

**CONTRACT DOCUMENTS &
CONSTRUCTION SPECIFICATIONS**

FOR

City of Daphne Project

BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION

THE CITY OF DAPHNE, ALABAMA



Date
June 8, 2022

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ITEM I

ADVERTISEMENT FOR BIDS

Sealed Bids will be received by the City of Daphne at Daphne City Hall (1705 Main Street, P. O. Box 400, Daphne, AL 36526) until 11:30 A.M. on **July 13, 2022** and thereafter the same will be publicly opened for furnishing all labor and materials, and performing all Work required by City of Daphne (“City”) for the following Project:

BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION

One hundred twenty days (120) calendar days will be allowed for the completion of the Project.

Work will include construction of new pickleball courts, modification of existing courts, and installation of owner provided lighting.

All Bids must be on blank forms provided in the Specifications and submitted in its entirety. **A cashier’s check drawn on an Alabama bank or a Bidder’s bond, payable to City of Daphne, Alabama, for an amount not less than five percent (5%) of the amount bid, but in no event more than ten thousand dollars (\$10,000), shall be filed with the Bid. The Bidder’s bond shall be prepared on the form specified and signed by a bonding company authorized to do business in the State of Alabama.**

The response must be sealed and labeled on the outside of envelope as follows:

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A performance bond in the form and terms approved by the City in an amount not less than the contract price will be required at the signing of the Agreement. A labor and materials bond in the form and terms approved by the City in an amount not less than the Contract Price insuring payment for all labor and materials shall also be required at the signing of the Agreement. In addition, the Contractor must furnish to the City at the time of the signing of the Agreement a certificate of insurance coverage as provided in the Contract Documents. The City reserves the right to reject any and/or all Bids and to waive informalities and to furnish any item of material or work to change the amount of the Contract Price.

Liquidated damages for non-completion of the Work within the Contract Times will be assessed in accordance with the terms of the Contract.

The Engineer for the Project is Josh Newman, You may contact Josh Newman by e-mail at JNewman@DaphneAL.com. Prospective Bidders may examine the Bidding Documents at Daphne City Hall on Mondays through Fridays between the hours of 8:00 a.m. – 5:00 p.m.

Potential Bidders may procure Specification and Plan materials digitally at no charge from Suzanne Henson, Finance Department by E-Mailing SHenson@DaphneAL.com or may be obtained off the City’s website: [DaphneAL.com : http://www.daphneal.com/bids.aspx](http://www.daphneal.com/bids.aspx). No questions from potential Bidders will be answered through addendum later than forty-eight (48) hours prior to the scheduled bid opening.

Bids are invited from all qualified respondents. The City is an Equal Opportunity Employer. All minority business enterprises (MBE) and disadvantaged business enterprises (DBE) will be taken into consideration.

No Bids will be considered unless the Bidder, whether resident or non-resident of Alabama, is properly qualified to submit a Bid for this Project in accordance with all applicable laws of the State of Alabama. This shall include

evidence of holding a current license from the State Licensing Board for General Contractors, as required by Chapter 8, Title 34 of the Code of Alabama (1975). In addition, non-residents of the State, if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama.

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

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

The City may disqualify Bidders that have had prior demands placed on a bid bond, payment bond, or performance bond within the last five (5) years prior to the date of this Bid submission.

The City may disqualify Bidders that have prior or existing litigation arising from allegations regarding the quality of work performed on any contract within the last five (5) years prior to the date of this Bid submission.

If the Contract is to be awarded, the City will award the Contract to the lowest responsive and responsible Bidder.

No Bid shall be withdrawn for a period of sixty (60) days subsequent to the opening of Bids without the consent of the City Council of City of Daphne, Alabama.

A mandatory pre-bid conference will be held on June 29, 2022 at 10:00 A.M., at the City of Daphne City Hall at 1705 Main Street, Daphne, AL 36526. All prospective Bidders must have a representative present at the pre-bid conference.

Robin LeJeune, Mayor

ITEM II
INSTRUCTIONS TO BIDDERS

1. **PREPARATIONS OF BIDS:**

Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, these instructions, and the instructions printed on the forms is necessary. Special care should be exercised in the preparation of Bids. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed Contract, including local conditions, uncertainty of weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper space in the bid and guaranty forms shall be suitably filled in. Bidders are required to submit all Contract Documents and Specifications, including any addendums, upon submittal of Bid.

2. **LABOR AND MATERIALS NOT TO BE FURNISHED BY CITY OF DAPHNE, ALABAMA:**

The City of Daphne, will not furnish any labor, material, or supplies unless specifically provided in the Contract Documents.

3. **SIGNATURE TO BIDS:**

Each Bid must give the full business address of the Bidder and must be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A Bid by a person who affixes to this signature the word "president," "secretary," "agent," or other designation without disclosing his/her principal, may be held to be the Bid of the individual signing. When requested by the City, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.

4. **BIDS FOR ALL OR PART:**

Each project will be bid separately unless otherwise expressly requested in the Advertisement for Bids. Combination bids, i.e., bids on separate projects lumped together as a single bid or an all-or-none basis, will not be accepted unless the Advertisement for Bids expressly requests or permits same.

5. **ALTERNATE BIDS:**

Alternate bids will not be considered unless called for.

6. **SPECIFICATIONS AND SCHEDULES:**

The Specifications, conditions, schedules, and Drawings which form the basis of any Bid will be considered as a part thereof and will form a part of the Contract. Copies of these papers, together with a copy of the sample contract form, including authorized additions, or deletions, if any, will be furnished to or made available for the inspection of Bidders by the Issuing Office indicated in the Advertisement for Bids.

7. CORRECTIONS:

Erasures or other changes in any Bid must be explained or noted over the signature of the Bidder.

8. OWNER:

Where the word "Owner" appears herein, the same refers to City of Daphne, and includes the City Council of the City of Daphne, its governing body.

9. GUARANTY AND INSURANCE:

Security is required to insure the execution of the Contract and bond for performance of the services, and no Bid will be considered unless it is so guaranteed. The Bidder must furnish with its Bid a guaranty bond or cashier's check drawn on an Alabama bank payable to the City of Daphne, Alabama, in the amount of 5% of its Bid price, but in no event more than ten thousand dollars (\$10,000). Cashier's checks or bid bonds, will, at the option of the Owner, be paid into the funds of City as liquidated damages upon failure of the successful Bidder to execute the Agreement and furnish the performance bond, labor and materials bond, and insurance coverages as hereinafter required, within ten (10) consecutive calendar days following written notice of the award of the Contract.

10. BONDS AND INSURANCE:

The bonds and insurance policies of a surety company or insurance company respectively, authorized to do business in the State of Alabama, acceptable to the City may be accepted as security and insurance as required for any Bid or Contract. See the instructions hereinafter contained and the applicable standard forms with respect to the type, form, and amounts of required bonds and insurance policies.

11. MARKING AND MAILING BIDS:

Bids, with their guarantee, must be securely sealed in suitable envelopes, addressed and marked on the outside:

**“BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION
Please return the entire contract booklet and insert tabs for each section.”**

12. TIME FOR RECEIVING BIDS:

Bids received prior to the time of opening will be securely kept, unopened. The Owner will decide when the specified time has arrived, and no bid will be considered if received thereafter, except that when a Bid arrives by U. S. Postal mail after time for opening, but arrived on the day of opening and it is shown to the satisfaction of the Owner that the non-arrival on time was due solely to delay in City pickup and distribution of the mails, such bid will be received and considered. No responsibility will attach to City of Daphne or the City Council for the premature opening of a bid not properly addressed or identified. Telegraphic bids will not be considered.

13. WITHDRAWAL OF BIDS:

Bids may be withdrawn on written request received from bidders prior to the time fixed for opening.

Negligence on the part of the Bidder in preparing the Bid confers no right for the withdrawal of the Bid after it has been opened.

14. BIDDERS PRESENT:

At the time fixed for the opening of Bids, their contents will be made public for the information of Bidders and others properly interested who may be present either in person or by representation.

15. AWARD OR REJECTION OF BIDS:

The Contract will be awarded to the lowest responsible Bidder complying with the Bidding Requirements, provided its Bid is reasonable and it is in the interest of the Owner to accept it. The Bidder to whom the award is made will be notified at the earliest possible date. The Owner, however, reserves the right to reject any and all Bids and to waive any informality in Bids received whenever such rejection or waiver is in the interest of the Owner. The Owner also reserves the right to reject the Bid of a Bidder who has previously failed to perform properly or complete on time contracts of a similar nature, or a Bid of a Bidder who is not, in the judgment of the Owner, in a position to perform the Contract.

16. BIDDERS INTERESTED IN MORE THAN ONE BID:

If more than one Bid is offered by any one party, by or in a name of that party clerk, partner, corporation in which that party has a substantial interest, or in which that party is an officer, or other person, all such Bids may be rejected. A party who has quoted prices on materials to a Bidder is not thereby disqualified from quoting prices to other Bidders or from submitting a Bid directly for the materials or Work. The City Council Daphne reserves the right to determine in its discretion whether the provisions of this clause have been violated by any Bidder.

17. ERRORS IN BIDS:

Bidders or their authorized agents are expected to examine the maps, Drawings, Specifications, and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the Bidder's own risk, and the bidder cannot secure relief on the plea of error in the Bid. In case of error in the extension of prices, the unit price will govern.

18. CONTRACT AND BOND:

The Bidder to whom award is made must, when requested, enter into an Agreement similar to the format as on the sample contract form as set out herein, with satisfactory security in the amount required, within the period specified, or, if no period be specified, within 10 days after the required forms are presented to him for signature.

19. COLLUSION:

If there is any reason for believing that collusion exists among any of the Bidders, any or all Bids may be rejected, and those participating in such collusion may be barred from submitting Bids on the same or other work with the City.

20. SUBLETTING OR ASSIGNING OF CONTRACT:

- (a) Limitations. The Contractor shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the Contract, its right, title, or interest therein, or its power to execute such Contract, to any person, firm or corporation without written consent of the City, and such written consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract. Unless otherwise stipulated in the Bidding Documents or Contract Documents, the Contractor shall perform with its own organization, and with the assistance of workers under its immediate superintendence and reported on its payroll, all contract work of a value not less than 50 percent of the total contract amount, except that any items designated in the contract as "Specialty Items" so performed by subcontract may be deducted from the total Contract Price before computing the amount of Work required to be performed by the Contractor with its own organization.
- (b) Subcontractor's Status: A Subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor and the Contractor will be responsible to the City for all of the Subcontractor's work, including failures or omissions; and a Subcontractor's removal may be required by the Engineer, as in the case of an employee.

21. PROSECUTION OF WORK:

- (a) Notice of Intent: The Contractor shall give the Engineer definite notice of its intention to start Work at least 72 hours in advance of beginning Work. Should prosecution of the Work be discontinued by the Contractor with the consent of the Engineer, the Contractor shall give the Engineer at least 48 hours' notice in writing before resuming operations.
- (b) General: The Contractor shall prosecute the Work continuously and diligently in the order and manner set out in the schedule as approved by the Engineer. The Contractor shall provide sufficient satisfactory materials, labor, and equipment to ensure that the Work will be completed in a satisfactory manner within the time specified in the Contract Documents.

Should the Contractor fail to maintain a satisfactory rate of progress, the Engineer will require that additional forces and equipment be placed on the Work to bring the Project up to schedule and maintain it at that level.

Should the Contractor fail to furnish sufficient satisfactory equipment and labor for maintaining the quality and progress of the Work at satisfactory level, the Engineer may withhold all pay applications which are or may become due until satisfactory quality and progress are maintained; or the Contract may be terminated.

SECTION III
PROPOSAL

Date: _____

Proposal of _____ (“Bidder”)

Alabama General Contractor License No. _____

for the performance of all Work and the furnishing of all labor and materials required by the Contract terms,
Specifications, and special provisions, for the public project designated as

BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION

The Specifications are attached hereto and made a part hereof.

TO: The City of Daphne

The following proposal is made on behalf of Bidder and no others. Evidence of Bidder’s authority to submit the proposal is herewith furnished.

The proposal is made without collusion on the part of any person, firm, or corporation.

I certify that Bidder has carefully examined the plans for this Project and the Specifications hereto attached including the special provisions, and has also personally examined the site of work. On the basis of the Specifications and plans, Bidder proposes to furnish all necessary machinery, tools, apparatus, and other means of construction, and do all the Work and furnish all the material in the manner specified.

Bidder further agrees to complete all the Work within One hundred twenty **(120 days) calendar days from the issuance of the Notice To Proceed for the Project.**

Bidder understands that the quantities below are approximate only and are subject to either increase or decrease, and hereby proposes to perform any increased or decreased quantities of Work at the price bid, subject to adjustments as specified in the Contract Documents.

Bidder further proposes to perform all “Force Account or Extra Work” that may be required of Bidder on the basis provided in the Specifications hereto attached, and to give such work Bidder’s personal attention in order to see that it is economically performed.

Bidder further proposes to execute the Agreement as soon as the Work is awarded to Bidder and to begin and complete the Work within the Contract Times specified in the Agreement.

Bidder also proposes to furnish a Contract Performance Bond, approved by the Owner in an amount equal to the total amount of the Bid. This bond shall serve not only to guarantee the completion of the Work on Bidder’s part, but also to guarantee the excellence of both workmanship and materials until the Work is finally accepted.

Bidder encloses a cashier’s check for _____ Dollars (\$ _____) or bid bond in the form specified for five (5%) percent of Bidder’s bid (but in no event in excess of Ten Thousand and No/100 Dollars), and hereby agrees that in case of Bidder’s failure to

execute the Agreement and furnish bond within 10 days after notice of award, the awarding authority shall retain from the proposed guaranty if it be a cashier's check, or recover from the principal or the sureties if the guaranty be a bid bond, the difference between the Contract Price as awarded and the amount of the Bid of the next lowest bidder. If no other Bids are received, the full amount of the proposal guaranty shall be so retained or recovered as liquidated damages for such default. It is understood that in case the Work is not awarded to Bidder, the check will be returned as provided in the Specifications.

Signature of Bidder (If Firm or Individual) _____

Print Name: _____

Company Name _____

Address _____

E-Mail: _____

Signature of Bidder (Corporation) _____

_____ Business Address _____
President

_____ Business Address _____
Secy. & Treas.

Attest: _____ Incorporated in _____
State

(Corporate Seal)

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The following items shall be completed in accordance with [the *Alabama Department of Transportation Standard Specifications for Highway Construction*, latest Edition]¹, except as modified herein:

NOTES:

Any and all erosion control items and best management practices needed or required by or for the Work shall be included in and incidental to the lump sum price of the contract.

Bidder understands that the Owner reserves the right to reject any and all Bids.

SALES TAX ACCOUNTING

Pursuant to Code of Alabama (1975 Section 40-9-14-1), the Contractor accounts for the sales tax NOT included in the bid proposal form as shown below.

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ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	BID AMOUNT
1	EROSION CONTROL	LS	1		
2	LIGHTING	LS	1		
3	SITE PREPERATION AND GRADING	LS	1		
4	PAVEMENTS	LS	1		
5	HARDWARE AND ACCESSORIES	LS	1		
6	SOD	LS	1		
TOTAL BASE BID					

SALES TAX EXEMPTION INFORMATION BELOW MUST BE INCLUDED WITH BID SUBMITTAL:

- A. Total Project Bid Amount: \$ _____
- B. Labor Cost:\$ _____
- C. Material Cost:\$ _____

Company Name: _____

¹ **Note to Draft:** This will need to be revised as applicable for non-roadway projects.

ITEM IV

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ of
(Name of Contractor)

(Address)

as Principal, and _____ of
(Name of Surety)

(Address)

as Surety, are held firmly bound unto CITY OF DAPHNE, a Municipal Corporation in the State of Alabama, as Obligee, in the full and just sum of FIVE PERCENT (5%) OF AMOUNT BID (Maximum Amount of Bond \$10,000), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is herewith submitting its proposal for:

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The condition of this obligation is such that if the aforesaid Principal shall be awarded the contract the said Principal will, within the time required, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms of and conditions of the Contract, then this obligation to be void; otherwise, the Principal and the Surety will pay unto the Obligee the difference in money between the amount of the Contract as awarded and the amount of the proposal of the next lowest bidder, which amount shall not exceed \$10,000. If no other bids are received, the full amount of the proposal guarantee shall be so retained or recovered as liquidated damages for such default.

Signed, Sealed and Delivered

Witness as to Principal:

Contracting Firm / Date

(SEAL)
Countersigned:

By: _____

Name of Surety

_____ By: _____

BIDS WILL NOT BE CONSIDERED UNLESS BID BOND IS SIGNED BY PRINCIPAL AND SURETY.

ITEM V

PERFORMANCE BOND

KNOW ALL MEN: That we _____
(Insert here the name & address of legal title of the Contractor)

_____, hereinafter called the "Principal," and
_____,
(Insert here the name and address of legal title of one or more sureties)

_____, and
_____, hereinafter called the
"Surety" or "Sureties," are held and firmly bound unto City of Daphne, a Municipal Corporation in the State of
Alabama, hereinafter called the "Owner," in the sum of _____ Dollars
(\$ _____) for the payment whereof the Principal and the Surety or Sureties bind themselves, their
heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written agreement dated _____,
entered into a contract with the Owner for:

BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION

which agreement is by reference made a part hereof,

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform
the Contract on its part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify and
save harmless the Owner from all cost and damage which owner may suffer by reason of failure to do so, and shall
reimburse and repay the Owner all outlay and expense which the Owner may incur in making good for any such
default thence this obligation shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED, further, that the said surety or sureties, for value received, hereby stipulate and agree that no
change, extension of time, or addition to the terms of the Contract or to the work to be performed thereunder of the
Specifications thereof shall in any way effect their obligations on this bond, and they do hereby waive notice of
any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the
Specifications.

(Signature Page to Follow)

Signed and Sealed this _____ day of _____, 20____.

(Individual principals sign here)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

In the presence of:

_____ (SEAL)

(Corporate Principal Sign Here)

Attest:

By: _____

(Surety Sign Here)

Witness:

By: _____

Countersigned:

ITEM VI

LABOR AND MATERIALS BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____ as Principal, and _____ as Surety, are held and firmly bound unto said City of Daphne, a Municipal Corporation in the State of Alabama, hereinafter called the "Obligee," in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said principal has entered into a certain Contract with said Obligee, dated _____ 20 _____, (hereinafter called the "Contract") for

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which Contract and the Specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the said Principal and all subcontractors to whom any portion of the work in said contract is sublet and all assignees of said Principal and of such subcontractors shall promptly make payments to all persons supplying principal or any subcontractor with labor, materials, or supplies for or in the prosecution of the work provided for in such Contract, or any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees incurred by the successful claimant or plaintiffs in suits or claims against the contractor arising out of or in connection with the said contract, then the above obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions and limitations.

(a) Any person, firm or corporation that has furnished labor, materials, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right to action against the Principal and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the CITY in which the work provided for in said Contract is to be performed or in any CITY in which said Principal or Surety does business. Such right of action shall be asserted in a proceeding instituted in the name of the claimant or claimants for or their use and benefit against the Principal and Surety or either of them (but not later than one year after the final settlement of said Contract falls due) in which action such claim or claims shall be adjusted, and judgment rendered thereon.

(b) The Surety shall not be liable hereunder for any damages or compensation recoverable under Workmen's Compensation or Employer's Liability Statute.

(c) In no event shall the Surety be liable for a greater sum than the penalty of this bond.

(d) This Bond is given pursuant to the terms of an Act of the Legislature of the State of Alabama approved February 8, 1935, entitled: "An Act to further provide for Bonds and Contractors on State and other public works and suits thereon.

SIGNED, SEALED AND DELIVERED this _____ day of _____, 20__.

(Individual Principals sign here)

_____ (SEAL)

By: _____ (SEAL)

In the Presence Of:

_____ (SEAL)

(Corporate Principal sign here)

Attest:

_____ BY: _____
Surety Sign Here

Witness:

_____ BY: _____

INSTRUCTIONS

1. The full name (given, initial, surname) and residence of each individual party to the Bond must be inserted in the first paragraph.
2. If the Principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are the partners composing the partnership (to be named) and all partners must execute the Bond as individuals.
3. The State of Incorporation of each corporate party to bond must be inserted in the first paragraph and the Bond must be executed under the Corporate Seal of each party attested by its Secretary or other appropriate Officer.
4. The date of the Bond must not be prior to the date of the Contract.

ITEM VII
INSURANCE REQUIREMENTS

The Contractor, at its sole expense, shall obtain and maintain in full force the following insurance to protect the Contractor and the City of Daphne at limits and coverages specified below. These limits and coverages specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the Contractor. The requirements shown for “large projects” are for those projects for which the bid is greater than or-equal to \$250,000. The requirements shown for “small projects” are for those with bids less than \$250,000.

All insurance will be provided by insurers licensed to conduct business in the State of Alabama and shall have a minimum A.M. Best rating of A- VII and must be acceptable to the City. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the City for prior approval.

No work shall be performed until proof of compliance with the insurance requirements has been received by the City.

(a) Worker’s Compensation and Employers Liability

Part One: Statutory Benefits as required by the State of Alabama

Part Two: Employers Liability

	<u>Large Projects</u>
Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000
Bodily Injury by accident (Each Accident)	\$1,000,000
Bodily Injury by disease (Aggregate)	\$1,000,000

(b) Commercial General Liability

Coverage on an Occurrence form with a combined single limit (Bodily Injury and Property Damage combined) as follows:

Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Products/completed Operation Aggregate	\$3,000,000
General Aggregate	\$3,000,000

- Coverage to include:
 - Premises and operations
 - Personal Injury and Advertising Injury
 - Independent Contractors
 - Blanket Contractual Liability
 - Explosion, Collapse and Underground hazards
 - Broad Form Property Damage
 - Products/Completed Operations - This shall remain in effect for 24 months beyond completion and acceptance by owner of the project, whichever is later.
 - Railroad Protective Liability Insurance if work involves construction, demolition or maintenance operations on or within 50 feet of a railroad.

- The contractor shall name the City of Daphne, its employees and agents as additional insured for claims arising out of the work of the Contractors and/or Subcontractors. The ISO Form CG 20 10 11 85 or a comparable form that is no more restrictive shall be required. The Additional Insured form MUST include the current Operations and Products/Completed Operations of the Contractor. The naming of the additional insured does not obligate the additional insured to pay any premiums due.

- Aggregate limits to be on a “per project” basis OR an Owners and Contractors Protective Liability Policy shall be provided in the name of City of Daphne, Alabama, the contractor and Subcontractors. Limits to be the same as above Commercial General Liability.

(c) Automobile Liability

Covering all Owned, Non-Owned, and Hired vehicles with a combined single limit (bodily injury and property damage combined) of \$1,000,000 each accident. The policy shall name City of Daphne as an Additional Insured.

(d) Protection and Indemnity Insurance

If the contract involves work aboard an Owned, Non-Owned or Hired Vessel, Liability coverage in the amount of \$1,000,000 per occurrence shall be maintained.

(e) Waiver of Subrogation

The Workers Compensation Policy shall contain a Waiver of Subrogation in favor of the City of Daphne.

(f) Certificate of Insurance

A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the City of Daphne PRIOR to commencement of any work on the contract. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation to the City of Daphne.

ITEM VIII

STATE OF ALABAMA
COUNTY OF BALDWIN

**AGREEMENT FOR CONSTRUCTION SERVICES
FOR
BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION**

This Agreement for Construction Services (this "Agreement") is made and entered into by and between the City of Daphne, an Alabama municipal corporation acting by and through its governing body, the City Council of Daphne (hereinafter called "City"), and _____, (hereinafter referred to as "Contractor").

WITNESSETH:

The Contractor shall furnish the materials and perform the Work for the completion of: **BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION** and other work, complete in place with all appurtenances, for the consideration of the unit prices set forth in the Contractor's Bid (estimated to total _____ Dollars (\$ _____)) for the various items of Work and in strict and entire conformity with the provisions of the Contract, the Advertisement and Bidding Requirements, and the Plans and Specifications (including Special Provisions, if any) prepared (or approved) and submitted by the City, copies of which are hereto attached, and which said Plans and Specifications and the Advertisement and the Bidding Requirements are hereby made a part of this Agreement as fully and to the same effect as if the same has been set forth at length in the body of this Agreement. All capitalized words and terms used herein that are not defined herein shall have the meaning attributed to them in Section 1.01 of the General Conditions provided to Contractor with the Bidding Documents.

The work shall be completed within **one hundred twenty (120)** calendar days from and after the Commencement Date.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained the sufficiency of which being hereby acknowledged, Contractor and City do hereby agree as follows:

Obligations Generally. The City hereby employs Contractor to perform , and the Contractor agrees to perform for the City, those construction services as hereinafter set forth. This document shall serve as the binding Agreement for the services of Contractor. Contractor shall immediately commence performance of the Work upon full execution of this Agreement. All Work shall be commenced and completed in a timely manner as, and at the times, herein set out.

- I. Recitals Included. The above recitals and statements are incorporated as part of this Agreement and shall have the effect and enforceability as all other provisions herein.

- II. Professional Qualifications. For the purpose of this Agreement, the Contractor represents and warrants to the City that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to perform the Work required herein.
- III. No Prohibited Exclusive Franchise. The City neither perceives nor intends, by this Agreement, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.
- IV. Representation and Warranty of Certifications. Contractor represents and warrants that Contractor is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that Contractor shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the City in entering this Agreement, and the parties agree that the breach thereof shall be deemed material at the City's option.
- V. Legal Compliance. The Contractor shall at all times comply with all applicable federal, state, local and municipal laws and regulations, including but not limited to Title 23 CFR 635, Title 23 CFR 230, Title 23 CFR 633, and Title 49 CFR 18.42(b).
- VI. Independent Contractor. Contractor acknowledges that it is an independent contractor, and Contractor shall at all times remain as such in performing the services under this Agreement. Contractor is not an employee, servant, partner, or agent of the City and has no authority, whether express or implied, to contract for or bind the City in any manner. The parties agree that Contractor shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in performing and completing the Work, and that the City's interests herein are expressly limited to the results of said Work. Contractor is not entitled to unemployment insurance benefits, and Contractor is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.
- VII. No Agency Created. It is neither the express nor the implied intent of Contractor or City to create an agency relationship pursuant to this Agreement; therefore, the Contractor does not in any manner act on behalf of City and the creation of such a relationship is prohibited and void.
- VIII. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- IX. Entire Agreement. This Agreement represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by all parties.
- X. Failure to Strictly Enforce Performance. The failure of the City to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute, and shall never be asserted by Contractor as constituting, a default or be construed as a waiver or

relinquishment of the right of the City to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XI. Assignment. This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered by Contractor without the prior written consent of the City, which may be withheld or granted in the sole discretion of the City.

XII. Ownership of Documents/Work. The City shall be the owner of all copyright or other intellectual property rights in reports, documents, and deliverables produced and paid for under this Agreement, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the City without payment of further consideration. Contractor shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the Work hereunder, without the City's prior written consent, which may be withheld or granted in the sole discretion of the City.

XIII. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

Contractor: _____

City: City of Daphne, Alabama
c/o Honorable Mayor Robin LeJeune
P.O. Box 400
Daphne, AL 36526

XIV. Services to be Rendered. Contractor is retained by the City as a professionally-qualified Contractor. The general scope of work for the services shall include all the terms and conditions for completion of the Project, the same being expressly incorporated herein by reference, and without limitation will encompass:

BID DOCUMENT NO: 2022-X-LOTT PARK PICKLEBALL EXPANSION

and including all work shown within the Drawings, Specifications, Plans, Attachments, and any other documents referenced herein for the Project.

The work consists of properly performing the following tasks in accordance with the plans, specifications, regulations, codes and good engineering and construction practices:

- i. Contractor will provide ongoing communications with the City regarding this service, including updates, emails and etc. as requested. Additionally, Contractor will meet with City as needed or requested.
- ii. Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

iii. Contractor represents and warrants that its services shall be performed within the limits and standards provided by the City, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XV. ATTACHMENTS. The exhibits and/or attachments listed below are specifically included as a necessary part of this Agreement and the same shall not be complete without such items, namely:

- A. The Bidding Documents;
- B. The Specifications and Drawings;
- C. [USACE Permit# SAM-2017-01171-GAC General Conditions]²;
- D. [USACE Permit# SAM-2017-01171-GAC Special Conditions]; and
- E. All Applicable Federal, State and Local Regulations

City and Contractor jointly shall cause such items as listed above to contain dates, signatures of the parties with authorization to make such signatures, and sufficient marks and references back to this Agreement noting their inclusion and attachment hereto. In any event of a conflict between this document and the attachments referenced above, this document shall govern.

XVI. General Responsibilities of the City.

- i. The City shall provide reasonable notice to Contractor whenever the City actually observes or otherwise actually becomes aware of any development that affects the scope or time of Contractor's services hereunder or any defect or nonconformance in the work of Contractor.
- ii. The City shall pay to Contractor the compensation as, and subject to the terms set out below.

XVII. City's Right to Perform Work. The City may delete any of the items listed in the Bidding Documents and the Contractor agrees to complete the remaining items at the Bid price for each item.

XVIII. Compensation Limited. The compensation to be paid to the Contractor shall be the full compensation for all Work performed by Contractor under this Agreement. Any and all additional expenditures or expenses of Contractor, not listed in full within this Agreement, shall not be considered as a part of this Agreement and shall not be demanded by Contractor or paid by City.

XIX. Direct Expenses. Compensation to Contractor for Work shall be paid on contract unit prices for work completed by Contractor upon approval of the Engineer. Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services.

² Note to Draft: This may need to be revised for each Project depending on applicable permits.

XX. Method of Payment. Contractor shall submit invoices to the City for payment for Work performed. Each such invoice shall be accompanied by a detailed account of compensation to be paid Contractor.

Payment shall be made by the City within sixty (60) days of the approval of each invoice submitted by the Contractor. The City agrees to review and approve invoices submitted for payment in a timely manner.

XXI. Effective and Termination Dates. This Agreement shall be effective and commence immediately upon the written Notice To Proceed of the City and with the full execution of this Agreement, and the same shall terminate upon the satisfactory completion of all items of Work. Nothing herein stated shall prohibit the parties from otherwise terminating this Agreement according to the provisions herein.

XXII. Force Majeure. The parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason on an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIII. Indemnification. Contractor shall indemnify, defend, and hold City and its affiliates, employees, agents, and representatives (collectively "City") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon City, as a result of or in any manner related to provision of services hereunder, or any act or omission, by the Contractor. Contractor shall provide the City with proof of general liability coverage including the City as an additional insured. This provision shall survive the expiration of this agreement.

XXIV. Number of Originals. This Agreement shall be executed with three (3) originals, all of which are equally valid as an original.

XXV. Governing Law. This Agreement in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVI. Insurance. Prior to commencing Work pursuant to this Agreement, Bidder shall carry, with insurers satisfactory to City, throughout the term of hereof, Auto Liability Insurance, including owned, hired, and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence. Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence, and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the City as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to City, shall be furnished to City, which shall specifically state that such insurance shall provide for at least thirty (30) days' notice to City in the event of cancellation, termination or any

change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against City and City Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, City may, at its option, suspend this Agreement until insurance is obtained, terminate this Agreement immediately without further action, or hold Provider in material default and pursue any and all remedies available.

XXVII. Surety. As a material inducement for the City to enter this Agreement, any and all bond and/or surety guarantees required by the City in reference to the Project shall be in a form acceptable to the City and shall, without limitation, meet the following requirements:

(a) Acceptance of Surety. The bond and/or surety document must be reviewed by, and be acceptable to the City at any time prior to or during the effectiveness of this Agreement, the services and/or Work described in this Agreement shall either not commence or immediately cease, depending on the situation. Any Project delay that is attributable to the City's acceptance, or non-acceptance, of the bond and/or surety document form shall in no way be considered as a delay caused by the City, and the Contractor and/or Provider waives all rights to claim that any such delay was the fault of the City.

(b) Value of Surety. The bond and/or surety guarantee shall be of an amount equal to or greater than 100 percent of the total cost identified in the bid response.

(c) Term of Surety. Any bond and/or surety guarantees required by the City must be valid at all times during the life of this Agreement. Notwithstanding anything written or implied herein to the contrary, in no event shall the bond and/or surety document lapse, terminate, expire, or otherwise become invalid prior to the City, or the City's authorized agent, providing a written Notice to the Contractor that the Project is in fact completed in all respects. Said Notice from the City or its authorized agent shall not be provided until the City, in its sole discretion, is satisfied that the Project is complete in all respects.

(d) Scope of the Surety. The terms and provisions of any bond and/or surety guarantee provided as part of this Project shall in all respects, without limitation, be consistent and in agreement with, the provisions of this Agreement. In the event that the bond and/or surety guarantee is in conflict with this Agreement, this Agreement shall govern. Neither this section nor this provision limits the duties of the Contractor to satisfy all of the requirements in this Agreement.

XXIX. Liquidated Damages. Contractor and City recognize that time is of the essence and that City will suffer financial loss if the Project is not completed within the time specified herein, plus any extensions thereof allowed in accordance with this Contract and the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Project is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City \$250⁰⁰ per calendar day for each day thereafter beginning from the stated or extended date of completion and continuing for so long as the Project remains incomplete. The City shall deduct said sum or sums from any funds due the Contractor under this Contract for any and all invoices.

It is further agreed that the above-described liquidated damages are not a penalty, but funds due to reimburse the City for significant inconvenience, extra costs, and damages incurred by City and the general public due to delays in the completion of the Project. The Parties hereby agree that the amounts of such stated liquidated damages incurred will be determined by the City's reasonable estimates of the costs which may be accrued by the City. It is expressly understood and agreed that these amounts are not to be considered in the nature of penalties, but as damages which have accrued against the Contractor. The collection of liquidated damages by the City shall not constitute an election or waiver by the City of recovery of additional non-delay related damages from the Contractor.

XXX. OPEN TRADE: Section 41-16-5, Code of Alabama (1975): By signing this Agreement, the Contractor represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

Signature page to follow.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the City as written below.

City

ATTEST:

_____/_____
Robin LeJeune, Mayor /Date City Clerk /Date

Contractor: _____

By _____/Date _____

Print Name: _____

Title _____

STATE OF ALABAMA)

COUNTY OF BALDWIN)

Subscribed and sworn to me on this _____ day of _____, _____

Notary Public Signature: _____

My Commission Expires On: _____

ITEM IX
GENERAL CONDITIONS

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Commencement Date* — The date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
12. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
13. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
14. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
15. *Contract Times*—The number of days or the dates stated in the Agreement to:
(i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final payment.
16. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
17. *Cost of the Work*—See Paragraph 11.01 for definition.
18. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
19. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
22. *General Requirements*—Sections of Division 1 of the Specifications.

23. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
24. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
27. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
29. *Notice To Proceed*—A written notice given by Owner to Contractor fixing the Commencement Date.
30. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
31. *PCBs*—Polychlorinated biphenyls.
32. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
33. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
34. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Project Manual*—The documentary information prepared for bidding and constructing the Work.

36. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
37. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
38. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
39. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
40. *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.
41. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
42. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
43. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
44. *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 at the Site.
45. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
46. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
49. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
50. *Unit Price Work*—Work to be paid for on the basis of unit prices.
51. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
52. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B through 1.02.F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of

Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraphs 14.04 or 14.05).

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

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

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice To Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement 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 Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
 - 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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or

authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. 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.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures

within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- 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 the Work is to be performed 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.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such

reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and
 - 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final 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
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraphs 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph

4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

- b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
- 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 - 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 - 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 - 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 - 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 - 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may (but not required) purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Inland Marine Builder's Risk Insurance*

- A. The Contractor, prior to Notice To Proceed or Commencement of Work, whichever occurs first, agrees to maintain an Inland Marine Builder's Risk insurance coverage form providing coverage to protect the interest of the City, Contractor, Subcontractors, and property on or off-premises, which shall become part of the Work.
- B. Coverage shall be written on a replacement cost and completed value form basis in an amount at least equal to one hundred percent (100%) of the ultimate projected completed value of the Work. This policy shall also include delay cost coverage for soft costs, which shall at a minimum include additional expenses for interest, legal, consulting, insurance, deductibles (including the City's deductible for Wind and Hail), architectural and engineering, Contractor's overhead and general conditions, and equipment rental. The period of indemnity shall not be less than twelve (12) months and the limit of delay cost coverage not be less than ten percent (10%) of the projected completed value of the Work and shall be a scheduled limit on the policy in addition to a scheduled limit for the hard cost coverage. The waiting period for delay cost coverage may not exceed thirty (30) days. Collectively, the scheduled soft cost limit and hard cost limit may equal one hundred percent (100%) of the projected value of the Work, unless the builder's risk carrier requires the delay cost coverage to be in addition to the one hundred percent (100%) projected value of the Work.
- C. For projects including buildings or structures the Contractor agrees to endorse the Inland Marine Builder's Risk Insurance with a manuscript endorsement eliminating the automatic termination of coverage in the event the building/structure is occupied in whole or in part, or put to its intended use, or partially accepted by City. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy is cancelled, the City's interest in the building/structure ceases, or the building/structure is accepted or insured by the City.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

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

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

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

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and “Or-Equals”*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *“Or-Equal” Items:* If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is

essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) 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
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or-equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the

Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities

identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor

shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *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.

6.11 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 3. 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 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 by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site 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 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 property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *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. 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.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and Regulatory Agencies when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraphs 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a

particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a

release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. 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 performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by other agencies or owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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 9.09. 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.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under

Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The

expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 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:*
1. Contractor agrees that:
 - a. 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
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

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

11.03 *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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each

be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and

beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C. *See Appendix B. Rain Chart*

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. as otherwise specifically provided in the Contract Documents.
- 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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
 - E. 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.
 - F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such 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 Owner shall be entitled to an appropriate decrease in the

Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or

2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the

Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated according to State of Alabama Bid Law.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, 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 9.07, 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 Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. 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;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless

Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. 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 tentative list.

14.05 *Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. The Contractor must publicly advertise the NOTICE OF COMPLETION furnished by the Engineer in accordance with Title 39, Code of Alabama, 1975. Copy of the notice must be sent to the Owner (Finance Department).

14.07 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment

and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. 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. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for a Work not fully completed or corrected is less than the retainage stipulated according to State of Alabama bid law, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. 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
 3. complete the Work as Owner may deem expedient.

- C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents 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. *Notwithstanding anything to the contrary in the foregoing, the calculation of calendar days for purposes of determining liquidated damages shall not be subject to the provisions of this Section 17.02, as weekends and legal holidays shall be counted as calendar days for purposes of calculating liquidated damages.*

17.03 *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 Documents. 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

17.07 *References*

- A. Bidders shall have experience in work of the same or similar nature, and must provide references that will satisfy the City. Bidder shall furnish three references for whom Bidder has similar work and must provide information as requested in this document.

ITEM X

SUPPLEMENTAL CONDITIONS

E-Verify/Immigration Law Compliance

Appendix "A"

Rain Chart

Appendix "B"

Contractor References

Appendix "C"

Sales Tax Exemption

Appendix "D"

Supplemental Specifications

Appendix "E"

APPENDIX "A"

E-Verify

E-Verify / Immigration Law Compliance

The City of Daphne is required to comply with the provisions of the Alabama Immigration Law. Compliance requirements for all cities in the State of Alabama became effective January 1, 2012 and updated in July 2012. The requirements flow down to all contractors, vendors under Bid Contract and grantees doing business with the City of Daphne and are employing one or more employee(s) in the State of Alabama. If you are awarded a contract with the City of Daphne, awarded incentives or grants, or if you wish to continue to do business with the City of Daphne, under a current contract and wish to receive funds from the City of Daphne you must complete and submit the following within 10 business days:

If your organization/entity does NOT employ one or more employees in the State of Alabama, please complete Part I of the attached form stating such along with a W-9:

1. Submit an updated W-9 Form (attached)
2. Status of Immigration Law Compliance (PART I only, attached)

If your organization/entity DOES employ one or more employee(s) in the State of Alabama, you must submit the following:

1. Submit an updated W-9 Form (attached)
2. Proof of enrollment in E-Verify for Immigration Law Compliance:

An acceptable proof of enrollment with E-Verify would be an E-VERIFY MEMORANDUM of UNDERSTANDING (MOU). To enroll in E-Verify, you must go to the following web site to enroll in E-Verify which is a federal program that verifies the employment eligibility of all newly hired employees. <http://www.uscis.gov/portalsite/uscis>. Go to the E-Verify Home Page to initiate enrollment. Once ALL of the steps to enroll are completed, a signed copy of your MOU that includes your E-Verify assigned Company ID Number will be available for you to export.

If you have SUBCONTRACTORS, provide your subcontractors notice of their compliance obligations and OBTAIN from each a notarized Proof of Immigration Law Compliance Form. You may provide copies of this memo to your subcontractors as an explanation of this mandatory requirement. *You are not required to submit the subcontractor proof to the City of Daphne. However, the City reserves the right to request evidence of your subcontractors' compliance at any time.*

These requirements are a condition for doing business with the City of Daphne and for receiving any funds from the City of Daphne. ***MAINTAIN COPIES OF ALL DOCUMENTS FOR AUDIT PURPOSES.***

If you DO NOT employ one or more employee(s) in the State of Alabama, submit an updated W-9 and complete PART I of the attached Proof of Immigration Compliance Form. If you DO employ one or more employee(s) in the State of Alabama, please submit the required proof of enrollment and W-9 Form as identified on the previous page.

Please submit the requested documentation to the City of Daphne's address below:

City of Daphne
Attention: Suzanne Henson
P.O. Box 400
Daphne, AL 36526

PROOF OF ALABAMA IMMIGRATION ACT COMPLIANCE

In compliance with amendments to the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (Sections 31-13-1 et. seq of the Alabama Code), the City must obtain proof of enrollment with E-Verify for various contracts and agreements as determined by law. If your company has received this memorandum and it employs one or more employees in the State of Alabama, you must present proof of enrollment with E-Verify. Please complete Part I (if you do NOT employ one or more employees in the State of Alabama) or submit proof of enrollment with E-Verify II (if you DO employ one or more employees in the State of Alabama).

NOTE: signature page is considered proof of enrollment.

Part 1 - (Complete if you do NOT employ one or more employees in Alabama)

State of _____

County of _____

I certify in my capacity as _____ (your position) for
_____ (name of contractor or grantee)

that contractor or Grantee does not employ one or more employees in the State of Alabama. I further certify that should my status change and I am required to comply that I will submit all required documents to the City of Daphne, AL. I have read the E-Verify Requirements and swear and affirm that it is true and correct.

Authorized Signature

APPENDIX "B"

Rain Chart

<u>Amount of Rain During 24 Hour Period</u>	<u>Allowance for April 1 through October 31</u>
0" - 0.99"	None
1" - 1.99"	1 Days
2" and above	2 Days

<u>Amount of Rain During 24 Hour Period</u>	<u>Allowance for November 1 through March 31</u>
0" - 0.25"	None
0.26" - 0.50"	1 Day
0.51" - 1.00"	2 Days
1.01" - 1.99"	3 Days
2.00" and above	4 Days

APPENDIX “C”

Contractor References

Bidders shall include this form completed in its entirety with its Bid.

The following information is required from all Bidders so all statements of qualification may be reviewed and properly evaluated. In evaluating Bidders, City will consider the qualifications of Bidders. The City may conduct such investigations as City deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents. The City may disqualify Bidders that have had prior demands placed on a bid bond, payment bond, or performance bond within the last five years prior to the date of this bid submission. City may disqualify Bidders that have prior or existing litigation arising from allegations regarding the quality of work performed on any contract within the last five years prior to the date of this bid submission. If the Agreement is to be awarded, City will award the Agreement to the Bidder whose Bid is in the best interests of the Project.

PLEASE LIST THREE (3) REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED CONTRACT SERVICES FOR WITHIN THE PAST FIVE (5) YEARS (All fields must be completed) you may attach an additional page if needed for project description:

Business Reference #1		
Name of Organization:		
Contact Person:		
Address:		
City:	State:	Zip:
Describe the business relationship and the type of project:		
Business Reference #2		
Name of Organization:		
Contact Person:		
Address:		
City:	State:	Zip:
Describe the business relationship and the type of project:		
Business Reference #3		
Name of Organization:		
Contact Person:		
Address:		
City:	State:	Zip:
Describe the business relationship and the type of project:		

APPENDIX “D”

Sales Tax Exemption

Sales Tax Exemption Requirements and Procedure

An estimate of sales and use tax savings must be accounted for on the bid proposal. Failure to provide the estimated sales and use tax savings may render the bid as non-responsive. Other than determining responsiveness of the bid, sales and use tax accounting shall not affect the bid pricing nor shall be considered in the determination of the lowest responsible and responsive bidder.

BACKGROUND

Alabama Department of Revenue Rule 810-6-3.69.02(2010) exempts certain payment of state, county, and municipal sales and use taxes by the contractor or subcontractor on tangible personal property to be incorporated into the realty pursuant to a contract with a municipal corporation such as the City of Daphne. All tax exempt purchases shall be in accordance with the laws of this state and the Alabama Department of Revenue. It is the sole responsibility of the successful contractor to make the necessary inquiries and determinations as to what materials or items of tangible personal property to be incorporated into the project qualify as tax exempt in the opinion of the Alabama Department of Revenue. Unless otherwise noted, the project will be bid and administered in compliance with the State of Alabama Act 2013-205, Certificate of Exemption from Sales and Use Tax for Governmental Entities, regarding sales and use taxes. Sales and use taxes shall not be included in the bid. When applicable, all business entities entering into construction contracts with the City of Daphne, Alabama, will comply with the requirements of Section 40-9-14.1 of the Alabama Code: (<http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/40-9-14.1.htm>)

PROCEDURE

The Contractor shall be responsible for obtaining a certificate of exemption from the Alabama Department of Revenue for purchases of materials and other tangible property made part of the project. Any subcontractors purchasing materials or other tangible personal property as part of the project shall also be responsible for obtaining a certificate of exemption.

Each contractor and subcontractor must make application for qualification of the Sales and Use Tax exemption using Alabama Dept. of Revenue Form ST: EXC-01 for each tax-exempt project. The application is available on the Alabama Department of Revenue’s website at <http://revenue.alabama.gov/salestax/ST-EXC-01.pdf>. Applications should be submitted directly to the Sales and Use Tax Division Central Office, P.O Box 327710, Montgomery, AL 36132-7710.

Legislative Act 2013-205 requires the Department of Revenue to issue Form STC-1, Sales and Use Tax Certificate of Exemption for Government Entity Projects, to all contractors and subcontractors working on qualifying governmental entity projects once the Form ST: EXC-01 is approved.

Contractors and sub-contractors for qualifying projects will be required to file monthly consumer use tax returns and report all exempt purchases for ongoing projects, as well as all taxable purchases, on one return. These returns must be filed through the Alabama Department of Revenue’s online tax return filing and payment portal, “My Alabama Taxes” (<https://mvalabamataxes.alabama.gov>).

SALES TAX ACCOUNTING: Pursuant to Code of Alabama (1975 Section 40-9-14-1, the Contractor accounts for the sales tax NOT included in the bid proposal form as show on the Proposal Sheet.

SALES TAX EXEMPTION INFORMATION BELOW MUST BE INCLUDED WITH BID SUBMITTAL:

- A. Total Project Bid Amount: \$ _____
- B. Labor Cost:\$ _____
- C. Material Cost:\$ _____

APPENDIX "E"

Supplemental Specifications

1.0 FULL-SIZE ASPHALT PICKELBALL COURTS

1.1. GENERAL

1.1.1. Guarantee

- a. The Contractor shall guarantee labor, materials, and workmanship for a period of one (1) year from the date of the final billing. Anytime during this time, the Contractor shall make necessary repairs to the surface without cost to the Customer.

1.2. BIDDER QUALIFICATIONS

- 1.2.1. Bidder must have ten (10) years minimum experience in court construction and resurfacing.
- 1.2.2. Upon request, Bidder must present a minimum of fifteen (15) major court projects completed during the past five (5) year, as well as a list including resurfacing projects with multiple courts.
- 1.2.3. Bidder must be an approved member and a Certified Pickleball Court Builder of the American Sports Builders Association Bidder, an approval applicator for Acrytech Surface System.
- 1.2.4. Bidder must be a licensed contractor in the State of Alabama.

1.3. INSTALLATION AND MATERIALS

1.3.1. DIMENSIONS

- a. The outside dimensions of the playing lines for Pickleball Courts shall be as follows:
 - i. 20' x 44' (6.10m x 13.41m)

1.3.2. ASPHALT

a. Site

- i. A site should be chosen for the Pickleball court that measures at least (64' x 124') per court. There should be no trees or bushes with extensive root systems within 10' of the court.
- ii. Soil testing shall be performed on the site. Borings can be performed by a soil testing firm to determine the proper type and thickness of base material to be installed and a drainage system if needed.
- iii. The sub-base shall be root-raked to ensure that there are no roots, stumps, vegetation, or any other debris in the Pickleball court pads.
- iv. The sub-grade should be sloped 1" in 10' side to side. Crowning is not acceptable. The sub-base shall meet at least 95% compaction.

b. Base

- i. Crushed limestone or concrete ¾" to fines, should be used as the base material unless otherwise indicated by the soil testing. The base material is then fine graded and shall meet at least 95% compaction. The base course should extend at least 1' beyond the asphalt pad.

- c. Sterilant
 - i. Immediately before installing the asphalt, the pad shall be sterilized using Primatol or approved equal soil sterilant.
 - 1) The sterilant shall not be applied outside of the limits of the court. The sterilant shall not be applied when rain is imminent.
- d. Asphalt
 - i. The asphalt shall be installed in two lifts.
 - 1) The base course of asphalt shall be at least 1 ½” average thickness running lengthwise.
 - 2) The surface course of asphalt should be at least 1” average thickness running lengthwise and overlapping the base course seam by at least 1’. The aggregate size of the surface course of asphalt should not exceed 3/8”.
 - ii. The asphalt shall be installed with a laser guided paver and rolled with a vibratory roller that weighs approximately 2 tons.
 - iii. The asphalt surface shall not vary more than 1/8” to 10’.

1.3.3. 12” RIBBON CURB

- a. Curb around entire court area will be a minimum height of 6” above subgrade.

1.3.4. FENCING

- a. Fencing or an acceptable alternative, is required along the perimeter of each 6-court battery.
- b. 10’ fencing is required across the back of the court (backstop) and along each sideline from the corner 21’ up the sidelines (to the baseline). 5’ fencing is required from baseline to baseline connecting to the 10’ fencing.
- c. All fence posts shall be mounted into the curb using PVC sleeves.

1.3.5. NET POST FOUNDATIONS

- a. The net post foundations shall be dug by removing the asphalt in 2’ x 2’ areas. The size of the holes shall measure 2’ x 2’ and 3’ deep.
- b. A PVC sleeve with an inside diameter of 3” is then installed in the center of each foundation.
- c. Concrete is poured around the sleeve to within 2 1/2 “of the surface. The removed asphalt is then heated and re—installed on top of the concrete foundation.
- d. The asphalt is tamped to be smoothed and even with the existing surface course.
- e. The area is then patched as described in the Acrytech Surfacing System patching specifications.
- f. The center anchor installation is performed in the same manner as the net posts, but measures 1’ x 1’ x 1’. A galvanized center anchor is installed in the center of the foundation.

1.3.6. PLAYER CABANA

- a. General
 - i. A cabana shall be provided at each battery of courts to provide shade and seating for players. The player cabana shall be 8’ long, 6’ wide, and 8’10” high with steel posts measuring 3” x 3”.

- b. Materials
 - i. Bench
 - 1) Flatbench: 6” long by 3” wide
 - 2) 3” x 4” Durawood Plastic Composite Material or approved equal
 - ii. Canopy
 - 1) 8’ x 6’ x 2’ Gable
 - 2) All-weather, fade-resistance canvas
 - iii. Frame
 - 1) Heavy gauge steel
 - 2) High-quality black powder coating finish
- c. Mounting/Installation
 - i. Surface mount or direct burial method
 - 1) Surface mount install four expansion bolts to secure the legs of the bench directly onto the concrete surface
 - 2) Direct burial: install the bench in a 2’ diameter by 2’6” deep concrete foundation

1.4. METHOD OF MEASUREMENT

- 1.4.1. Measurement for “Full-Size Asphalt Pickleball” shall be Per Each (EA 2-court battery (two Pickleball within one fenced area.)

1.5. BASIS OF PAYMENT

- 1.5.1. “Full-Size Asphalt Pickleball” shall be measured and paid for as a Per Each item. The payment will be full compensation for furnishing all materials and constructing courts. Payment shall include any materials, labor, equipment, tools, and incidentals necessary to complete the work.

2.0 **FULL SIZE ASPHALT PICKLEBALL COURT**

2.1. GENERAL

- 2.1.1 Except where outlined in this specification, Pickleball court construction shall match that of “Full-Size Asphalt Pickleball”.

2.2. INSTALLATION AND MATERIALS

2.2.1. FENCING

- a. Fencing, or an acceptable alternative, is required along the outside border of the playing area that is a minimum height of 3.5’ to a maximum height of 10’
- b. In-between each court, fencing shall be required at a minimum height of 5’. The fencing shall, at a minimum, run to the limits of the non-volley zone (the “kitchen” playing area).

2.2.2. DIMENSIONS

- a. The outside dimensions of the playing lines for Pickleball Courts shall be as follows:
 - i. 20’ x 44’ (6.10m x 13.41m)
- b. Tournament play requires a minimum 10’ from base line to fixed construction (i.e. backstop, wall, etc.)

- c. Not less than 8' is required from the side line to a fixed obstruction (i.e. sidestop, light pole, wall, etc.). This dimension does not restrict obstructions at the net line; for example, the net post of the adjacent court or light standards.

2.2.3. REQUIRED COURT EQUIPMENT

- a. Pickleball net
 - i. 3.5mm braided polyethylene net body, heavy duty vinyl coated headband, 5/8 fiberglass dowels, 22' length, 36" height post, 34" height at center
- b. Net post
 - i. 2 7/8" round tubular steel posts with integral facing bars (2) per court. Hot zinc coating inside and out, polyester powder coated to prevent rust. Including brass winder.
- c. Sponge roller
 - i. Polyvinyl alcohol roller with aluminum handle and stainless-steel powder coated frame. Stainless steel hardware.
- d. Windscreen
 - i. 6' windscreens are hung from the top of the chain-link fence with 2' of air space at the bottom along the 10' fence around each battery of courts.
 - ii. The windscreens shall hang so that the seams and hems are toward the fence, leaving the smooth side facing the court.
 - iii. All grommets must be used to secure the windscreens to the fence.
 - iv. One vertical edge shall be fastened at the desired height to the fence using 50-lb. breaking strength Ty-Rap or approved equal.
 - v. The top of the windscreen shall be fastened to the fence, keeping the top straight by following the chain-link pattern. Snap hooks or heavy-duty 120-lb. breaking strength Ty-Rap (or approved equal) shall be used.
 - vi. The remaining sides of windscreen shall be fastened to the fence with regular Ty-Rap (or approved equal).
 - vii. The bottom shall be fastened with snap hooks or heavy-duty 120-lb. breaking strength Ty-Rap (or approved equal).
 - viii. When anti-billowing center tape is used, it shall be fastened after top and bottom are attached using regular, 50-lb. breaking strength Ty-Rap (or approved equal) through each grommet.

2.3. METHOD OF MEASUREMENT

- 2.3.1 The quantity of "Full-Size Pickleball Courts" shall be Per Each (EA) court.

2.4. BASIS OF PAYMENT

- 2.4.1. "Full-Size Pickleball Courts" shall be measured and paid for as a per each item. The payment will be full compensation for furnishing all materials and constructing courts. Payment shall include any materials, labor equipment, tools, and incidentals necessary to complete the work.

3.0 PICKLEBALL COURT FENCING

3.1. INSTALLATION AND MATERIALS

- 3.1.1. Fencing, or an acceptable alternative, is required along the outside border of the playing area that is a minimum height of 3.5" to a maximum height of 10'

- 3.1.2. In-between each court, fencing shall be required at a minimum height of 5'. The fencing shall, at a minimum, run to the adjacent fence

3.2. METHOD OF MEASUREMENT

- 3.2.1 The quantity of "Pickleball Court Fencing" shall be measured by the Linear Foot (LF) as "Industrial Fence: 4 Feet High (P.V.C Coated) (Pickleball)" and "Industrial Fence: 10 Feet High (P.V.C. Coated) (Pickleball)".

3.3. BASIS OF PAYMENT

- 3.3.1 The quantity of "Pickleball Court Fencing" shall be paid for per Linear Foot, it will be recorded as "Industrial Fence: 4 Feet High (Pickleball)" and "Industrial Fence: 10 Feet High (P.V.C. Coated) (Pickleball)". The payment will be full compensation for furnishing all materials and for constructing fencing. Payment shall include any materials, labor, equipment, tools, and incidentals necessary to complete the work.

4.0 PAIN T FOR PICKLEBALL COURTS

4.1. GENERAL

4.1.1. General Description

- a. This specification is for a colored and textured acrylic surfacing system for use on asphalt and concrete Pickleball, basketball courts, running tracks, volleyball courts and other recreational surfaces.
- b. This specification is for the surfacing/resurfacing of Pickleball/recreational surfaces located at Lott Park in Daphne, Alabama.

4.1.2. Quality Assurance

- a. All work shall conform to American Sports Builders Association (ASBA) guidelines.
- b. All coatings, patching and resurfacing compounds shall be ACRYTECH by Stegas, Inc. of Austell, GA or approved equal.
- c. For Pickleball, the surfacing system must be International Tennis Federation court pace classified as category 3 medium.
- d. The contractor shall record the batch number of each product used on site and maintain it through the warranty period.
- e. The contractor shall provide the inspector, upon request, an estimate of the volume of each product to be used on site. For volume estimates, visit www.tennispaint.com and see the Paint Estimator.

4.1.3. Submittals (see www.tennispaint.com for items A-C)

- a. Technical Data Sheets (TDS) for system components and one-color chart.
- b. Material Safety Data Sheets (MSDS) for system components.
- c. Manufacturer's warranty of no less than one year.
- d. Installer Certification from the manufacturer.

4.1.4. Material Handling and Storage

- a. Store and move materials in accordance with the manufacturers TDS and MSDS.

4.2. PRODUCTS

4.2.1. Manufacturer

- a. Stegas, Inc., Austell, GA, Product: ACRYTECH, www.Tennispaint.com.
- b. Approved Equal: Submit documentation to demonstrate to the owner that alternate products are of equal quality to the specified product.

4.2.2. Materials

- a. ACRYTECH Sport Patch (Deep Patch): A 100% acrylic latex emulsion, that when mixed with Portland cement and sand, produces semi flexible latex concrete that is ideal for patching depressions over ¼” deep and filling cracks larger than 3/8” wide. ACRYTECH Sport Patch is appropriate for use when applied to asphalt or concrete surfaces, or to previously coated surfaces.
 - i. Percent solids by weight: 47%
 - ii. Weight: 8.8 lbs./gal.
- b. ACRYTECH Adhesion Promoter: A 100% self-crosslinking, ultra-low VOC acrylic emulsion, that when mixed with 1-part water, penetrates, primes and creates a topside vapor barrier in concrete surfaces.
 - i. Percent solids by weight: 43%
 - ii. Weight 8.7 lbs./gal.
- c. ACRYTECH Acrylic Resurfacer: A 100% acrylic latex emulsion concentrate designed for the addition of water and silica sand on site for hiding patchwork, smoothing and preparing for ACRYTECH Colorguard. Apply 1-2 coats as according to Section 3.5.
 - i. Percent solids and pigments by weight: 45%
 - ii. Weight 9.5 lbs./gal.
- d. ACRYTECH Colorguard: A 100% acrylic latex emulsion concentrate designed for the addition of water and silica sand (texture) on site to be used as a secondary and final coating.
 - i. Percent solids and pigments by weight: 47%
 - ii. Weight 9.8 lbs./gal.
- e. ACRYTECH Colorguard Premix: Colorguard factory mixed with silica sand at the ITF Medium court pace classification rate.
 - i. Percent solids by weight: 65%
 - ii. Weight: 12.5 lbs./gal.
- f. ACRYTECH Line Primer: Optional clear drying primer to prevent line bleeding and create the most precise lines. Recommended for professional courts.
 - i. Percent solids and pigments by weight: 29%
 - ii. Weight: 10 lbs./gal.
- g. ACRYTECH White Line Paint: A 100% acrylic latex emulsion textured bright white line marking paint. 20-25% of White Line Paint may be added to Colorguard colors to create lighter colors commonly used for Quick Start lines.
 - i. Percent solids and pigments by weight: 71%
 - ii. Weight 12.4 lbs./gal.

4.2.3. EXECUTION

- a. Limitations
 - i. DO NOT APPLY WHEN:
 - 1) Rain is in near forecast.
 - 2) Surface temperatures exceed 54°C (130°F). Surface temperatures may be reduced by misting surface with water prior to application except on the final coat of Colorguard.
 - 3) When ambient air temperatures are or will be below 1°C (34°F) within 48 hours.
- b. New Construction (asphalt)
 - i. Allow asphalt to cure a minimum of 14 days.

- ii. Inspect asphalt for irregularities, including contamination and unevenness. Findings, if any, shall be reported to general contractor.
- iii. Remove any mold, mildew, algae, dirt, grease, oil and other debris from surface using issue specific cleaners and rinse as needed.
- iv. Flood surface with water to check for depressions 1/16” or greater. Fill with ACRYTECH Sport Patch (Deep Patch) as needed and allow to completely cure. 3.5 Application - No coatings shall be applied until inspector has approved the surface.
- v. All Surfaces-apply coatings with soft rubber squeegee. Allow each coat to completely dry (usually 1-3 hours) prior to applying next coat.
- vi. Mix Acrylic Resurfacer and Colorguard according to the charts below. If Colorguard Premix is used, only add 15-18 gallons of water per 40 gallons of Premix.
 - 1) Apply one to two coats of Acrylic Resurfacer (new or rough surfaces require two coats).
 - 2) Apply two coats of Colorguard – Standard durability suitable for most courts.
 - 3) Apply a third coat of Colorguard – Supreme durability for high use professional courts.

ACRYTECH Acrylic Resurfacer Mixing Chart 27.5 gallons concentrate – 1 or 2 coats		
Filling Power	Greater Filling (e.g. new asphalt)	Standard Filling
Sand Grade	80 mesh	80 mesh
Sand Qty	250 pounds	200 pounds
Water	15-18 gallons	15-18 gallons

ACRYTECH Colorguard Mixing and Court Speed of Play Chart 27.5 gallons concentrate – 2 to 3 coats			
Speed of Play	Medium-Slow	ITF Medium (Standard)	Medium Fast
Sand Grade	80 mesh	80 mesh	80mesh
Sand Qty	225 pounds	200 pounds	200 pounds
Water	15-18 gallons	15-18 gallons	15-18 gallons

4.2.4. METHOD OF MEASUREMENT

- a. “Paint” shall be measured by gallon (GAL)

4.2.5. BASIS OF PAYMENT

- a. “Paint” shall be paid for as a subsidiary item to “Full-Size Asphalt Pickleball Courts” and “Full-Size Asphalt Pickleball Courts”. Payment will constitute full compensation for materials and installation of paint and for all labor, equipment, tools, and incidentals required to complete the work.