and labor costs to complete the minor clearing and grubbing work, excavation, embankment construction. The finished site grading shall be to the extents, lines, slopes, and cross-sections shown on the plans.

*Measurement:* Measurement for earthwork shall be made on a lump sum (LS) basis for all earthwork (clearing, grubbing, excavation, embankment, and compaction) work performed and required to complete the project as accepted by the City Project Manager.

*Payment:* Payment shall be made on the established lump sum (LS) amount set forth in the bid schedule for the earthwork completed to the lines, grades, and sections shown on the plans.

### **3. REMOVE AND DISPOSE OF EXISTING TURF**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 350 – Removal of Existing Improvements, Section 430 – Landscaping, and other related sections and details.

*Description:* The existing turf shall be removed for the full width, length, and extents where shown on the plans.

Prior to removal, herbicide shall be applied in order to kill the turf and root system. Herbicide application shall be performed during the warm season while turf is actively growing. Herbicide application shall be preceded by fertilizing and thoroughly watering in order to promote active growth. Herbicide shall be re-applied as needed to ensure all turf has been killed.

Once the turf has been effectively treated, remove the vegetation and underlying root structure to a depth of at least a 2-inches.

The removed turf, and other related materials, shall be loaded and properly transported to and disposed of at a landfill or other legal and approved site designated for disposal of this type of material.

The work shall include all materials, equipment, and labor costs to remove the existing turf including proper disposal of the removed materials.

*Measurement:* Measurement will be based on the square feet (SF) of existing turf removed as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per square feet (SF).

#### **4. REMOVE AND SALVAGE RIVER ROCK**

*Note: This line item of construction work is an alternative bid item - see the Bid Form section herein.*

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* Existing landscape river rock cobble within the limits of the work shall be removed, salvaged, stockpiled on site, and replaced at the locations shown on the plans so as to generally match the existing river rock beds.

Salvaged decorative river rock cobble shall be replaced at the designated locations such that it has a smooth, uniform appearance and no bare ground is visible.

In the event that the quantity of salvaged rock is not sufficient to cover the entire area disturbed by construction such that no bare ground is visible, contractor shall furnish and install additional decorative river rock cobble to match existing (in both size and color) in sufficient quantities to provide complete coverage.

The work shall include all materials, equipment, supplies, and labor costs to place and install the salvaged or new landscape river rock cobble per the plans and specifications. The bid unit price shall include all work associated with the removal, salvage, and replacement installation as described herein and as shown on the plans.

*Measurement:* Measurement will be based on square feet (SF) of river rock removed, salvaged, and replaced complete to match the original condition as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per square feet (SF) of removed, salvaged, and replaced river rock based on the measured quantity.

## 5. RELOCATE EXISTING LIGHT FIXTURES

*Note: This line item of construction work is an alternative bid item - see the Bid Form section herein.*

**Specifications:** Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, applicable sections of the ADOT Standard Specifications and Details, the National Electric Code, and all other applicable electric codes, standards, requirements, and installation details.

**Description:** Contractor shall perform all work associated with the removal of existing landscape light fixtures, and the relocation and re-installation of the landscape light fixtures where shown on the plans. Contractor shall remove, stockpile on site, safeguard the items, and re-use the existing fixtures.

Contractor shall perform all work associated with the removal of the existing landscape light fixtures, and with the relocation and re-installation of the landscape light fixtures. The new light foundations shall be set to finished grade at their new locations as shown on the plans.

**Measurement:** Measurement will be based on the relocation of each (EA) existing landscape light fixture satisfactorily completed as confirmed by the City Inspector.

**Payment:** Payment will be made at the bid unit price per each (EA) relocated existing light fixture based on the measured quantity.

## **6. REMOVE EXISTING CONCRETE HEADER**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 350 – Removal of Existing Improvements, Detail No. 607-3 – Concrete Header, and other related sections and details.

*Description:* Existing concrete header sections shall be removed completely from the locations shown on the plans. Contractor to backfill the void left after removal of the existing concrete header with onsite native earth materials and the backfilled surface shall be fine graded to a smooth condition.

Adjacent sections of concrete header shall be protected in place, and any sections outside the designated removal areas that may be damaged by the Contractor's actions shall be removed and replaced at the Contractor's sole expense.

The work shall include all materials, equipment, and labor costs to completely remove the existing concrete header sections and to properly dispose of these materials at a legal and approved disposal site. The cost shall include backfilling and grading the removal area as required and the proper disposal of the removed materials.

*Measurement:* Measurement will be based on the linear feet (LF) of existing concrete header satisfactorily removed as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) based on the measured quantity.

## **7. REMOVE AND SALVAGE CONCRETE PAVER HEADER**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 350 – Removal of Existing Improvements, and other related sections and details.

*Description:* Existing concrete paver header shall be removed from locations designated on the plans, salvaged, stockpiled onsite, and protected from damage, for future re-installation under a separate bid item of construction work. Contractor to backfill the void left after removal of the existing concrete header with onsite native earth materials and the backfilled surface shall be fine graded to a smooth condition.

Adjacent sections of concrete header shall be protected in place, and any sections outside the designated removal areas that may be damaged by the Contractor's actions shall be removed and replaced at the Contractor's sole expense.

The work shall include all materials, equipment, supplies, and labor costs to completely remove and salvage the concrete paving header per the plans and specifications.

*Measurement:* Measurement will be based on the linear feet (LF) of existing concrete paving header satisfactorily removed and salvaged for re-use as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) based on the measured quantity.

## 8. CONSTRUCT SEGMENTED BLOCK RETAINING WALL

*Note: This line item of construction work is an alternative bid item - see the Bid Form section herein.*

**Specifications:** Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 510 – Concrete Block Masonry, Segmental Block Unit Manufacturer’s Design Guidelines and Specifications, and other related sections and details.

**Description:** The Contractor shall furnish and install segmental block retaining wall units to the lines and grade shown on the plans. Site preparation and furnishing and installing appurtenant materials required for construction of the segmental block retaining wall as shown on the plans are also included.

Excavation and backfill required for the construction of the retaining walls is included in this bid item. Any and all earthwork needed to be completed for the construction of the segmented block retaining walls shall be included in the bid-contract unit price. This earthwork is considered subsidiary and incidental to this line item of construction work.

The segmental blocks shall be a commercially available block intended to simulate a natural rock wall. Blocks shall be colored to blend with the surrounding landscape. Colors shall be an earthtone desert palette colors. Color may be achieved by the use of colored concrete or surface staining. A minimum of 3 colors shall be used to prevent a uniform appearance. Submit block pattern, colors, and method of achieving colors to the City Project Manager for approval a minimum of 2 weeks prior to fabrication.

The Contractor shall inspect all materials delivered to the site to assure the specified type, grade, color, and texture of the segmental block retaining wall units have been received. Segmental block units shall be sound and free of cracks or other defects that would interfere with the proper placement of the units or significantly impact the strength or permanence of the structure. Units showing cracks longer than 1/2 inch shall not be used within the wall.

The Contractor shall consult with an approved wall manufacturer to obtain construction plans and all the necessary instructions and specifications needed to install the gravity segmental block retaining wall. The construction plans shall be forwarded to the City Project Manager and Registered Landscape Architect of record a minimum of 2 weeks in advance of construction for approval. Segmental block retaining wall construction plans and details shall include plan and elevation views, typical cross sections, and the quantity of blocks required.

After the required excavation has been completed to the leveling pad elevation, the foundation subgrade material shall be compacted to provide an adequate foundation for the wall system. Subgrade preparation shall be in accordance with the requirements of MAG Section 301, Subgrade Preparation. The subgrade shall be scarified to a depth of 6-inches and then moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

A granular leveling pad is required for the gravity segmental block retaining wall system. The minimum embedment depth to the top of the leveling pad shall be 1 foot. The leveling pad shall be constructed using granular material conforming to MAG Specifications Section 310, Placement and Construction of Aggregate Base Course. The aggregate base course shall be moisture conditioned and compacted to at

100% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

Drainage pipe shall be perforated or slotted PVC pipe or corrugated HDPT pipe and drainage fill material for the gravity segmental block wall shall be granular material meeting the criteria as set forth by the wall block manufacturer.

Segmental block retaining wall unit installation shall be installed at the proper elevation and orientation as shown on the wall profiles and details on the plans and in accordance with the manufacturer's recommendations for sequence of the units, drainage materials, and backfill courses.

Typically the maximum stacked vertical height of wall units prior to unit drainage fill and backfill placement and compaction shall not exceed two courses.

Layout of curves and corners shall be installed in accordance with the plan details. Walls meeting at corners shall be interlocked and continuous.

The first course of blocks shall be leveled side-to-side, front-to-rear, and with adjacent units, and aligned to ensure intimate contact with the leveling pad. Excess debris shall be cleaned from the top of units before installation of the next course. Damaged units shall be replaced immediately with new units during construction. All block units shall have positive horizontal interlock and shear/connecting devices shall be installed according to the manufacturer's recommendations.

Drainage aggregate shall be installed to the lines, grades, and sections shown on the plans. All voids between and within retaining wall block units shall be filled with drainage aggregate. Drainage fill shall be placed to the thickness and depth shown on the plans behind the units and have a minimum depth of 12-inches. Drainage collection pipes shall be installed to maintain gravity flow of water. The drainage collection pipe shall be connected to existing drain inlets/catch basins.

Backfill shall be placed in maximum compacted layers of 8-inches. Only hand operated compaction equipment is allowed within 3-feet of the back of the block units. The backfill shall be moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C. At the end of the day, the Contractor shall slope the last level of backfill away from the wall units and shall not allow surface runoff from adjacent areas to enter the wall construction site. At completion of the wall construction, final backfill shall be placed to the lines and grades shown on the plans.

The Contractor shall ensure that the top cap units are properly aligned and glued to the underlying block units with a suitable, flexible, high-strength, all-weather adhesive recommended by the block unit manufacturer. Cap units may be cut if needed to ensure the proper fit.

All excavation, materials, tools, labor, and any other incidentals necessary to build the wall as prescribed by the wall manufacturer shall be included in the contract unit price per linear foot for gravity segmental block retaining wall. All associated costs for furnishing and installing the wall complete in-place including developing and providing construction plans, preparing the subgrade, constructing the leveling pad, installing the segmental concrete blocks, placing the granular drainage material, backfill to bring the site up to grade shall be included in the bid unit price.

The retaining walls will not be considered completed until inspected and approved by the City Project Manager. The wall shall be cleaned and free of any dirt or debris that detract from its appearance.

*Measurement:* Measurement will be based on construction of the linear feet (LF) of segmental block retaining wall satisfactorily completed as confirmed by the City Project Manager.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) of segmental block retaining wall based on the measured quantity.

## 9. CONSTRUCT SINGLE SEGMENTED BLOCK SEAT WALL

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 510 – Concrete Block Masonry, Segmental Block Unit Manufacturer’s Design Guidelines and Specifications, and other related sections and details.

*Description:* The Contractor shall furnish and install segmental block units to construct a single segmented block seat wall to the lines, grades, and details shown on the plans. Site preparation and furnishing and installing appurtenant materials required for construction of the single segmented block seat wall as shown on the plans are also included.

The segmental blocks shall be a commercially available block intended to simulate a natural rock wall. Blocks shall be colored to blend with the surrounding landscape. Colors shall be an earthtone desert palette colors. Color may be achieved by the use of colored concrete or surface staining. A minimum of 3 colors shall be used to prevent a uniform appearance. Submit block pattern, colors, and method of achieving colors to the City Project Manager for approval a minimum of 2 weeks prior to fabrication. The color schema for the single segmented block seat wall shall match the new segmented block seat walls to be constructed with this project.

The Contractor shall inspect all materials delivered to the site to assure the specified type, grade, color, and texture of the segmental block seat wall units have been received. Segmental block units shall be sound and free of cracks or other defects that would interfere with the proper placement of the units or significantly impact the strength or permanence of the structure. Units showing cracks longer than 1/2 inch shall not be used within the wall.

The Contractor shall consult with an approved wall manufacturer to obtain construction plans and all the necessary instructions and specifications needed to install the single segmented block seat wall. The construction plans shall be forwarded to the City Project Manager and Registered Landscape Architect of record a minimum of 2 weeks in advance of construction for approval. Single segmented block seat wall construction plans and details shall include plan and elevation views, typical cross sections, and the quantity of blocks required.

After the required excavation has been completed to the leveling pad elevation, the foundation subgrade material shall be compacted to provide an adequate foundation for the wall system. Subgrade preparation shall be in accordance with the requirements of MAG Section 301, Subgrade Preparation. The subgrade shall be scarified to a depth of 6-inches and then moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

A granular leveling pad is required for the gravity segmental block seat wall system. The minimum embedment depth to the top of the leveling pad shall be 1 foot. The leveling pad shall be constructed using granular material conforming to MAG Specifications Section 310, Placement and Construction of Aggregate Base Course. The aggregate base course shall be moisture conditioned and compacted to at 100% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

Segmental block seat wall unit installation shall be installed at the proper elevation and orientation as shown on the wall profiles and details on the plans and in accordance with the manufacturer's recommendations for sequence of the units, drainage materials, and backfill courses.

Typically the maximum stacked vertical height of wall units prior to backfill placement and compaction shall not exceed two courses.

Layout of curves and corners shall be installed in accordance with the plan details. Walls meeting at corners shall be interlocked and continuous.

The first course of blocks shall be leveled side-to-side, front-to-rear, and with adjacent units, and aligned to ensure intimate contact with the leveling pad. Excess debris shall be cleaned from the top of units before installation of the next course. Damaged units shall be replaced immediately with new units during construction. All block units shall have positive horizontal interlock and shear/connecting devices shall be installed according to the manufacturer's recommendations.

All voids between and within seat wall block units shall be filled with aggregate.

Backfill shall be placed in maximum compacted layers of 8-inches. Only hand operated compaction equipment is allowed within 3-feet of the back of the block units. The backfill shall be moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C. At the end of the day, the Contractor shall slope the last level of backfill away from the wall units and shall not allow surface runoff from adjacent areas to enter the wall construction site. At completion of the wall construction, final backfill shall be placed to the lines and grades shown on the plans.

The Contractor shall ensure that the top cap units are properly aligned and glued to the underlying block units with a suitable, flexible, high-strength, all-weather adhesive recommended by the block unit manufacturer. Cap units may be cut if needed to ensure the proper fit.

All excavation, materials, tools, labor, and any other incidentals necessary to build the wall as prescribed by the wall block manufacturer shall be included in the contract unit price per linear foot for gravity segmental block seat wall. All associated costs for furnishing and installing the wall complete in-place including developing and providing construction plans, preparing the subgrade, constructing the leveling pad, installing the segmental concrete blocks, placing the granular drainage material, backfill to bring the site up to grade shall be included in the bid unit price.

The seat walls will not be considered completed until inspected and approved by the City Project Manager. The wall shall be cleaned and free of any dirt or debris that detract from its appearance.

*Measurement:* Measurement will be based on construction of the linear feet (LF) of single segmented block seat wall satisfactorily completed as confirmed by the City Project Manager.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) of single segmented block seat wall based on the measured quantity.

## **10. CONSTRUCT DOUBLE SEGMENTED BLOCK SEAT WALL**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 510 – Concrete Block Masonry, Segmental Block Unit Manufacturer’s Design Guidelines and Specifications, and other related sections and details.

*Description:* The Contractor shall furnish and install segmental block units to construct a double segmented block seat wall to the lines, grades, and details shown on the plans. Site preparation and furnishing and installing appurtenant materials required for construction of the double segmented block seat wall as shown on the plans are also included.

The segmental blocks shall be a commercially available block intended to simulate a natural rock wall. Blocks shall be colored to blend with the surrounding landscape. Colors shall be an earthtone desert palette colors. Color may be achieved by the use of colored concrete or surface staining. A minimum of 3 colors shall be used to prevent a uniform appearance. Submit block pattern, colors, and method of achieving colors to the City Project Manager for approval a minimum of 2 weeks prior to fabrication. The color schema for the double segmented block seat wall shall match the new segmented block seat walls to be constructed with this project.

The Contractor shall inspect all materials delivered to the site to assure the specified type, grade, color, and texture of the segmental block seat wall units have been received. Segmental block units shall be sound and free of cracks or other defects that would interfere with the proper placement of the units or significantly impact the strength or permanence of the structure. Units showing cracks longer than 1/2 inch shall not be used within the wall.

The Contractor shall consult with an approved wall manufacturer to obtain construction plans and all the necessary instructions and specifications needed to install the double segmented block seat wall. The construction plans shall be forwarded to the City Project Manager and Registered Landscape Architect of record a minimum of 2 weeks in advance of construction for approval. Double segmented block seat wall construction plans and details shall include plan and elevation views, typical cross sections, and the quantity of blocks required.

After the required excavation has been completed to the leveling pad elevation, the foundation subgrade material shall be compacted to provide an adequate foundation for the wall system. Subgrade preparation shall be in accordance with the requirements of MAG Section 301, Subgrade Preparation. The subgrade shall be scarified to a depth of 6-inches and then moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

A granular leveling pad is required for the gravity segmental block seat wall system. The minimum embedment depth to the top of the leveling pad shall be 1 foot. The leveling pad shall be constructed using granular material conforming to MAG Specifications Section 310, Placement and Construction of Aggregate Base Course. The aggregate base course shall be moisture conditioned and compacted to at 100% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

Segmental block seat wall unit installation shall be installed at the proper elevation and orientation as shown on the wall profiles and details on the plans and in accordance with the manufacturer's recommendations for sequence of the units, drainage materials, and backfill courses.

Typically the maximum stacked vertical height of wall units prior to backfill placement and compaction shall not exceed two courses.

Layout of curves and corners shall be installed in accordance with the plan details. Walls meeting at corners shall be interlocked and continuous.

The first course of blocks shall be leveled side-to-side, front-to-rear, and with adjacent units, and aligned to ensure intimate contact with the leveling pad. Excess debris shall be cleaned from the top of units before installation of the next course. Damaged units shall be replaced immediately with new units during construction. All block units shall have positive horizontal interlock and shear/connecting devices shall be installed according to the manufacturer's recommendations.

All voids between and within seat wall block units shall be filled with aggregate.

Backfill shall be placed in maximum compacted layers of 8-inches. Only hand operated compaction equipment is allowed within 3-feet of the back of the block units. The backfill shall be moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C. At the end of the day, the Contractor shall slope the last level of backfill away from the wall units and shall not allow surface runoff from adjacent areas to enter the wall construction site. At completion of the wall construction, final backfill shall be placed to the lines and grades shown on the plans.

The Contractor shall ensure that the top cap units are properly aligned and glued to the underlying block units with a suitable, flexible, high-strength, all-weather adhesive recommended by the block unit manufacturer. Cap units may be cut if needed to ensure the proper fit.

All excavation, materials, tools, labor, and any other incidentals necessary to build the wall as prescribed by the wall block manufacturer shall be included in the contract unit price per linear foot for gravity segmental block seat wall. All associated costs for furnishing and installing the wall complete in-place including developing and providing construction plans, preparing the subgrade, constructing the leveling pad, installing the segmental concrete blocks, placing the granular drainage material, backfill to bring the site up to grade shall be included in the bid unit price.

The seat walls will not be considered completed until inspected and approved by the City Project Manager. The wall shall be cleaned and free of any dirt or debris that detract from its appearance.

*Measurement:* Measurement will be based on construction of the linear feet (LF) of double segmented block seat wall satisfactorily completed as confirmed by the City Project Manager.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) of double segmented block seat wall based on the measured quantity.

## **11. CONSTRUCT CONCRETE RILL WALL**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 206 – Structure Excavation and Backfill, Section 505 – Concrete Structures, Section 701 - Aggregate, Section 725 – Portland Cement Concrete, Section 727 – Steel Reinforcement, and other related sections and details.

*Description:* The Contractor shall construct reinforced concrete rill walls where shown and as detailed on the plans. Concrete rill wall construction shall be to the lines, grades, and elevations provided on the plans.

The rill walls shall be reinforced with #4 rebar placed 12-inches on center in each direction and located mid-footing and mid-wall.

After the required excavation has been completed to the rill wall footing elevation, the foundation subgrade material shall be scarified and recompacted to provide an adequate foundation for the wall system. Subgrade preparation shall be in accordance with the requirements of MAG Section 301, Subgrade Preparation. The subgrade shall be scarified to a depth of 6-inches and then moisture conditioned and compacted to at least 95% of the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C.

The work shall include all materials, equipment, and labor costs to excavate to the structure subgrade, prepare the structure subgrade, construct the reinforced concrete rill walls, and backfill the walls including all incidental and contingent items of work needed to make complete structures suitable for the purpose intended.

*Measurement:* Measurement will be based on construction of the linear feet (LF) of concrete rill wall satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) of concrete rill wall based on the measured quantity.

## 12. INSTALL RIPRAP AT RILL WALL

*Standard Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 220 – Riprap Construction, Section 703 – Riprap, Section 796 – Geosynthetic Fabric, and other related sections and details.

*Description:* Riprap shall be 3"-8" in size, and its color shall be 'Ash' as available through Rock Pros USA, or as otherwise approved by the City Project Manager. The Contractor shall construct a single layer of riprap on geotextile filter fabric to the dimensions, at the locations, and per the concrete rill wall section details shown on the plans.

The ground surface shall be prepared to receive the geotextile filter fabric and riprap by excavating or filling the existing ground surface to the riprap subgrade elevation as shown on the riprap at rill wall section detail in the plans.

The receiving riprap subgrade and its vertical edges shall be lined with geosynthetic filter fabric. Erosion control filter fabric used below areas to receive riprap shall meet the requirements of MAG Section 796.2.3, Erosion Control and Table 796-3 Erosion Control Geosynthetic Properties. Installation of the geotextile filter fabric shall be per the manufacturer's guidelines.

Carefully hand place riprap on the fabric in a single layer. Riprap shall be placed to present a dense uniform mass of durable round or angular stone with no apparent voids or pockets. Riprap material shall be round or angular and have a  $D_{50} = 5.5$ -inches with stone sizes ranging from 3" to 8". The riprap materials shall meet the requirements of MAG Section 703, Riprap, and of MAG Section 220, Riprap Construction.

The Contractor shall provide all tools, equipment, supplies, materials, and labor to complete the work per the plans and specifications, and to the satisfaction of the City Inspector. Excavation, and all required grading and shaping work and other incidental and contingent work, is included in this item of construction work.

*Measurement:* Measurement will be based on square feet (SF) of riprap at the rill walls installed and completed as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per square feet (SF) of riprap at the rill walls based on the measured quantity.

### **13. RE-INSTALL SALVAGED CONCRETE PAVER HEADER**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 340 – Concrete Curb, Gutter, Sidewalk, Curb Ramps, Driveway and Alley Entrance, Section 350 – Removal of Existing Improvements, Section 430 - Landscaping, Detail 607-3 Concrete Header, and other related sections and details.

*Description:* The Contractor shall install the required length of salvaged and stockpiled concrete paver header at the locations shown on the plans.

The salvaged concrete paver header shall be installed per MAG Specification Section 430.10, Header/Edger Installation, and generally as shown on Detail 607-3, Concrete Header.

Prior to installation, stake the alignment and elevations for the City Inspector's approval. The staked alignment and layout shall be approved by the City Inspector prior to use. Make minor adjustments as requested.

Concrete headers shall be installed at the location and grades as shown on the plans. The header shall vary no more than one half ( $\frac{1}{2}$ ) inch in each ten (10) feet from the vertical or horizontal dimension and the identified grades, elevations, and cross sections shown on the plans.

The work shall include all materials, equipment, supplies, and labor costs to completely re-install the salvaged concrete paving header per the plans and specifications.

*Measurement:* Measurement will be based on the linear feet (LF) of salvaged concrete paver header satisfactorily re-installed as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) based on the measured quantity.

## **14. INSTALL STEEL HEADER**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, and other related sections and details.

*Description:* The Contractor shall install the required length of steel header at the locations shown on the plans.

The steel header/edging shall be installed per MAG Specification Section 430.10, Header/Edger Installation and as shown on the steel header detail on the plans.

Prior to installation, stake the alignment and elevations for the City Inspector's approval. The staked alignment and layout shall be approved by the City Inspector prior to use. Make minor adjustments as requested.

Steel headers shall be installed at the location and grades as shown on the plans. The steel header shall vary no more than one half ( $\frac{1}{2}$ ) inch in each ten (10) feet from the vertical or horizontal dimension and the identified grades, elevations, and cross sections shown on the plans.

The work shall include all materials, equipment, supplies, and labor costs to completely install the steel header per the plans and specifications.

*Measurement:* Measurement will be based on the linear feet (LF) of steel header satisfactorily installed as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) based on the measured quantity.

## **15. CONSTRUCT CONCRETE HEADER**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 340 - Concrete Curb, Gutter, Sidewalk, Curb Ramps, Driveway, and Alley Entrance, and other related sections and details.

*Description:* The Contractor shall construct concrete header at the locations shown on the plans and as detailed on the plans. The contractor shall fine grade the existing subgrade as needed, prepare the subgrade, and construct the concrete header.

Subgrade preparation shall be performed in accordance with MAG Standard Specification 301 – Subgrade Preparation.

Concrete header construction shall be performed in accordance with MAG Standard Specification 340 – Concrete Curb, Gutter, Sidewalk, Curb Ramps, Driveway, and Alley Entrance.

The lines and profile of the concrete header shall be straight, uniform, smooth, and to the satisfaction of the City Project Manager.

*Measurement:* Measurement will be based on installation of the linear feet (LF) of concrete header satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per linear feet (LF) of concrete header based on the measured quantity.

## **16. CONSTRUCT STABILIZED DECOMPOSED GRANITE PATH**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 301 – Subgrade Preparation, Section 430 - Landscaping, City of Phoenix Standard Specifications and Details for Public Works Construction, Section 429, Trails, and other related sections and details.

*Description:* The Contractor shall construct stabilized decomposed granite paths where shown on the plans and to the alignments, lines, grades, dimensions, and details shown on the plans. Construction of the stabilized decomposed granite paths shall be in accordance with the requirements of City of Phoenix Standard Specifications and Details for Public Works Construction, Section 429, Trails.

The stabilized decomposed granite paths shall be 4-feet wide, except where otherwise denoted on the plans, compacted decomposed granite (DG) surface stabilized to its full 4-inch depth allowing pedestrian and bicycle use.

**Subgrade:** The subgrade shall be scarified to a depth of 6-inches and then compacted to at least 90% the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C, prior to the installation of the stabilized decomposed granite paths.

**Grade:** The maximum sustained longitudinal grade shall be 5% (20:1).

**Cross-slope:** The maximum cross-slope shall not exceed 2%.

**Surfacing:** The stabilized decomposed granite path surface shall be 1/4-inch minus decomposed granite (DG) and its color shall be 'Desert Gold' as available through Rock Pros USA, or as otherwise approved by the City Project Manager. DG shall be compacted and stabilized to its full 4" depth. The DG shall comply with MAG Specification Section 795.9. The DG shall be installed per MAG Specification Section 430.8 and these specifications.

**Edges:** The stabilized decomposed granite path shall have a 6-inch x 6-inch concrete header that meets or exceeds MAG Standards on each side.

**Match Lines:** Where the path surface ties into another hardscape surface material i.e., sidewalk or curb, the trail shall meet and match the grade of the hardscape surface.

**Vegetation Clearance and Removal:** Plant materials shall not be planted or allowed to grow within 2-feet of the concrete header edging. Plant material shall be cleared to a height of 10' measured from the trail surface.

**Measurement:** Measurement will be based on square feet (SF) of stabilized decomposed granite path installed and completed as measured on the ground by the City Inspector.

**Payment:** Payment will be made at the bid unit price per square feet (SF) of stabilized decomposed granite path based on the measured quantity.

## 17. INSTALL DECORATIVE ROCK TYPE 1

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* **Decorative Rock, Type 1, shall be 1/2" screened in size and its color shall be 'Superior Gold' as available through Rock Pros USA, or equal as approved by the City Project Manager.** The Contractor shall provide a 1-gallon sample of the rock for acceptance and approval of the City Project Manager.

Prior to spreading decorative rock mulch, ensure all areas to be covered are free of rock and debris. Contractor shall fine grade the areas where the decorative rock mulch is to be placed to a uniform, smooth surface. Apply a pre-emergent weed control on the earth surface and also on top of the decorative rock mulch after the rock has been placed. Application of pre-emergent weed control shall be considered incidental to this bid item and no extra payment will be made for such work.

The decorative rock shall be spread evenly throughout landscape areas where specifically called for on the plans. Provide a minimum 2inch thickness of decorative rock mulch to all areas to be covered.

Rake the rock during installation to aid with mixing the rock and applying it evenly, and to help fines to settle to the bottom. After placement, top of rock shall be broomed with a push-broom as needed to provide a uniform and even appearance.

The work shall include all materials, equipment, supplies, and labor costs associated with furnishing and placing the decorative rock mulch installation as described herein and as shown on the plans.

*Measurement:* Measurement will be based on the square feet (SF) of decorative rock, type 1, installed complete as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per square feet (SF) of decorative rock, type 1, based on the measured quantity.

## 18. INSTALL DECORATIVE ROCK TYPE 2

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

**Description:** **Decorative Rock, Type 2, shall be 1" screened in size and its color shall be 'Apache Brown' as available through Rock Pros USA, or equal as approved by the City Project Manager.** The Contractor shall provide a 1-gallon sample of the rock for acceptance and approval of the City Project Manager.

Prior to spreading decorative rock mulch, ensure all areas to be covered are free of rock and debris. Contractor shall fine grade the areas where the decorative rock mulch is to be placed to a uniform, smooth surface. Apply a pre-emergent weed control on the earth surface and also on top of the decorative rock mulch after the rock has been placed. Application of pre-emergent weed control shall be considered incidental to this bid item and no extra payment will be made for such work.

The decorative rock shall be spread evenly throughout landscape areas where specifically called for on the plans. Provide a minimum 2 inch thickness of decorative rock mulch to all areas to be covered.

Rake the rock during installation to aid with mixing the rock and applying it evenly, and to help fines to settle to the bottom. After placement, top of rock shall be broomed with a push-broom as needed to provide a uniform and even appearance.

The work shall include all materials, equipment, supplies, and labor costs associated with furnishing and placing the decorative rock mulch installation as described herein and as shown on the plans.

*Measurement:* Measurement will be based on the square feet (SF) of decorative rock, type 2, installed complete as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per square feet (SF) of decorative rock, type 2, based on the measured quantity.

## **19. RE-INSTALL SALVAGED RIVER ROCK**

*Note: This line item of construction work is an alternative bid item - see the Bid Form section herein.*

**Specifications:** Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

**Description:** The Contractor shall install the salvaged and stockpiled river rock cobble at the locations shown on the plans. The re-installation of the salvaged river rock shall be to the lines, shapes, and contours shown on the landscape construction plans.

The river rock shall be hand placed to completely cover the ground surface leaving no visible earth when viewing the rock surfacing. Should the amount of salvaged rock not be sufficient for complete coverage of the design area, the Contractor shall furnish and install new river rock of a similar size and color to the existing river rock as needed for complete coverage at no additional cost to the project.

The work shall include all materials, equipment, supplies, and labor costs to completely re-install the salvaged river rock per the plans and specifications.

**Measurement:** Measurement will be based on the square feet (SF) of re-installed salvaged river rock complete as measured on the ground by the City Inspector.

**Payment:** Payment will be made at the bid unit price per square feet (SF) of re-installed salvaged river rock, based on the measured quantity.

## **20. INSTALL BARK MULCH**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* Bark Mulch shall be commercial grade mulch that is brown in color as locally available. The Contractor shall provide a 1-gallon sample of the bark mulch for acceptance and approval by the City Project Manager.

Prior to spreading the bark mulch, ensure all areas to be covered are free of rock and debris. Contractor shall fine grade the areas where the bark mulch is to be placed to a uniform, smooth surface. Apply a pre-emergent weed control on the earth surface and also on top of the bark mulch after the mulch has been placed. Application of pre-emergent weed control shall be considered incidental to this bid item and no extra payment will be made for such work.

The bark mulch shall be spread evenly throughout landscape areas where specifically called for on the plans. Provide a minimum 2-inch thickness of bark mulch to all areas to be covered.

Rake and/or broom finish the surface of the bark mulch as needed to provide a uniform and even appearance.

The work shall include all materials, equipment, supplies, and labor costs associated with furnishing and placing the bark mulch installation as described herein and as shown on the plans.

*Measurement:* Measurement will be based on the square feet (SF) of bark mulch installed complete as measured on the ground by the City Inspector.

*Payment:* Payment will be made at the bid unit price per square feet (SF) of bark mulch based on the measured quantity.

## 21. INSTALL BENCH WITH CONCRETE PAD

*Note: This line item of construction work is a deduct alternative bid item that may be deleted from the construction contract if needed to meet the budget for the project – see the Bid Form section herein.*

**Specifications:** Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

**Description:** The Contractor shall furnish and install 6 foot long benches at the specified locations shown on the landscape plans.

Bench shall be Arizona Correctional Industries Model MPCUSTOUTDDORBNC-72 with CNC “City of Casa Grande” lettering design. Color shall be tan or as approved by the City Project Manager.



Benches shall be surface mounted per the manufacturer recommendations on a 4-inch thick concrete pad. The color of the concrete pad shall match the color of the adjacent sidewalk. Concrete pad shall extend 3" beyond the bench legs as detailed on the plans.

Prior to construction of the concrete pad for the bench, the subgrade shall be scarified to a depth of 6-inches and then compacted to at least 95% the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C,. Subgrade preparation shall be in accordance with the requirements of MAG Section 301, Subgrade Preparation.

Construction of the concrete pad shall be with Type A, 3,000 psi 28-day strength concrete, and in accordance with the requirement of MAG Specification Section 340, Concrete Curb, Gutter, Sidewalk, Curb Ramps, Driveways And Alley Entrances. Concrete pad for bench shall be considered incidental to this bid item and no extra payment will be made for such work.

The work shall include all materials, equipment, supplies, and labor costs as required to furnish, install, and surface mount benches to a concrete pad as detailed on the plans.

**Measurement:** Measurement will be based on each (EA) bench furnished and installed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) bench installed complete based on the measured quantity.

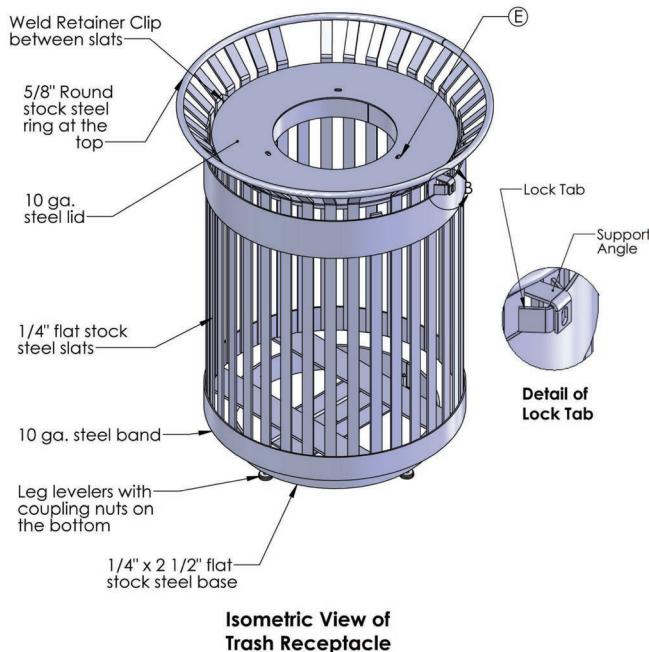
## 22. INSTALL TRASH RECEPTACLE

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall furnish and install trash receptacles at the specified locations shown on the landscape plan sheets.

Trash receptacle shall be Arizona Correctional Industries model MPPR1001 with model MPPR1003 Rain Cap, surface mounted per manufacturer recommendations on a 5" thick, 28"x28" square, concrete pad. Concrete pad at trash receptacle shall be considered incidental to this bid item and no extra payment will be made for such work.

Prior to construction of the concrete pad for the trash receptacle, the subgrade shall be scarified to a depth of 6-inches and then compacted to at least 95% the maximum dry density for the material and within the range of plus or minus 2% of the optimum moisture content per ASTM D698C,. Subgrade preparation shall be in accordance with the requirements of MAG Section 301, Subgrade Preparation.



Trash receptacle color shall be tan, or as approved by the City Project Manager.

The work shall include all materials, equipment, supplies, and labor costs as required to furnish, install, and surface mount picnic tables onto the constructed concrete pad.

*Measurement:* Measurement will be based on each (EA) trash receptacle furnished and installed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) trash receptacle based on the measured quantity.



## **23. PLANT 36" BOX TREE**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall install 36" box trees at the specified new locations shown on the landscape plan sheets.

The trees shall be maintained in good health and condition before and after planting. Proper maintenance includes regular watering and standard nursery practices to ensure the health and vigor of the tree.

All existing landscape material not directly impacted by the construction activities shall be protected in place from any damage. Any existing landscaping materials, plants, and other items that may be damaged or improperly pruned using non-ISA recommended methods during construction shall be replaced in kind at the sole expense of the Contractor.

The work shall include all materials, equipment, supplies, and labor costs to excavate planting pits, place and install the trees per the plans, details, and specifications, backfill the trees, and furnish and install stakes as required.

*Measurement:* Measurement will be based on installation of each (EA) 36" box tree satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) tree planting based on the measured quantity.

## **24. PLANT 24" BOX TREE**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall install 24" box trees at the specified new locations shown on the landscape plan sheets.

The trees shall be maintained in good health and condition before and after planting. Proper maintenance includes regular watering and standard nursery practices to ensure the health and vigor of the tree.

All existing landscape material not directly impacted by the construction activities shall be protected in place from any damage. Any existing landscaping materials, plants, and other items that may be damaged or improperly pruned using non-ISA recommended methods during construction shall be replaced in kind at the sole expense of the Contractor.

The work shall include all materials, equipment, supplies, and labor costs to excavate planting pits, place and install the trees per the plans, details, and specifications, backfill the trees, and furnish and install stakes as required.

*Measurement:* Measurement will be based on installation of each (EA) 24" box tree satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) tree planting based on the measured quantity.

## **25. PLANT 5 GALLON SHRUB**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall install 5-gallon shrubs at the specified new locations shown on the landscape plan sheets.

The shrubs shall be maintained in good health and condition before and after planting. Proper maintenance includes regular watering and standard nursery practices to ensure the health and vigor of the shrub.

All existing landscape material not directly impacted by the construction activities shall be protected in place from any damage. Any existing landscaping materials, plants, and other items that may be damaged or improperly pruned using non-ISA recommended methods during construction shall be replaced in kind at the sole expense of the Contractor.

The work shall include all materials, equipment, supplies, and labor costs to excavate planting pits, place and install the shrubs per the plans, details, and specifications, backfill the shrubs, and furnish and install stakes as required.

*Measurement:* Measurement will be based on installation of each (EA) 5-gallon shrub satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) shrub planting based on the measured quantity.

## **26. PLANT 5 GALLON AGAVE/ALOE**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall install 5-gallon agave/aloe plants at the specified new locations shown on the landscape plan sheets.

The agave/aloe plants shall be maintained in good health and condition before and after planting. Proper maintenance includes regular watering and standard nursery practices to ensure the health and vigor of the shrub.

All existing landscape material not directly impacted by the construction activities shall be protected in place from any damage. Any existing landscaping materials, plants, and other items that may be damaged or improperly pruned using non-ISA recommended methods during construction shall be replaced in kind at the sole expense of the Contractor.

The work shall include all materials, equipment, supplies, and labor costs to excavate planting pits, place and install the agave/aloe plants per the plans, details, and specifications, backfill the agave/aloe plants, and furnish and install stakes as required.

*Measurement:* Measurement will be based on installation of each (EA) 5-gallon agave/aloe plant satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) agave/aloe plant based on the measured quantity.

## **27. PLANT 5' TALL OCOTILLO**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall install 5-foot tall, bare root, ocotillo plants with a minimum of five canes each at the specified new locations shown on the landscape plan sheets.

The ocotillo plants shall be maintained in good health and condition before and after planting. Proper maintenance includes regular watering and standard nursery practices to ensure the health and vigor of the shrub.

All existing landscape material not directly impacted by the construction activities shall be protected in place from any damage. Any existing landscaping materials, plants, and other items that may be damaged or improperly pruned using non-ISA recommended methods during construction shall be replaced in kind at the sole expense of the Contractor.

The work shall include all materials, equipment, supplies, and labor costs to excavate planting pits, place and install the ocotillo plants per the plans, details, and specifications, backfill the ocotillo plants, and furnish and install stakes as required.

*Measurement:* Measurement will be based on installation of each (EA) 5-foot tall ocotillo plant satisfactorily completed as confirmed by the City Inspector.

*Payment:* Payment will be made at the bid unit price per each (EA) ocotillo plant based on the measured quantity.

## **28. INSTALL LANDSCAPE BOULDERS**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 - Landscaping, Section 440 – Landscape Irrigation, Section 795 – Landscape Material, and other related sections, specifications, and details.

*Description:* The Contractor shall furnish and install landscape boulders at the locations and per the details shown on the plans.

The two sizes of the boulders to be installed are called out on the plans to be:

1. 3-feet x 3-feet x 3-feet
2. 2-feet x 2-feet x 2-feet

Boulders shall be 'Painted Desert' in color as available through Rock Pros USA, or as otherwise approved by the City Project Manager.

The work shall include all materials, equipment, supplies, and labor costs to furnish and install the landscape boulders per the plans and specifications, including minor excavation work as needed to properly embed and seat the boulder in the ground.

*Measurement:* Measurement shall be on a lump sum (LS) basis for all labor, equipment, materials, and supplies involved with installing landscape boulders.

*Payment:* Payment will be made at the lump sum (LS) price indicated on the Bid Schedule, which amount shall be considered full compensation for the all work associated with this bid item, whether specifically stated or not.

## **29. RELOCATE EXISTING IRRIGATION HEADS**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 757 – Irrigation System Materials, Section 795 – Landscape Materials, and other related sections and details.

*Description:* The Contractor shall determine the layout, configuration, and extent of existing irrigation system within and adjacent to the limits of work and relocate existing irrigation heads, where shown on the plans, that will be affected by the work such that all new and existing plant material within the coverage area of the system will receive the necessary irrigation during and after construction. Necessary irrigation is the amount of watering required to ensure the continuous health and vigor of the trees, shrubs, and plant material or turf.

Trees, shrubs, and plants or turf that dies, or is stressed to the point that recovery is unlikely, in the opinion of the City Inspector, due to lack of irrigation caused by construction activities shall be replaced in kind at the Contractor's expense.

*Measurement:* Measurement shall be on a lump sum (LS) basis for all labor, equipment, materials, and supplies involved in relocating existing irrigation heads and repairing the irrigation system with new materials and equipment as required to make fully functional irrigation system.

*Payment:* Payment will be made at the lump sum (LS) price indicated on the Bid Schedule, which amount shall be considered full compensation for the all work associated with this bid item, whether specifically stated or not.

## **30. INSTALL DRIP IRRIGATION SYSTEM**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 757 – Irrigation System Materials, Section 795 – Landscape Materials, and other related sections and details.

*Description:* The Contractor shall furnish all the necessary labor, materials, and equipment required to complete the installation of the automatic drip irrigation system providing irrigation water to all trees, plants, and shrubs in accordance with the project plans. The irrigation system shall be tested to ensure the system is fully functional for its intended purpose.

*Measurement:* Measurement shall be on a lump sum (LS) basis for all labor, equipment, materials, and supplies involved and required to make a fully functional drip irrigation system.

*Payment:* Payment will be made at the lump sum (LS) price indicated on the Bid Schedule, which amount shall be considered full compensation for the all work associated with this bid item, whether specifically stated or not.

### **31. 60 DAY LANDSCAPE MAINTENANCE**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 430 – Landscaping, Section 440 – Landscape Irrigation, Section 757 – Irrigation System Materials, Section 795 – Landscape Materials, and other related sections and details.

*Description:* The Contractor shall maintain all landscape trees, shrubs, and plants areas on a continuous basis and insure that all plant materials are in a sound, healthy, vigorous condition free from insects, bark abrasions, or other objectionable disfigurements and shall immediately replace any plant which is unacceptable at any time up to and including final acceptance of the project or completion of the plant establishment period whichever occurs later.

Maintenance shall include keeping the landscape areas free of debris and weeding, and cultivating the planted areas at intervals acceptable to the City Project Manager.

During the maintenance period, and at least 9 days prior to final acceptance, the Contractor shall set the irrigation controller(s) on automatic operation and the system(s) shall operate satisfactorily during throughout this period. All necessary repairs, replacements, and adjustments shall be made until all equipment, electrical work, controls, and instrumentation are functioning in accordance with the manufacturer's requirements and these contract documents.

*Measurement:* Measurement shall be on a lump sum (LS) basis for all labor, equipment, materials, and supplies involved in maintaining all trees, shrubs, and plants in the landscaped areas as well as the drip irrigation system(s) for the 60 day (minimum) period as described above.

*Payment:* Payment will be made at the lump sum (LS) price indicated on the Bid Schedule, which amount shall be considered full compensation for the all work associated with this bid item, whether specifically stated or not.

## **32. TRAFFIC CONTROL**

*Specifications:* Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, Section 401 – Traffic Control, Arizona Department of Transportation Specifications and requirements for traffic control and work zone safety, and the applicable sections of the Manual on Uniform Traffic Control Devices for traffic control and work zone safety.

*Description:* Effective and safe pedestrian traffic control is critically important for this project. The Contractor shall coordinate closely with City officials throughout the duration of the project to ensure safe passage of pedestrian, bicycle, and vehicular traffic around and adjacent to the construction zone.

The work site may be closed to pedestrian traffic for the duration of the work as long as the access to and from the north and the City Hall building entrances remain open and unobstructed at all times.

The Contractor shall install lighted work site barricades, safety fencing, and other traffic control devices and maintain them for the full duration of the construction period. The Contractor shall also promptly remove all traffic control devices and measures once the construction has been completed and approved by the City.

This construction item includes any and all barricades, barrels, cones, lights, signage, directional pedestrian routing, signing, and development and implementation of an approved traffic control plan. Traffic control shall meet all requirements of the City of City of Casa Grande and the Manual on Uniform Traffic Control Devices.

*Measurement:* Measurement for the construction site traffic control shall be on a lump sum (LS) basis for all labor, equipment, materials, rentals, permits, and supplies involved in full time traffic control for the total duration of construction activities as required.

*Payment:* Payment shall be a partial lump sum (LS) amount for the previous month based on the prorated percentage completion of the total contract (e.g. 1/3 of the LS amount each month on a project with a 3-month schedule).

## INCIDENTAL ITEMS

Any and all items of work to be provided by the Contractor that are not specifically listed in the Bid Schedule will NOT be measured or paid for separately as they are considered "incidental" and "subsidiary" to the overall project. The cost associated with each incidental item of work shall be applied to its associated bid schedule line item or across all applicable bid schedule line items as most appropriate in the judgment of the Contractor.

The following is a list of some, but not all, construction items that are considered "incidental" to the construction project that shall be provided, but will not be measured or paid for separately as a bid item:

- **Water Used by the Contractor for Construction Purposes**

The Contractor shall establish an account with Arizona Water to purchase water used at a nominal rate for construction purposes so the water utility has a record of water usage. The water utility will provide a water meter for this purpose. The Contractor shall reimburse Arizona Water for the cost of water used for this project. The cost of associated work and the cost of water used for construction purposes is incidental to the overall project.

- **Construction Staking for All Improvements**

Cost for all labor, materials, and equipment associated with construction surveying and staking for construction purposes. Any survey monuments that are disturbed during construction activities shall be replaced at the Contractor's expense. All surveying and staking work shall be under the direction and oversight of an Arizona Registered Land Surveyor.

- **Record drawings**

Accurate red-lined "as-built" drawings of all improvements, landscape plantings, irrigation system components, and any encountered existing utility, whether shown on the plans or not, shall be provided to the Public Works Director upon completion of the construction. The location of all installed features shall be dimensioned, with the location based on identifiable surface features. Two weeks prior to final contract settlement, full record (as-built) drawings and data will be required.



*End of Technical Specifications Section*