

# ***US CUSTOMARY UNITS***

## **STATE AID PROJECT**

Submitted in accordance with the Highway Law and the Standard Specifications officially finalized and adopted on September 1, 2022 as posted on New York State Department of Transportation's website.

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# **PROPOSAL**

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Proposal Description:

**WATKINS GLEN DRI  
EAST 4<sup>th</sup> STREET IMPROVEMENTS  
(NY ROUTE 414)**

Letting Time and Date: February 2, 2023  
2:00 PM

Letting Location:

Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, New York 14891

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## **NOTICE TO BIDDERS**

### **WATKINS GLEN DRI EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414) Village of Watkins Glen Schuyler County, New York**

Sealed bids will be received by the Village of Watkins Glen, 303 North Franklin Street, Watkins Glen, New York, 14891 until 2:00 pm, Thursday, February 2, 2023, at which time they will be publicly opened and read aloud.

The proposed project is located in the Village of Watkins Glen, Schuyler County.

The work includes providing all labor, materials, machinery, tools, equipment and other means of construction necessary and incidental to the completion of the work shown on the plans and described in these specifications.

Bids will be received for the following:

### **WATKINS GLEN DRI EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)**

Proposed work includes new sidewalks, bicycle lanes, raised medians, decorative fencing, and enhanced pedestrian crossing at Boat Launch Road.

Complete sets of the specifications and bid forms may be obtained on or after Wednesday January 4, 2023 from Village of Watkins Glen, 303 North Franklin Street, Watkins Glen, New York, 14891.

Contract documents will be provided electronically on a flash drive which may be obtained at no cost. Hard copy full and partial plan sets will not be distributed. Drawings and Specifications may be examined at the Village of Watkins Glen, 303 North Franklin Street, Watkins Glen, New York, 14891.

Contractors that obtain contract documents from a source other than the issuing office must notify the issuing office in order to be placed in the official plan holder's list, to receive addenda and other bid correspondence. Bids received from contractors other than those on the official plan holder's list, will not be accepted.

A pre-bid meeting will not be held.

All questions on the bid documents shall be submitted in writing to:

Fred Warrick, Village Clerk  
Email: [villageclerk@watkinsglen.us](mailto:villageclerk@watkinsglen.us)

The period for questions pertaining to the bid documents will close at 12:00 pm on Friday, January 20, 2023.

All bids must be made on the official Bid Form and Bid Summary Form or an exact reproduction thereof and enclosed in a sealed envelope with the following clearly marked on the front of the envelope:

- Bidders Name and Address
- Watkins Glen DRI – East 4<sup>th</sup> Street Improvements

- Thursday, February 2, 2023 at 2:00 pm. Bid Opening

Bid proposals may be hand delivered to the Village of Watkins Glen, 303 North Franklin Street, Watkins Glen, New York 14891 until 2:00 pm local time on the day of the bid opening. Please refer to the Bidder's Checklist in the Project Proposal for a list of all documents required for submittal.

Bid proposals may be mailed using regular mail to the following address:

Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, New York, 14891

Bid proposals may also be "overnight" or otherwise shipped to the above address. Bids received after 2:00 pm local time on the day of the bid opening will not be opened and will be returned to the bidder. Such bids will not be considered.

This is a Unit Price bid. No bidder may withdraw his bid within forty five (45) calendar days after the actual date of the opening thereof. Each bid must be accompanied by a bid security in the amount of 5 percent of the bid in accordance with the Instruction to Bidders.

The successful bidder will be required to furnish construction performance and payment bonds in the full amount of the contract price.

The successful bidder will be required to comply with all provisions of the Federal Government Equal Opportunity clauses issued by the Secretary of Labor on May 21, 1968 and published in the Federal Register (41 CFR Part 60-1, 33 F.2 7804).

Owner reserves the right to reject any and all Bids, to waive any and all informalities and the right to disregard all nonconforming, non-responsive or Conditional Bids.

OWNERS CONTACT

Fred Warrick, Village Clerk  
Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, New York, 14891

OWNER

Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, New York, 14891

ENGINEER

Lorenzo Rotoli, P.E.  
LaBella Associates  
300 State Street, Suite 201  
Rochester, NY 14614

## PROJECT TITLE SHEET

Village of Watkins Glen  
Schuyler County, New York

Proposal Description: **Watkins Glen DRI  
East 4th Street Improvements (NY Route 414)**

Completion Date: October 27, 2023

Questions During Bidding: No interpretation of the meaning of the plans, specifications or other contract documents will be made to any bidder orally. Every request for such interpretation shall be in writing addressed to:

Fred Warrick, Village Clerk  
Email: [villageclerk@watkinsglen.us](mailto:villageclerk@watkinsglen.us)

Addenda to Bid Documents: Addenda to the Bid Documents will be published by the Village of Watkins Glen.

### FUNDING REQUIREMENTS

1. This is a State funded contract subject to the approval of the New York State Department of State (NYSDOS).
2. State Contract Requirements are contained herein.
3. The BUY AMERICA provisions in Section 106-11 of the NYSDOT Standard Specifications apply to this contract.
4. There are no residence, geographical restrictions, or preferences contained in this contract.
5. There are M/WBE/SDVOB requirements or preferences contained in this contract.

### NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

1. The NYSDOT Standard Specifications September 1, 2022, as amended, govern work performed under this contract. This shall include Sections 100 through 799, inclusive.
2. The low bidder must have an approved New York State Uniform Contracting Questionnaire (CCA-2 Form) on file with NYSDOT prior to an award being made. The CCA-2 form is available online at <https://www.dot.ny.gov/bids-and-lettings/construction-contractors/general-info> or by calling the NYSDOT Office of Contract Management at (518) 457-1564.

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## INSTRUCTIONS TO BIDDERS

### PROJECT IDENTIFICATION:

- a) Project Title: **Watkins Glen DRI  
East 4th Street Improvements (NY Route 414)**
- b) Owner: Village of Watkins Glen
- c) Engineer: LaBella Associates, DPC

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## 1. Defined Terms

1.1. Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Project Manual have the meanings assigned to them in the General Provisions.

1.2. Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- Bidder – one who submits a bid directly to owner as distinct from sub-bidder, who submits a bid to a bidder.
- Issuing Office – the office from which the bidding documents are to be issued and where the bidding procedures are to be administered.
- Successful Bidder – the lowest responsible, responsive bidder to whom owner (on the basis of owner's evaluation as hereinafter provided) makes an award.

## 2. Copies of Bidding Documents

2.1. Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Notice to Bidders may be obtained from the Issuing Office. If the bidding documents are obtained from a source other than the issuing office, contractor must notify issuing office in order to be placed on the official plan holder's list, receive addenda and other bid correspondence. Bids received from contractors other than those on the official plan holder's list will not be accepted.

2.2. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Document.

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

## 3. Bidders Responsibility

Bidders shall fully acquaint themselves with all of the details set forth in Specifications and General/Supplemental Conditions before submission of bids. All items bid upon must be in accordance with manufacturer's current specification sheets and the available options listed thereon. Wherever components are identified by their trade names those units are desired by the Village of Watkins Glen and shall be given preference in determining award. However, the use of trade names is not intended to be restrictive and

other manufacturer's units meeting or exceeding these specifications will be considered. Vender must identify and describe all items offered since the term "meet or exceed" for alternate items is not acceptable in vendors' specifications proposal sheets. Failure to do so may be grounds for rejection.

## 4. Bidders Qualifications

All Bidders, including foreign and domestic corporations must be qualified and/or licensed to do business within the State of New York. Village of Watkins Glen reserves the right to make any investigation deemed necessary to determine bidder qualifications and responsibility. Bidder shall furnish to the Village, upon request, all data pertinent thereto.

## 5. Examination of Contract Documents and Site

5.1. It is the responsibility of each bidder before submitting a Bid:

5.1.1. To examine thoroughly the Contract Documents and other related data identified in the bidding documents (including "technical data" referred to below);

5.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the work;

5.1.3. To consider federal, state, and local laws and regulations that may affect cost, progress, performance, or furnishing of the Work;

5.1.4. To study and carefully correlate Bidders knowledge and observations with the Contract Documents and such other related data;

5.1.5. To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

5.2. Reference is made to the Supplementary Conditions for identification of:

5.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

5.2.2. Those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions, or information shown or indicated in such drawings or otherwise relating to such structured, nor upon the completeness thereof for purposes of bidding or copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph SC-4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions, or information.

5.3. Information and data or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by Owners of such Underground Facilities or others, and the Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

5.4. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03 and 4.04 of the General Conditions.

5.5. Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.

5.6. On request, OWNER will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests, and studies as each Bidder deems necessary for

submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

5.7. Reference is made to the Supplementary Conditions for identification of the general nature of work that is to be performed at the site by Owner of others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, OWNER will provide to each Bidder for examination access to or copies of the Contract Documents (other than portions thereof related to price) for such work.

5.8. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 5, that without exception of the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences, or procedures for construction (if any) that may be shown or indicated or expressly required by the Contract Documents, the Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

5.9. The provisions of 1-5.1 through 5.8, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste, or Radioactive Material covered by paragraph 4.06 of the General Conditions.

## **6. Availability of Lands for Work, etc.**

The lands upon which the Work is to be performed, right-of-way and easements for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Contract Documents. A11 additional land and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.

## **7. Interpretation and Addenda**

7.1. All questions about the meaning or intent of the Bidding documents are to be directed to Engineer through the Purchasing Agent. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded

by Purchasing Agent as having received the Bidding documents. Questions received less than ten days prior to the date for opening of the Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.2. Addenda may also be issued to modify the Bidding documents as deemed advisable by OWNER and ENGINEER.

## **8. Bid Security**

8.1. Each Bid must be accompanied by Bid security made payable to the OWNER in the amount of five percent(5%) of Bidders maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of section 5.01 of the Supplementary Conditions.

8.2. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by the OWNER until the earlier of the seventh day after the Effective Date of the Agreement or the forty-fifth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the bid opening.

## **9. Contract Times**

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the term "Contract Time" is defined in paragraph 1.14 of the General Conditions) are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

## **10. Liquidated Damages**

Provisions for Liquidated Damages, if any, are set forth in the Agreement.

## **11. Substitute and "Or-Equal" Items**

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without

consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission for any such application by Contractor and consideration by Engineer is set forth in paragraphs 6.05.A, 6.05.B and 6.05.C of the General Conditions and may be supplemented in the General Requirements.

## **12. Subcontractors, Suppliers and Others**

12.1. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to the OWNER in advance of a specified date prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five days of Notice of Award submit to OWNER a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required.

An OWNER or ENGINEER who after due investigation reasonably believes that a Subcontractor, Supplier or other person or organization is suspended, debarred or has otherwise been declared ineligible to perform this contract, may request that a Successful Bidder submit an acceptable substitute Subcontractor, Supplier, person or organization.

If apparent Successful Bidder declines to make any such substitution, the OWNER may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, other persons and organizations.

12.2. In contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to the OWNER those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with OWNER's written consent.

12.3. No CONTRACTOR shall be required to employ and Subcontractor, Supplier, other person or organization against whom the CONTRACTOR has a reasonable objection.

## **13. Bid Form**

13.1. The Bid Form and the Bid Summary Form (where applicable) are included with the Bidding

documents; additional copies may be obtained from Engineer (or issuing office).

13.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.

13.3. Bids by corporations must be executed in the corporate name by the president or vice president (or corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

13.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

13.5. All names must be typed or printed in black ink below the signature.

13.6. The Bid shall contain acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

13.7. The address and telephone number for communications regarding the Bid must be shown.

13.8. All documents set forth in the Bidders Checklist must be submitted with bid.

#### **14. Submission of Bids**

Bids shall be submitted at the time and place indicated in the Advertisement or Notice to Bidders and shall be enclosed in a sealed envelope, marked with the project title and name an address of Bidder and accompanied by the Bid security and other required documents (see bidders checklist). If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

#### **15. Modification and Withdrawal of Bids**

15.1. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are submitted at any time prior to the opening of Bids.

15.2. Where a unilateral error or mistake is discovered in a Bid, such Bid may be withdrawn after showing of the following: (1) the mistake is known or made known to the OWNER and ENGINEER prior to the awarding of the contract or within three days after opening of the Bid, whichever period is shorter; and

(2) the price Bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the Bid was submitted in good faith and the Bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the Bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn by inspection of the original work papers, documents or materials used in the preparation of the Bid; and (5) it is possible to place the OWNER in status quo ante.

#### **16. Opening of Bids**

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) may be made available to Bidders after the opening of the Bids.

#### **17. Bids to Remain Subject to Acceptance**

All Bids will remain subject to acceptance for forty-five (45) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

#### **18. Award of Contract**

18.1. To the fullest extent permitted by law OWNER reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids and to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the project to make an award to that Bidder, whether because the Bid is not responsible or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. OWNER also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate, to the extent permitted by law, contract times with the Successful Bidder.

18.2. Discrepancies between words and figures will be resolved in favor of the words.

18.3. In evaluating Bids, OWNER will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, lump sum price and other data, as may be requested in the Bid form or prior to Notice of Award.

18.4. OWNER may consider the operating costs, maintenance requirements, performance data and

guarantees of major item of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to Notice of Award.

18.5 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, to perform and furnish the work in accordance with the Contract Documents to OWNERS satisfaction within the prescribed time.

18.6 If the contract is to be awarded, it will be awarded to the lowest responsible bidder whose evaluation by OWNER indicates to OWNER that the award will be in the best interest of the project.

18.7 If the contract is to be awarded, OWNER will give successful Bidder a Notice of Award within forty- five (45) days after the day of the Bid opening.

**19. Contract Security**

Article 5 of the Supplementary Conditions sets forth OWNERS requirements as to performance and payment Bonds. When successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required performance and payment Bond.

**20. Signing of Agreement**

When OWNER gives Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement Within fifteen days thereafter CONTRACTOR shall sign and deliver the required number of counterparts of the Agreements to OWNER with the required bonds. Within ten days thereafter OWNER shall deliver one fully signed counterpart to CONTRACTOR.

**21. Prebid Conference**

A prebid conference may be held as outlined in the Notice to Bidders. If held, representatives of the OWNER and ENGINEER will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

**22. Sales and Use Taxes**

Owner is exempt from New York State Sales and Use Tax on materials and equipment to be incorporated into work (Exemption No\_\_\_\_\_).

Said taxes should not be included in contract price. Refer to the Supplementary Conditions SC-6.10 for additional information.

**23. Non-Collusive Bidding Procedures**

Each Bidder is required to comply with the requirement regarding non-collusive bidding procedures and shall submit the appropriate Non-Collusive Bidding Certification and Non-Collusive Bidding Certification Bidder Information with the bid. Knowledge of bid collusions or other questionable contract related practices shall be reported per the instructions contained in Reporting Violations of the Non-Collusive Bidding Procedures, Misconduct, or other Prohibited Contract Activities. .

**24. Minority/Women/SDVOB Business Enterprise Utilization Goals**

The provisions for M/WBE and SDVOB Business Enterprise Utilization Goals are set forth in Section 2. Each Bidder must submit the MBE/WBE/SDVOB Utilization Goals form with its Bid.

**25. Schedule for Bid and Award of Contract**

A schedule of the major events required for the Bid and Award is shown below:

Notice of Award	No later than 45 days following Bid Opening
Signed Documents returned by Contractor	No later than 15 days following Notice of Award
Signed Documents returned by the Owner with Notice to Proceed	No later than 10 days following Signed Documents returned by Contractor
Submittal of Bonds and Insurance	No later than 15 days following Notice of Award

**26. Prevailing Wages**

This is a public works project and prevailing wages as determined by the New York State Department of Labor must be paid.

**SECTION 1 – CONTRACTOR’S BID PACKAGE CONTENTS**

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## **BIDDER'S CHECKLIST**

In order to submit a complete bid, Bidders must submit the following documents:

- \_\_\_\_\_ Non-Collusive Bidding Certificate (NCB-1)
- \_\_\_\_\_ MBE/WBE/SDVOB Utilization Goals (MWBE-1)
- \_\_\_\_\_ Bid Bond or Certified Bank Check (BB-1 to BB-3)
- \_\_\_\_\_ Bid Form (BF-1 to BF-4)
- \_\_\_\_\_ Certified Copy of Resolution of Board of Directors (For Corporations) (BF-5)
- \_\_\_\_\_ Acknowledgement of Receipt of Addenda (RA-1)
- \_\_\_\_\_ Bid Summary Forms (BSF-1 to BSF-8)

Also the following forms are due from the apparent responsible low bidder no later than 10 days after bid opening:

- \_\_\_\_\_ NYS Uniform Contracting Questionnaire  
(obtained from the Office of Contract Management Pre-Award Unit)

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**NON-COLLUSIVE BIDDING CERTIFICATE**

By submission of this bid, each bidder and each person signing on behalf of any bidder, certifies, and in case of a joint bid, each party hereto certifies as to its organization, under penalty of perjury, that to the best of knowledge and belief:

- 1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
- 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the opening, directly or indirectly, to any other bidder or to any competitor.
- 3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.
- 4. The bidder herein has carefully examined the annexed form of the contract and contract documents.
- 5. The bidder has not violated the provisions of Section 103-d of General Municipal Law.

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_  
 CITY OF \_\_\_\_\_

SS \_\_\_\_\_  
 Signature of Bidder

\_\_\_\_\_  
 Business Address of Bidder

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 (Notary Public)

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**MINORITY/WOMENS BUSINESS ENTERPRISE (M/WBE) and SERVICE  
DISABLED VETERAN-OWNED BUSINESS (SDVOB) UTILIZATION GOALS**

The following participation goal(s) have been established for this contract,  
expressed as a percentage of the total contract bid amount.

Minority Business Enterprise (MBE) Goal	15 % (Non-Federal-Aid Only)
Women’s Business Enterprise (WBE) Goal	15 % (Non-Federal-Aid Only)
Service-Disabled Veteran-Owned Business (SDVOB) Goal	6 % (Non-Federal-Aid Only)

The NYS M/WBE Directory is located at: <https://ny.newnycontracts.com/>

The NYS SDVOB Directory is located at: <https://online.ogs.ny.gov/SDVOB/search>

**Business Enterprise Officer**

The Bidder shall designate and enter below the name of the Minority/Women’s Business  
Enterprise Officer who will have the responsibility for the M/WBE Utilization.

Bidder Designated M/WBE Officer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

(\_\_\_\_)\_\_\_\_\_  
Telephone Number

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## ADD ALTERNATES AND METHOD OF AWARD

The Bid for this project consists of a Base Bid and two (2) Add Alternates. The Agreement for construction will include one of the following options:

- The Base Bid alone
- The Base Bid PLUS Bid Alternate 1
- The Base Bid PLUS Bid Alternate 2.

Options are defined below.

### Base Bid

All work necessary to construct all road improvements.

### Bid Alternate 1

All work necessary to construct the sections of fence (approximate Station 21+93 to Station 25+90, left).

### Bid Alternate 2

All work necessary to construct the section of fence (approximate Station 18+51 to Station 21+93, left).

Bidders shall provide written bids for the Base Bid and the Add Alternates on the Bid Form and the unit price bid sheets for the Owners consideration. Each Add Alternate bid amount shall include the entire cost of the Add Alternate portion of the work including overhead, profit, and other costs including cost of coordinating the Alternate with related work.

Base Bid and Add Alternate Bids shall be submitted at the same time and opened at the same time.

If any Base Bid plus Alternate 1 plus Alternate 2 are less than the construction budget, the Award will be based on the Base Bid plus Alternate 1 plus Alternate 2. If all Base Bid plus Alternate 1 plus Alternate 2 exceed the construction budget, and any Base Bid plus Alternate 1 are less than the construction budget, award will be based on Base Bid plus Alternate 1. If all Base Bid plus Alternate 1 exceed the construction budget, and any Base Bid are less than the construction budget, award will be based on the Base Bid.

Immediately following award of the Contract, the Owner will prepare and distribute to the Contractor a notice that will indicate which Bid Option has been selected.

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**BID BOND**

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

BIDDER *(Name and Address)*:

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

OWNER: Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, New York 14891

Bid Due Date: February 2, 2023

Description: **Watkins Glen DRI  
East 4th Street Improvements (NY Route 414)**

Bond Number:

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

\_\_\_\_\_  
(Figures)

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

**BIDDER**

**SURETY**

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

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

\_\_\_\_\_  
By: Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

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**BID FORM**

PROJECT IDENTIFICATION: **WATKINS GLEN DRI  
EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY 414)**  
Watkins Glen, Schuyler County, New York

THIS BID IS SUBMITTED TO: Village of Watkins Glen  
303 North Franklin Street Main  
Watkins Glen, New York 14891

1. The undersigned BIDDER proposes and agrees, if this bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all work as specified or indicated in the Contract Documents for the Bid Price and Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents
2. Bidder accepts all the terms and conditions of the Advertisement or Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for forty-five (45) days after the Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of OWNER's Notice of Award
3. In submitting this Bid, BIDDER represents as more fully set forth in the Agreement, that:
  - a. BIDDER has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which is hereby acknowledged: (List Addenda by Addendum Number and Date)  

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  - b. BIDDER has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the work.
  - c. BIDDER is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of work.
  - d. BIDDER is aware of the general nature of work to be performed by OWNER and others at the site that relates to work for which this Bid is submitted as indicated in the Contract Documents
  - e. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, test, studies, and data with the Contract Documents

- f. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
- g. This bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

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

BID SUBMISSION		
Description	Bid Price In Figures	Bid Price In Words
Total Amount Base Bid		
Total Amount Alternate 1		
Total Amount Alternate 2		
Total Amount Base Bid Plus Alternate 1 Plus Alternate 2		
Total Amount Base Bid Plus Alternate 1		

Unit Prices have been computed in accordance with paragraph 11.03.C General Conditions.

BIDDER acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.

5. BIDDER agrees that the Work will be substantially completed and completed and ready for final payment in accordance with section 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

6. The following documents are attached to and made a condition of this Bid:

- a. All documents set forth in the Bidders Checklist.

7. Communications concerning this Bid shall be addressed in writing to:

Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, New York 14891  
Attn. Fred Warrick, Village Clerk

Email: [villageclerk@watkinsglen.us](mailto:villageclerk@watkinsglen.us)

8. Terms used in this Bid which are defined in the Standard General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions or Instructions.

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

CONTRACTOR \_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

**BIDDER INFORMATION SHEET**

NAME OF BIDDER: \* \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

TYPE OF ENTITY: CORPORATION \_\_\_\_\_ PARTNERSHIP \_\_\_\_\_ INDIVIDUAL \_\_\_\_\_

SOCIAL SECURITY NO./ FED. ID: \_\_\_\_\_

IF A NON-PUBLICLY OWNED CORPORATION:

NAME OF CORPORATION: \_\_\_\_\_

LIST OF PRINCIPAL STOCKHOLDERS (HOLDING OVER 5% OF OUTSTANDING SHARES):

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

LIST OF OFFICERS: \_\_\_\_\_

\_\_\_\_\_

LIST OF DIRECTORS: \_\_\_\_\_

\_\_\_\_\_

DATE OF ORGANIZATION: \_\_\_\_\_

IF A PARTNERSHIP:

PARTNERS: \_\_\_\_\_

\_\_\_\_\_

NAME OF PARTNERSHIP: \_\_\_\_\_

DATE OF ORGANIZATION: \_\_\_\_\_

*\* IF THE BUSINESS IS CONDUCTED UNDER AN ASSUMED NAME, A COPY OF THE CERTIFICATE REQUIRED TO BE FILED UNDER THE NEW YORK GENERAL BUSINESS LAW MUST BE ATTACHED.*



**CERTIFIED COPY OF RESOLUTION OF BOARD OF DIRECTORS**

\_\_\_\_\_  
(NAME OF CORPORATION)

“Resolved that \_\_\_\_\_,  
(Person Authorized to Sign) (Title)

of \_\_\_\_\_ authorized to sign and submit Bid for this corporation for  
(Name of Corporation)

the following project:

\_\_\_\_\_

and to include in such bid the certificate as to non-collusion, and for any inaccuracies or misstatements in such certificate this corporate Bidder shall be liable under the penalties of perjury.

The foregoing is true and correct copy of resolution adopted by:

\_\_\_\_\_

(NAME OF CORPORATION)

At meeting of its Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**(SEAL)**

**The above form must be completed if the Bidder is a corporation**

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**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

The undersigned acknowledges receipt of the following addenda to the subject project (if none, state "NONE"):

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Receipt is hereby acknowledged for all addenda listed above.

\_\_\_\_\_ COMPANY NAME  
\_\_\_\_\_ AUTHORIZED SIGNATURE  
\_\_\_\_\_ PRINTED NAME  
\_\_\_\_\_ TITLE  
\_\_\_\_\_ DATE

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THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
203.02	UNCLASSIFIED EXCAVATION AND DISPOSAL	469 CY	_____ DOLLARS & _____ CENTS		
209.1702	DRAINAGE STRUCTURE INLET PROTECTION, GRAVEL BAG - TEMPORARY	1 CY	_____ DOLLARS & _____ CENTS		
304.15	SUBBASE COURSE, OPTIONAL TYPE	258 CY	_____ DOLLARS & _____ CENTS		
402.098304	9.5 F2 TOP COURSE HMA, 80 SERIES COMPACTION	73 T	_____ DOLLARS & _____ CENTS		
407.0102	DILUTED TACK COAT	63 G	_____ DOLLARS & _____ CENTS		
418.7603	ASPHALT PAVEMENT JOINT ADHESIVE	2,486 LF	_____ DOLLARS & _____ CENTS		
490.30	MISCELLANEOUS COLD MILLING OF BITUMINOUS CONCRETE	782 SY	_____ DOLLARS & _____ CENTS		
503.1010	PCC FOUNDATION FOR PAVEMENT, CLASS C	88 CY	_____ DOLLARS & _____ CENTS		

THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
601.01	PRECAST CONCRETE STREET PAVING (BITUMINUS SETTING BED)	373 SY	_____ DOLLARS & _____ CENTS		
607.41010010	TEMPORARY PLASTIC BARRIER FENCE	40 LF	_____ DOLLARS & _____ CENTS		
608.0101	CONCRETE SIDEWALKS AND DRIVEWAYS	94 CY	_____ DOLLARS & _____ CENTS		
608.020102	HMA SIDEWALKS, DRIVEWAYS, BICYCLE PATHS & VEGETATION CONTROL STRIPS	39 T	_____ DOLLARS & _____ CENTS		
608.21000003	CAST IRON EMBEDDED DETECTABLE WARNING UNITS	20 SY	_____ DOLLARS & _____ CENTS		
608.72136108	NON-SECURITY BOLLARD-FIXED IN GROUND, WITHOUT LIGHTING, WIDTH OVER 5 INCHES TO 7 INCHES, HEIGHT OVER 36 IN	24 EA	_____ DOLLARS & _____ CENTS		
609.0212	STONE CURB, NEAR VERTICAL FACE (NVF)	1,187 FT	_____ DOLLARS & _____ CENTS		
610.1402	TOP SOIL - ROADSIDE	110 CY	_____ DOLLARS & _____ CENTS		

THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
610.1601	TURF ESTABLISHMENT - ROADSIDE	900 SY	_____ DOLLARS & _____ CENTS		
619.01	BASIC WORK ZONE TRAFFIC CONTROL	1 LS	_____ DOLLARS & _____ CENTS		
619.04	TYPE III CONSTRUCTION BARRICADE	12 EA	_____ DOLLARS & _____ CENTS		
619.080102	REMOVE PAVEMENT MARKING STRIPES, EPOXY PAINT	6,148 LF	_____ DOLLARS & _____ CENTS		
619.110511	PVMS STANDARD SIZE – FULL MATRIX (LED) NO OPTIONAL EQUIPMENT SPECIFIED, NO CELLULAR COMMUNICATION	1 EA	_____ DOLLARS & _____ CENTS		
625.01	SURVEY OPERATIONS	1 LS	_____ DOLLARS & _____ CENTS		
627.50140008	CUTTING PAVEMENT	1,349 FT	_____ DOLLARS & _____ CENTS		
637.11	ENGINEERS OFFICE, TYPE 1	6 MO	_____ DOLLARS & _____ CENTS		

THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
645.5101	GROUND MOUNTED SIGN PANELS WITOUT Z-BARS	67 SF	_____ DOLLARS & _____ CENTS		
645.81	TYPE A SIGN POST	9 EA	_____ DOLLARS & _____ CENTS		
645.85	POLE-MOUNTED SIGN SUPPORT SYSTEM (BAND MOUNTING)	9 EA	_____ DOLLARS & _____ CENTS		
647.51	REMOVE AND DISPOSE SIGN PANEL, SIGN PANEL ASSEMBLY SIZE I (UNDER 30 SQUARE FEET)	2 EA	_____ DOLLARS & _____ CENTS		
647.61	REMOVE AND DISPOSE SIGN PANEL, GROUND MOUNTED TYPE A SIGN SUPPORTS AND FOUNDATIONS – SIZE I (UNDER 30 SQUARE FEET)	1 EA	_____ DOLLARS & _____ CENTS		
663.33	ADJUST EXISTING WATER VALVE BOX ELEVATION	2 EA	_____ DOLLARS & _____ CENTS		
680.82254310	RECTANGULAR RAPID FLASHING BEACON (RRFB) ASSEMBLY – FOUR BEACONS, SOLAR POWERED	2 EA	_____ DOLLARS & _____ CENTS		



THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
685.11	WHITE EPOXY REFLECTORIZED PAVEMENT STRIPES – 20 MILS	13,480 FT	_____ DOLLARS & _____ CENTS		
685.12	YELLOW EPOXY REFLECTORIZED PAVEMENT STRIPES – 20 MILS	5,156 FT	_____ DOLLARS & _____ CENTS		
685.14	WHITE EPOXY REFLECTORIZED PAVEMENT SYMBOLS – 20 MILS	50 EA	_____ DOLLARS & _____ CENTS		
697.03	FIELD CHANGE PAYMENT	25,000 DC	_____ TWENTY FIVE THOUSAND _____ DOLLARS & _____ ZERO _____ CENTS	1.00	25,000.00
698.04	ASPHALT PRICE ADJUSTMENT	200 DC	_____ ONE _____ DOLLAR & _____ ZERO _____ CENTS	1.00	200.00
698.05	FUEL PRICE ADJUSTMENT	200 DC	_____ ONE _____ DOLLAR & _____ ZERO _____ CENTS	1.00	200.00

<b>SUBTOTAL BASE BID</b>	IN WORDS	IN FIGURES
	_____ DOLLARS & _____ CENTS	\$ _____ . _____

THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
699.040001	MOBILIZATION (MUST NOT EXCEED 4% OF SUBTOTAL BASE BID)	NEC LS	_____ DOLLARS & _____ CENTS		
<b>TOTAL SUM BASE BID</b>		IN WORDS		IN FIGURES	
		_____ DOLLARS & _____ CENTS		\$ _____ . _____	

THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
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**BID ALTERNATE 1**

S607.95030106	ORNAMENTAL STEEL FENCE, 6 FEET	400 LF	_____ DOLLARS & _____ CENTS		
S607.95040104	ORNAMENTAL STEEL FENCE SWING GATE, 4 FEET	1 EA	_____ DOLLARS & _____ CENTS		
S607.95040220	ORNAMENTAL STEEL FENCE SWING GATE, DOUBLE LEAF 20 FEET	2 EA	_____ DOLLARS & _____ CENTS		
607.99870011	REMOVE EXISTING CHAIN LINK FENCE	450 LF	_____ DOLLARS & _____ CENTS		
<b>TOTAL AMOUNT BID ALTERNATE 1</b>			_____ DOLLARS & _____ CENTS		

THE UNDERSIGNED PROPOSES TO COMPLETE: **WATKINS GLEN DRI – EAST 4<sup>th</sup> STREET IMPROVEMENTS (NY ROUTE 414)** IN ACCORDANCE WITH NYSDOT STANDARD CONSTRUCTION CONTRACT DOCUMENTS AND THE ATTACHED CONSTRUCTION CONTRACT DOCUMENTS AT THE FOLLOWING PRICES:

ITEM NUMBER	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT BID PRICE IN WORDS	UNIT BID PRICE IN FIGURES	AMOUNT BID
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**BID ALTERNATE 2**

S607.95030106	ORNAMENTAL STEEL SECURITY FENCE, 6 FEET	309 LF	_____ DOLLARS & _____ CENTS		
S607.95040104	ORNAMENTAL STEEL FENCE SWING GATE, 4 FEET NOMINAL	1 EA	_____ DOLLARS & _____ CENTS		
S607.95040324	ORNAMENTAL STEEL FENCE SLIDE GATE, AUTOMATIC, 24 FEET	1 EA	_____ DOLLARS & _____ CENTS		
607.99870011	REMOVE EXISTING CHAIN LINK FENCE	337 LF	_____ DOLLARS & _____ CENTS		
<b>TOTAL AMOUNT BID ALTERNATE 2</b>			_____ DOLLARS & _____ CENTS		

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## **SECTION 2 - REQUIRED CONTRACT PROVISIONS**

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**MINORITY/WOMENS BUSINESS ENTERPRISE (M/WBE) and SERVICE DISABLED VETERAN-OWNED BUSINESS (SDVOB) UTILIZATION GOALS**

The following participation goal(s) have been established for this contract, expressed as a percentage of the total contract bid amount.

Minority Business Enterprise (MBE) Goal	15% (Non-Federal-Aid Only)
Women’s Business Enterprise (WBE) Goal	15%(Non-Federal-Aid Only)
Service-Disabled Veteran-Owned Business (SDVOB) Goal	6% (Non-Federal-Aid Only)

The NYS M/WBE Directory is located at: <https://ny.newnycontracts.com/>

The NYS SDVOB Directory is located at: <https://online.ogs.ny.gov/SDVOB/search>

**Business Enterprise Officer**

The Bidder shall designate and enter below the name of the Minority/Women’s Business Enterprise Officer who will have the responsibility for the M/WBE Utilization.

Bidder Designated M/WBE Officer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

(\_\_\_\_)\_\_\_\_\_  
Telephone Number



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## FORM D M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:  
 Address:  
 City, State, Zip Code:  
 Telephone No.:  
 Region/Location of Work:

Federal Identification No.:  
 Project/Contract No.:

M/WBE Goals in the Contract: MBE 15% WBE 15%

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/Supplies/Services and intended performance dates of each component of the contract.
A.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<b>NYS ESD CERTIFIED</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM E.**

<p><b>PREPARED BY (Signature):</b>  <b>DATE:</b></p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b>                  SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 30%;"><b>TELEPHONE NO.:</b></td> <td style="border: 1px solid black;"><b>EMAIL ADDRESS:</b></td> </tr> <tr> <td colspan="2" style="text-align: center; border: 1px solid black;"><b>FOR M/WBE USE ONLY</b></td> </tr> <tr> <td style="border: 1px solid black;"><b>REVIEWED BY:</b></td> <td style="border: 1px solid black;"><b>DATE:</b></td> </tr> </table> <p><b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____  <b>Contract No.:</b> _____ <b>Project No. (if applicable):</b> _____</p> <p><b>Contract Award Date:</b> _____  <b>Estimated Date of Completion:</b> _____  <b>Amount Obligated Under the Contract:</b> _____  <b>Description of Work:</b> _____  <b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____  <b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>FOR M/WBE USE ONLY</b>		<b>REVIEWED BY:</b>	<b>DATE:</b>
<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>						
<b>FOR M/WBE USE ONLY</b>							
<b>REVIEWED BY:</b>	<b>DATE:</b>						

## **SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices.
3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOS to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOS, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOS shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOS may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOS to enter into such litigation to protect the interests of NYSDOS, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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**FORM C  
WORK FORCE EMPLOYMENT UTILIZATION**

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period:</b> <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
<b>Contractor's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>		

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification														
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	Submit completed form to: NYS Department of State Office of Affirmative Action Programs 99 Washington Ave, Ste. 1150 Albany, NY 12231	

**General Instructions:** The work force utilization (FORM C) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to \_\_\_\_\_ within 10 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

**Instructions for completing:**

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Office of Affirmative Action Programs at (518) 473-2507 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition. **(NATIVE)**

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** **Male or Female**

## **SECTION 3 – SUPPLEMENTAL INFORMATION**

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## SUPPLEMENTAL INFORMATION AVAILABLE TO BIDDERS

The following information is available at the Office of the Owner and Engineer, as identified in the advertisement for bids, for inspection and review prior to the letting date. It is mutually understood that this data is independent information the Engineer and/or Owner has assembled, and the bidder shall assume the risk of its accuracy and that the information is not prepared or used as part of the contract plans and that Article 7 of the Agreement will apply. This information is not to be considered as a substitution or revision of that section of the standard specifications defining specifications and contract agreements.

By his/her signature on this proposal the bidder certifies that he/she has made himself aware of this availability, for his/her inspection and review prior to the letting date, of the information indicated below:

Available	Not Available	Information
	X	Utility Estimate Sheets with Names of Utility Officials
	X	Right of Way Plan
	X	Earthwork Cross Sections
	X	Earthwork Sheets
	X	Drainage Estimate Sheets
	X	Sign Face Layouts
X		Logs of Subsurface Exploration
	X	Tabulated Results of Probing
	X	Tabulated Depth to Bed Rock
	X	Logs Showing Laboratory Description of Soil Samples
	X	Laboratory Test Data from Soil Samples
	X	Rock Outcrop Maps
	X	Granular Materials Resources Survey Reports
	X	Terrain Reconnaissance Reports
	X	Subsurface Data Obtained from Other Sources
	X	Granular Material Sources Report
	X	Record Plans (Partial)
	X	SPDES Report/SWPPP
	X	Special Reports or Other Information (Identified Below)

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## **SECTION 4 – SPECIAL NOTES**

## **SPECIAL NOTES**

The Contractor's attention is specifically called to Section 102-08 of the State of New York Department of Transportation, Office of Engineering, Standard Specifications, Construction and Materials (US Customary) which are current on the date of advertisement for bids.

### **PROJECT SPECIFIC NOTES**

1. Those Contractors bidding this project are to note that the Notice to Award is planned to be within 60 days of the bid opening date for this particular contract.
2. Village of Watkins Glen reserves the right to change the scope of work due to financial constraints.
3. Any storage yard or staging area needed by the Contractor that cannot be accommodated within the project Right of Way must be secured and paid for by the Contractor.

### **PRECONSTRUCTION CONFERENCE AND PROJECT SCHEDULE**

The Contractor shall submit to the Village and the Engineer a detailed construction schedule acceptable to the Engineer for review prior to the preconstruction conference. The schedule shall be based on the begin and end of each subtask as outlined in the bid schedule. The Contractor should be represented at the preconstruction conference by those staff to be in responsible charge of the work, including the site superintendent.

### **OPERATIONAL DAMAGES**

The Contractor will be held entirely responsible for any damages to adjacent property as a result of his operations.

### **SITE SAFETY**

The Contractor shall perform all work in the Contract Documents in a workmanlike manner with due regard to the safety of the employees and of the public. The Contractor shall comply with all rules, regulations and standards of the Occupational Safety and Health Administration, U.S. Department of Labor in the performance of the work required by the Contract Documents in all matters regarding the safety and protection of persons employed in construction, excavation and demolition work. The Contractor shall also meet all applicable requirements of the State of New York Department of Labor, Industrial Code Rule 53 regarding construction, excavation and demolition operations at or near underground facilities. The Contractor is fully and solely responsible for site safety precautions.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss of:

- a. all employees on the site and other persons who may be affected thereby;
- b. all the work and all products to be incorporated therein, whether in storage on or off the site; and
- c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall assume all responsibility for damage to persons or property which may occur during the prosecution of the work and shall replace or make good any such damage, loss or injury.

### **UTILITIES, GENERAL**

All known public and private utility installations within the Contract limits and their disposition are shown in their approximate locations on the Contract plans. The Contractor is, however, cautioned that these locations are not guaranteed, nor is there any guarantee that all such facilities within the Contract limits have been shown on the plans. In this regard, the Contractor's attention is called to Subsections 102-02 and 105-04 of the Standard Specifications.

## **SPECIAL NOTES**

Utilities encountered during the work shall be maintained and protected in their existing locations until otherwise provided for. If services or utility lines not shown on the plans are encountered, excavation and grading shall be done with caution in order that these services not be disturbed until proper disposition of such is made by their owners. Damage by the Contractor to privately owned utilities shall be in all cases the responsibility of the Contractor. Relocation of public utilities and accessories is a responsibility of the servicing agency. Every reasonable attempt will be made by the agents of the Village of Watkins Glen not to inconvenience or additionally cost the Contractor due to such location relating to time and/or place; however, no extra compensation will be made to the Contractor by Village of Watkins Glen for extra work or loss of time due to such utilities or the removal or relocation of such utilities.

The Contractor shall be aware that during design, access to the existing drainage infrastructure was limited. The drainage information included in the contract plans is based on record drawings and the limited data that was able to be collected in the field during design. The Contractor shall be responsible for field verifying existing drainage information including but not limited to all top of grate elevations, invert elevations, pipe sizes, and pipe locations prior to ordering and fabricating drainage structures, pipes, and other drainage appurtenances. Should the drainage structures be filled with debris making this verification difficult, the Contractor shall notify the Village and/or the Engineer immediately so that they can be cleaned.

The Contractor shall notify the Engineer, in writing, at least fourteen (14) days in advance of any work which may affect any utility or cause an interruption or disruption of utility service.

### **MAINTENANCE AND PROTECTION OF TRAFFIC**

The Contractor will be responsible for providing traffic control. All traffic control signage and devices shall be accordance with the Contract documents and the New York State Manual of Uniform Traffic Control Devices. The Contractor shall coordinate with the Underground Facilities Protective Organization (UFPO) prior to driving any sign posts.

The Contractor shall submit work zone traffic control plans to the Engineer for approval prior to commencing work.

### **CONSTRUCTION INSPECTION**

It is intended that during the course of the work, a full-time Resident Engineer will be present. The Contractor shall give at least 48 hours notice to the Engineer of the following items:

1. Beginning of Excavation
2. Completion of Excavation
3. Beginning of placement of drainage structures
4. Beginning of any curb installation
5. Beginning of any paving
6. Completion of all work

The Contractor shall maintain adequate records of the progress of the work and as-built drawings showing deviations from the original plans. Any records pertaining to the work shall be available for review by the Engineer at all times.

The Contractor is responsible for carrying out the provisions of the contract at all times, regardless of whether an authorized inspector is present or not. Any work or item that is, at any time, found to be out of specification or not in compliance with the plans, shall be subject to such corrective measures as directed in writing by the Engineer at no additional cost to the Village.

## **SPECIAL NOTES**

### **SUBLETTING OR ASSIGNING THE CONTRACT**

The Contractor shall perform with his own organization contract work amounting to not less than 50percent of the original total contract price, except that any items designated by the Village as "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with his own organization.

His own organization shall be construed to include only workers employed and paid directly by the Contractor and equipment owned or rented by him, with or without operators.

### **SALVAGED MATERIALS**

Unless otherwise shown on the plans or specified in the proposal, all salvaged material shall become the property of the Contractor.

### **ORDINANCES AND PERMITS**

It is the Contractor's responsibility to obtain any and all necessary permits prior to starting work that have not been provided herein. He shall procure and pay for all permits and licenses which may be necessary for the completion of the work. The Contractor shall comply with, and give all notices required by, all laws, ordinances, rules and regulations bearing on the conduct of the work.

### **REQUIRED NOTICES**

a. Fire and Police Officials

Local fire and police authorities shall be notified by the Contractor in advance of the beginning of the progress of the work in order to coordinate and maintain sufficient fire and police protection.

b. School Officials and Ambulance Companies

The Contractor shall closely coordinate all work impacting school pedestrian and bus traffic with the Engineer. Safe School Route Maintenance Plans shall be submitted by the Contractor and approved by the Engineer prior to construction. The cost of any additional signage, flag persons or other requirements to maintain school routes throughout the duration of the project shall be included in the Bid price for Item 619.01.

The Contractor is required to make personal contact with appropriate ambulance companies in respect to the effect of road closing on their operations. This should be done several weeks in advance of changes so that there will be adequate time for them to make necessary adjustments to their schedules and routes.

### **RIGHT OF WAY**

The Contractor is responsible for establishing the right-of-way. Previously signed contracts or agreements made between the Village of Watkins Glen and adjacent landowners must be honored by the Contractor. Prior to conducting any work outside of the right-of-way, the Contractor must obtain a grading release from the property owner. Grading releases anticipated for the project are identified in a table in the Contract Plans.

### **MATERIAL SAFETY DATA SHEETS**

The Contractor is responsible for providing the Material Safety Data Sheets to the Village prior to introducing hazardous materials onto the site, assuring compliance before work is started and disseminating any information to the Village employees concerning significant chemical hazards that the Contractor is bringing to the Village's workplace. The Material Safety Data Sheets will be maintained by the Village as long as those materials are present. It is the responsibility of the Contractor to train its own employees.

## SPECIAL NOTES

### SUBCONTRACTORS, SUPPLIERS AND MATERIAL SOURCES

The Contractor shall submit to the Engineer for approval at the preconstruction meeting all subcontractors, suppliers and material sources anticipated to be used on the project.

### LEGAL LOADS

The Contractor is reminded that only legal loads are permitted on public highways. The only exception to this is the presently authorized issuance of permits for special or occasional oversize or overweight loads. These permits are issued at the discretion of the owning municipality and only under special conditions over specified highways at designated times and do not apply to the hauling of materials for construction contracts. Weigh slips which are part of contract records are available to enforcing agencies.

It is anticipated that seasonal or weather conditions may frequently require the use of lighter and smaller equipment and loads than might be used under optimum conditions. If the Engineer determines that hauling operations or other movement of heavy equipment is having or may result in detrimental effects on the finished highway, on or off the site, then the Engineer may restrict those operations and/or locations.

### LATE DELIVERY OF MATERIAL IN SHORT SUPPLY

In the event the delivery of any material in short supply is delayed substantially beyond the normal delivery time which results in delaying the completion of the contract, the contract will be extended without the assessment of engineering charges. The Contractor shall, however, demonstrate to the Engineer that he has made every reasonable effort to obtain such material and complete the contract.

### INSURANCE

The Contractor shall provide insurance coverage including the project and for a distance of 500 feet beyond the actual construction designated "Contract Begins" and/or "Contract Ends" and 500 feet beyond the "Limit of Work" of all intersecting highways.

### PROJECT SIGN

- 1) The Contractor must install signage identifying that the project received Downtown Revitalization Initiative Funding. Project Contractor must use the signage template. **All costs associated with manufacturing, installing (including excavation, backfill, foundations, etc.), maintaining and removing the Project Sign shall be included in the price bid for Item 619.01.**
- 2) The Project Sign is subject to the approval of the funding agency. The Department of State's internal approval process must be followed.
- 3) The sign shall be installed within one week from commencement of work at the site in accordance with all laws and codes having jurisdiction. The sign shall be erected in a prominent location, secure from vandalism.
- 4) The Contractor must submit a photograph of the installed sign to the office administering the funding of the project.
- 5) The Project Sign shall be maintained for at least 60 days after completion of construction. Sign must be maintained and be plumb, level and in good condition.
- 6) The Project Sign shall consist of medium density overlay exterior grade plywood with grade B surface veneers (MDO B-B EXT-APA). Exterior grade printed signs, such as closed cell PVC foam board, mounted on APA exterior grade sheets are acceptable. Signs shall be horizontal format 4 feet by 8 feet in size.

## SPECIAL NOTES

7) Project information in the center portion of the sign shall be limited to text only, i.e. project name or description, names of local officials, developers, etc. This project information text shall be visibly subordinate to the main sign graphics and text. The Village shall provide the project information.

The sign shall be fabricated by a professional sign manufacturer. Lettering and striping shall be uniform with sharp, neat profiles. The size of text and logos must be proportional to that shown on the sign template. Sign colors:

Blue

Pantone 3005 C  
CMYK 100/31/0/0  
RGB 0/119/200  
HEX #0077C8

Logo – Blue Fade on State

CYMK 100/90/6/1 to 71/15/0/0  
RGB 35/62/144 to 30/169/225  
HEX #233E90 to #1EA9E1

Logo - Gold

Pantone 130 C  
CMYK 0/32/100/0  
HEX #F2A900

8) The Department of State, may in its discretion, waive certain requirements if the DRI sign cannot be reasonably installed and or maintained at the project site. To request a waiver, the Village must notify an agency representative in writing, and must include:

- A brief explanation of why the sign requirement can't be met
- The proposed dimensions and materials if different from the requirements; and
- A mockup of the proposed sign.

9) An image of the sign template is pictured below. A zip file containing an Adobe Illustrator template can be downloaded from the DRI website FAQs, listed under "Implementation."





## SPECIAL NOTES

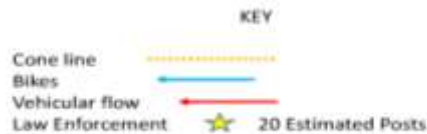
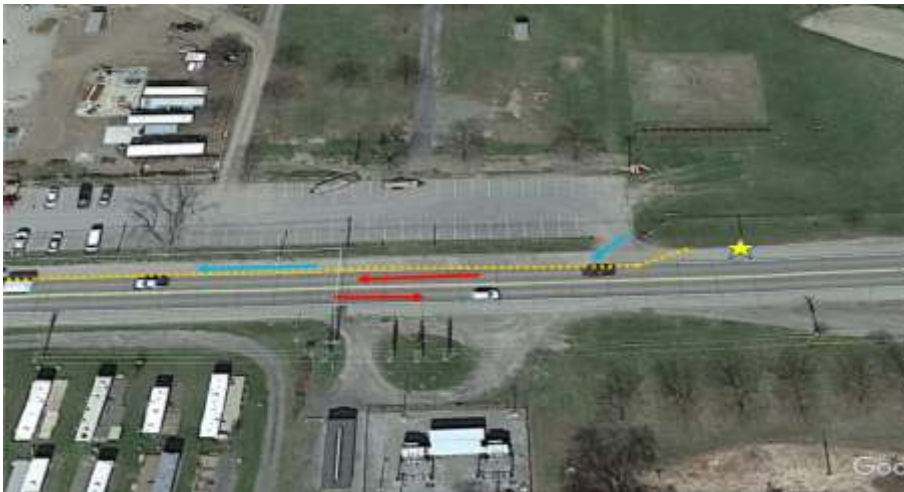
### SPECIAL EVENTS

The Contractor's attention is brought to special events (in addition to identified holidays) during the construction process, some of which may occur within or be adjacent to work zone(s). The Contractor may be required to stop work and make all areas within the project corridor accessible to allow proper function of the event. The Village and/or resident engineer will coordinate events with the Contractor. Events include, but not limited to, the following:

- Trout Derby - May 27<sup>th</sup> to 30<sup>th</sup>, 2023
- Wine Festival - June 7<sup>th</sup> to 9<sup>th</sup>, 2023
- Fireworks at Clute Park - TBD
- Italian Festival - August 11<sup>th</sup> to 13<sup>th</sup>, 2023
- NASCAR - August 18<sup>th</sup> to 22<sup>nd</sup>, 2023
- Global Water Cross – August 25<sup>th</sup> to 27<sup>th</sup>, 2023

Clash Triathlon at Clute Park & E. 4<sup>th</sup> Street - TBD

- Requires contractor to maintain an 8' rideable pavement area for bicyclists on the north side of E. 4<sup>th</sup> Street for the entire project length.



### CARGILL FENCING

Prior to beginning work related to the Cargill fencing, the Contractor shall notify Cargill a minimum of 72 hours prior to beginning any work on the fence. Cargill will be responsible for supplying and installing openers and actuation controls for the automatic sliding gates. Cargill will also be responsible for supplying power feeds to the openers. The Contractor shall coordinate fence installation efforts with Cargill to ensure site security throughout the duration of the project.

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## **SECTION 5 – SPECIAL SPECIFICATIONS**

## SPECIAL SPECIFICATIONS

The following Special Specifications enclosed herein shall be used for materials of construction:

<b>ITEM NUMBER</b>	<b>ITEM DESCRIPTION</b>
607.41010010	TEMPORARY PLASTIC BARRIER FENCE
S607.95030106	ORNAMENTAL STEEL FENCE, 6 FT
S607.95040104	ORNAMENTAL STEEL FENCE SWING GATE, 4 FT
S607.95040220	ORNAMENTAL STEEL FENCE SWING GATE, DOUBLE LEAF, 20 FT
S607.95040324	ORNAMENTAL STEEL FENCE SLIDE GATE, AUTOMATIC, 24 FT
607.99870011	REMOVE EXISTING CHAIN-LINK FENCE
608.21000003	CAST IRON EMBEDDED DETECTABLE WARNING UNIT
608.72136108	NON-SECURITY BOLLARD
627.50140008	CUTTING PAVEMENT
680.82254310	RECTANGULAR RAPID FLASHING BEACON (RRFB) ASSEMBLY

## **ITEM 607.41010010 - TEMPORARY PLASTIC BARRIER FENCE**

### **DESCRIPTION**

This work shall consist of furnishing, installing, and maintaining Temporary Plastic Barrier Fences of the type and at the locations shown in the plans or where directed by the Engineer.

### **MATERIALS**

Materials for Temporary Plastic Barrier Fences shall meet the following requirements:

- **Fence:** High-density polyethylene mesh, ultraviolet-stabilized min. 2 years; minimum height 4.0 feet. Color: high-visibility orange or green. When used to protect trees or other vegetation, color shall be high-visibility orange.
- **Posts:** Rigid metal or wood posts, minimum length 6.0 feet.
- **Ties:** Steel wire, #14 gauge or nylon cable ties.
- **Warning signs:** Sheet metal, plastic or other rigid, waterproof material, 1.5 feet by 2.0 feet with 4 inch black letters on a white background. Text shall be: "Protected Site - Keep Out" unless otherwise specified.

### **CONSTRUCTION DETAILS**

Fences shall be erected prior to moving construction equipment onto any area designated for protection.

The line of fences as indicated on the plans shall be staked or marked out on the ground by the Contractor and approved by the Engineer before any fence is installed. Where used for protection of individual trees, fence shall be placed at the drip line (extent of canopy). If not possible, placement shall be as close to the drip line as possible and in no case less than 5.0 feet away from the tree trunk.

On approval of the stakeout, posts shall be securely driven on 6.0 foot-maximum centers, normal to the ground, to a depth 1/3 of the total post length. Plastic barrier fence shall be placed along the side of all posts. Ends of fencing segments shall overlap a distance of at least one half the fence height.

Fencing shall be secured to posts with wire or cable ties at top, middle and bottom of post. Fastener shall be tight enough to prevent the fencing from slipping down. Overlaps shall also be securely fastened.

Barrier fence which is not orange in color shall be flagged at 6.0 foot intervals with red or orange florescent tape. Warning signs shall be mounted on the fence at no more than 100 foot intervals.

Maintenance shall commence immediately after erection of the fence and continue until one week prior to acceptance of the contract, and shall consist of: replacing damaged post(s) and fencing; re-fastening and tightening fencing; and restoring fence to its intended height.

Fencing used for tree or other vegetation protection shall not be temporarily removed to allow equipment access over a protected area, except as required for items of work specifically shown on the plans and approved by the Engineer in writing.

**ITEM 607.41010010 - TEMPORARY PLASTIC BARRIER FENCE**

**METHOD OF MEASUREMENT**

The quantity to be measured for payment will be the number of feet of Temporary Plastic Barrier Fence erected, measured along the top, to the nearest whole foot.

**BASIS OF PAYMENT**

The unit price bid shall include the cost of all labor, materials and equipment necessary to satisfactorily complete the work. Relocation of a fence from one location to another as directed by the Engineer shall be considered as a new location and will be separately paid.

Seventy percent (70%) of the price bid will be paid after satisfactory installation of the fence. The remaining Thirty percent (30%) will be paid after complete removal of the fence.

SECTION 32 31 19 – DECORATIVE METAL FENCES AND GATES

**PART 1 - GENERAL**

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions.

1.2 SUMMARY

- A. This Section includes the following:
  - 1. Fencing system complete with all hardware, posts, rails, gates, and accessories necessary for a structurally integrated and aesthetically balanced installation.
  - 2. Swinging gates and related hardware
  - 3. Sliding Gates and related hardware
  - 4. Concrete foundation for posts

1.3 REFERENCES

- A. American Society for Testing and Materials:
  - 1. ASTM A123 Standard Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products
  - 2. ASTM A653 Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process
  - 3. ASTM B117 Standard Practice for Operating Salt Spray (Fog) Apparatus
  - 4. ASTM B633 Standard Specification for Electrodeposited Coatings of Zinc on Iron and Steel
  - 5. ASTM C33 Standard Specification for Concrete Aggregates
  - 6. ASTM C150 Standard Specification for Portland cement
  - 7. ASTM C207 Standard Specification for Hydrated Lime for Masonry Purposes
  - 8. ASTM D1654 Standard Test Method for Evaluation of Painted or Coated Specimens Subjected to Corrosive Environments
  - 9. ASTM D2248 Standard Practice for Detergent Resistance of Organic Finishes
  - 10. ASTM D2794 Standard Test Method for Resistance of Organic Coatings to the Effects of Rapid Deformation
  - 11. ASTM D3359 Standard Test Methods for Measuring Adhesion by Tape Test
  - 12. ASTM D3363 Standard Test Method for Film Hardness by Pencil Test

13. ASTM D4141 Standard Practice for Conducting Black Box and Solar Concentrating Exposures of Coatings
14. ASTM F2408 Ornamental Fences Employing Galvanized Steel Tubular Pickets

B. American Concrete Institute:

1. ACI 301 Specifications for Structural Concrete

1.4 SYSTEM DESCRIPTION

- A. The Manufacturer shall supply a Fencing System complete with all hardware, posts, rails, gates, and accessories necessary for a complete and aesthetically balanced installation.
- B. Gates shall be swing, or slide type as indicated on the plans and schedules. Slide gates shall be cantilevered and automatic or manual operation as indicated in the schedules.

1.5 SUBMITTALS

- A. Product Data: For each product indicated, include manufacturer's recommendations for installation.
- B. Installation Drawings: Show layout, locations, components, materials, dimensions, sizes, weights, finishes of components, installation and operational clearances, gate swings, post sizes, spacing, gate details/dimensions, details of post anchorage, and post attachment/bracing.
- C. Samples: Provide color samples for finishes on fence and accessories.

1.6 QUALITY ASSURANCE

- A. The contractor shall provide laborers and supervisors who are thoroughly familiar with the type of construction involved and the materials and techniques specified. Review and follow manufacturer's installation instructions.
- B. Provide fence system and gates, as a complete unit produced by a single manufacturer, including necessary erection accessories, fittings and fastenings.
- C. Manufacturer Qualifications: Company specializing in manufacturing the products specified in this section with a minimum of 10 years documented experience.
- D. Field Quality Control to be conducted by Owner's Project Manager.

1.7 DELIVERY, HANDLING, AND STORAGE

- A. Deliver fence materials, gates, posts, and accessories to project site, completely pre-finished. Upon receipt at the job site, all materials shall be checked to ensure that no damages occurred during shipping. Materials shall be handled and stored properly to protect against damage and theft.
- B. Handle fence components to protect finish coating from any scuffs, abrasion or other damage during unloading and installation. Excessive damage to factory applied coatings will be cause for rejection.

1.8 PRODUCT WARRANTY

- A. All structural fence components (i.e. rails, pickets, and posts) shall be warranted within specified limitations, by the manufacturer for a period of 15 years from date of original



purchase. Warranty shall cover any defects in material finish, including cracking, peeling, chipping, blistering or corroding.

**PART 2 – PRODUCTS**

2.1 REFERENCE PRODUCT

- A. Montage Plus Classic, as manufactured by:  
Ameristar Fence Products, Inc., in Tulsa, Oklahoma  
Or approved equal.

2.2 PERFORMANCE REQUIREMENTS

- A. Wind Loading:
  1. Fence Height: 6 feet.
  2. Wind Exposure Category: D.
  3. Design Wind Speed: 105 mph.
- B. Lightning-Protection System: Maximum grounding-resistance value of 25 ohms under normal dry conditions.

2.3 MATERIAL

- A. Steel material for fence panels and posts shall conform to the requirements of ASTM A653/A653M, with a minimum yield strength of 45,000 psi (310 MPa) and a minimum zinc (hot-dip galvanized) coating weight of 0.60 oz/ft<sup>2</sup> (184 g/m<sup>2</sup>), Coating Designation G-60.
- B. Material for pickets shall be 3/4" square x 18 Ga. tubing. The rails shall be steel channel, 1.5" x 1.4375" x 14 Ga. Picket holes in the rail shall be spaced 4.675" o.c. Fence posts and gate posts shall meet the minimum size requirements of Table 1.

<b>Table 1 – Minimum Sizes for Montage Plus Posts</b>		
<u>Fence Posts</u>	<u>Panel Height</u>	
2-1/2" x 16 Ga.	Up to & Including 6' Height	
<u>Gate Leaf</u>	<u>Gate Height</u>	
	<u>Up to &amp; Including 4'</u>	<u>Over 4' Up to &amp; Including 6'</u>
Up to 4'	2-1/2" x 16 Ga.	2-1/2" x 14 Ga.
4'1" to 6'	3" x 12 Ga.	3" x 12 Ga.
6'1" to 10'	4" x 11 Ga.	4" x 11 Ga.
10'1" to 16'	6" x 3/16" wall	6" x 3/16" wall

2.4 FABRICATION

- A. Pickets, rails and posts shall be pre-cut to specified lengths. Rails shall be pre-punched to accept pickets.
- B. Pickets shall be inserted into the pre-punched holes in the rails and shall be aligned to standard spacing using a specially calibrated alignment fixture. The aligned pickets and rails shall be joined at each picket-to-rail intersection by Ameristar's proprietary fusion welding

process, thus completing the rigid panel assembly (Note: The process produces a virtually seamless, spatter-free good-neighbor appearance, equally attractive from either side of the panel).

- C. The manufactured panels and posts shall be subjected to an inline electrodeposition coating (E-Coat) process consisting of a multi-stage pretreatment/wash, followed by a duplex application of an epoxy primer and an acrylic topcoat. The minimum cumulative coating thickness of epoxy and acrylic shall be 2 mils (0.058 mm). The color shall be Black.
- D. The manufactured fence system shall be capable of meeting the vertical load, horizontal load, and infill performance requirements for Commercial weight fences under ASTM F2408.
- E. Gates with an out-to-out leaf dimension less than and including 72 inches shall be fabricated using Montage Plus ornamental panel material and 1-3/4" sq. x 14ga. gate ends. Gate leafs greater than 72 inches shall be fabricated using ForeRunner rails, 17 gauge pickets, intermediate uprights, gussets and 1-3/4" sq. x 14ga. gate ends. All rail and upright intersections shall be joined by welding. All picket and rail intersections shall also be joined by welding.
- F. Pedestrian swing gates shall be self-closing, having a gate leaf no larger than 48" width. Integrated hinge-closer set (2 qty) shall be ADA compliant that shall include a variable speed and final snap adjustment with compact design (no greater than 5" x 6" footprint). Hinge-closer set (2 qty) shall be tested to a minimum of 500,000 cycles and capable of self-closing gates up to a maximum gate weight of 260 lbs. and maximum weight load capacity of 1,500 lbs. Hinge-closer device shall be externally mounted with tamper-resistant security fasteners, with full range of adjustability, horizontal (.5" - 1.375") and vertical (0 - .5"). Maintenance free hinge-closer set shall be tested to operate in temperatures of negative 20 F to 200 F degrees, and swings to negative 2 degrees to ensure reliable final lock engagement.
- G. Cantilever Gates: Design of gates shall be as shown on the submittals.
  - 1. Gate Frames and Infill Panels: Materials as described above in 2.3.
  - 2. Frame Members: Shall be MIG welded. If necessary, truss rods or cables to be used to prevent gate sag and allow for future adjustment.
  - 3. Gate Posts and Foundation: Size as determined by Supplier, based on gate size, local wind loading requirements, and installation type.
- H. Gate Openers: Gates noted as Automatic shall be capable of connecting to and being opened by chain type openers. Openers will be supplied and installed by the Owner and connected to the gates by the Contractor.

## 2.5 CONCRETE FOOTINGS

- A. General: Comply with ACI 301 for cast-in-place concrete; materials consisting of Portland cement complying with ASTM C150, aggregates complying with ASTM C33, and potable water.
- B. Concrete Mixes: Normal-weight concrete air entrained with not less than 3000-psi

compressive strength (28 days), 3-inch slump, and 1-inch maximum size aggregate.

- C. Footings: Footings shall be minimum 3,000 psi after twenty-eight (28) days concrete. Footing sizes shall be determined by Engineer.

## **PART 3 - EXECUTION**

### **3.1 PREPARATION**

- A. Verify areas to receive fencing.
- B. Coordinate fence installation with work of other sections listed in these specifications.
- C. Examine conditions under which fencing and gates are to be installed. Notify Engineer of unsatisfactory conditions. Do not proceed with work until conditions are satisfactory to the installer.

### **3.2 WORK BY OTHERS**

- A. Electrical service connections will be provided by the Owner.
- B. Connection of activation controls will be provided by the Owner.

### **3.3 INSTALLATION**

- A. Install fence and gates in accordance with manufacturer's instructions and approved installation drawings. Install fencing to withstand wind load as specified.
- B. Handle fence components to protect finish coating from any scuffs, abrasion, or other damage during installation. Excessive damage to factory applied coatings will be cause for rejection.
- C. Space posts at dimensions indicated in the installation drawings. Attach fence rails to posts using stainless steel panel hanger brackets supplied by manufacturer. Field welding of panels to posts is unacceptable as it will cause significant damage to the galvanizing and powder coat protective finishes.
- D. Concrete Footings: Place concrete around posts and vibrate or tamp for consolidation. Verify that posts are set plumb, aligned, and at correct height and spacing, and stabilized in position during placement and finishing operations until concrete is sufficiently cured. Protect portion of posts above ground from concrete splatter.
- E. Install gates level, plumb, and secure for full opening without interference. Attach hardware using tamper-resistant or concealed means. Install ground-set items in concrete for anchorage. Adjust gate to operate smoothly, easily, and quietly throughout entire operational range. Confirm that latches and locks engage accurately and securely without forcing or binding.
- F. Avoid unnecessary cutting, drilling, and welding of pre-finished fence components. If necessary to cut, drill, weld, or otherwise modify product due to field conditions, spot finish bare metal with manufacturer's approved spray enamel.

### **3.4 CLEANING**

- A. Fence contractor shall remove packing materials and unused product and level uneven areas due to excavations created by fence installations.

**METHOD OF MEASUREMENT**

Fencing. Fencing shall be measured as the number of feet along the top of the fencing from center to center of the end posts, properly furnished and installed in accordance with the plans, specifications, and directions of the Engineer.

Fence Gates. Fence gates shall be measured as the number of complete gates furnished and erected in accordance with the specifications, plans, and directions of the Engineer. Double leaf gates are considered as one gate.

**BASIS OF PAYMENT**

General. The unit price bid per linear foot of fencing shall include the cost of furnishing all labor, materials, tools and equipment necessary to satisfactorily complete the work.

Fence Gates. The unit price bid for each size gate shall cover the cost of furnishing all labor, materials, tools and equipment necessary to satisfactorily complete the work and shall include all necessary clearing, grubbing, excavation and disposal, fill, concrete, gates, gate posts, lock, bracing and all other necessary materials.

Payment will be made under:

<b>Item No.</b>	<b>Item Description</b>	<b>Pay Unit</b>
S607.95030106	Ornamental Steel Fence, 6 ft. tall	Linear Foot
S607.95040104	Ornamental Steel Fence Swing Gate, 4 ft. Nominal	Each
S607.95040220	Ornamental Steel Fence Swing Gate, Double Leaf, 20 ft.	Each
S607.95040324	Ornamental Steel Fence Slide Gate, Automatic, 24 ft.	Each

**END OF SECTION 32 31 19**

## **ITEM 607.99870011 - REMOVE EXISTING CHAIN-LINK FENCING**

### **DESCRIPTION**

This work shall consist of removing and disposing the existing chain-link fencing (including gates, if present) from the locations indicated on the contract plans or where directed by the Engineer.

### **MATERIALS**

None Specified.

### **CONSTRUCTION DETAILS**

The Contractor shall remove and dispose away from the site the existing chain-link fencing (and gates, if present), including the fence posts and footings as directed by the Engineer. All excavated areas shall be properly filled to match the surrounding area to the satisfaction of the Engineer.

### **METHOD OF MEASUREMENT**

This work will be measured as the number of feet of chain-link fencing removed. Measurement will be along the horizontal projection of the center of the fencing, center-to-center of terminal fence posts.

### **BASIS OF PAYMENT**

The unit price bid per linear foot shall include the cost of furnishing all labor, materials, and equipment necessary to complete the work, including excavation, fill and all necessary incidentals.

**ITEM 608.21000003 - CAST IRON EMBEDDED DETECTABLE WARNING UNITS**

**DESCRIPTION**

Section §608-1 of the Standard Specifications shall apply.

**MATERIALS**

Section §608-2.07 of the Standard Specification shall apply with the following modifications:

**Embedded Detectable Warning Units 726-02**

All embedded detectable warning units shall be cast iron. No other material will be accepted. Installation of detectable warning units shall be in accordance with manufacturer's recommendations. All detectable warning units shall have a natural finish color.

**CONSTRUCTION DETAILS**

Cast iron detectable warning units shall be installed in wet concrete as directed by the manufacturer. Follow all applicable manufacturer's requirements for environmental conditions, surface preparation, installation procedures, curing procedures, and materials compatibility.

**METHOD OF MEASUREMENT**

Section §608-4.07 of the Standard Specifications shall apply.

**BASIS OF PAYMENT**

The unit bid price per square yard shall include all labor, material, and equipment necessary to satisfactorily complete the work, including bedding material. No adjustment shall be made for concrete removed to accommodate embedded units.

Payment will be made under:

<b>Item No.</b>	<b>Item</b>	<b>Pay Unit</b>
608.21000003	Cast Iron Embedded Detectable Warning Units	Square Yard

**ITEM 608.7ABXYN08 – NON-SECURITY BOLLARD**

**DESCRIPTION**

This work shall consist of furnishing and installing bollards in accordance with the contract documents and as directed by the Engineer.

The bollard(s) furnished and installed under this pay item is identified in a special note entitled “*Bollards*” in the contract documents. Bollard anchoring types include the following:

- Fixed – Surface Mounted
- Fixed – In-Ground
- Removable – with embedment sleeve
- Retractable – manual (with embedment sleeve)
- Retractable – automatic or semiautomatic (with pneumatic embedment sleeve)
- Collapsible/Flexible – mounting as indicated in the contract documents
- As specified

**MATERIALS**

Where appropriate, the following sections of the standards specifications shall apply:

Excavation and Embankment	203-2
Portland Cement Concrete	501-2
Wood Preservative – Waterborne	708-31
Epoxy Coated Bar Reinforcement	709-04
Timber and Lumber	713-13
Galvanized Coating and Repair Methods	719-01
Acrylic Plastic Reflectors	730-10

**General**

The materials required to satisfactorily furnish a bollard under this pay item shall be in accordance with the requirements found in the special note entitled, “*Bollards*”. This special note will include information on the bollard material, finishes, mounting/embedment hardware and concrete (if required), including reinforcement. When Collapsible/Flexible bollards are specified, the special note will indicate the mounting/embedment method.

**Galvanization:**

Bolts, nuts and washers shall be galvanized in accordance with the provisions of §719-01 Galvanized Coatings and Repair Methods, Type II.

Sleeves for removable bollards shall be galvanized in accordance with the provisions of §719-01 Galvanized Coatings and Repair Methods, Type I, unless otherwise specified.

Any other galvanization types shall be as specified in the special note.

## **ITEM 608.7ABXYN08 – NON-SECURITY BOLLARD**

### **Submittals:**

The Contractor shall submit shop drawings and/or manufacturer's cut sheets/specifications for each unique bollard to be installed using this specification. The following information shall be included:

- Manufacturer's name and address
- Bollard type, name and/or catalog/reference number
- Bollard material and finish,
- Bollard dimensions (including height and outside diameter (OD) or largest width dimension), and
- Bollard anchor details including mounting/embedment type with hardware.

### **CONSTRUCTION DETAILS**

The bollard shall be installed according to the installation instructions provided by the manufacturer and/or in accordance with the contract documents.

The construction methods required to satisfactorily install a bollard under this pay item shall be in accordance with the requirements found in the special note entitled, "*Bollards*".

### **Submittals:**

The Contractor shall supply shop, installation and detail drawings that describe the construction methods necessary to install the bollard(s). At a minimum, the information shall include:

- drawings of the proposed bollard(s) and hardware
- dimensions,
- materials and finishes
- connection and anchor details, and
- installation details.

### **METHOD OF MEASUREMENT**

This work will be measured as the number of each bollard(s) satisfactorily furnished and installed.



**ITEM 608.7ABXYN08 – NON-SECURITY BOLLARD**

**BASIS OF PAYMENT**

The unit price bid shall include the cost of furnishing all labor, materials, and equipment necessary to satisfactorily complete the work.

Where:

<i>A = Embedment Type</i>	<i>B = Lighting</i>	<i>X = largest width dimension</i>	<i>Y = Height</i>
<i>1 = Fixed, surface mounted</i>	<i>1 = without light</i>	<i>1 = up to 3"</i>	<i>1 = up to 12"</i>
<i>2 = Fixed, in ground</i>	<i>2 = with light</i>	<i>2 = over 3" – 5"</i>	<i>2 = over 12" to 18"</i>
<i>3 = Removable</i>		<i>3 = over 5" – 7"</i>	<i>3 = over 18" to 24"</i>
<i>4 = Retractable – Manual</i>		<i>4 = over 7" to 9"</i>	<i>4 = over 24" to 30"</i>
<i>5 = Retractable – (Semi) Automatic</i>		<i>5 = over 9 - 11"</i>	<i>5 = over 30" to 36"</i>
<i>6 = Collapsible/Flexible</i>		<i>6 = over 11"</i>	<i>6 = over 36"</i>
<i>7 = As Specified</i>			

And N = a serialization pay item number for each unique bollard type

## **ITEM 627.50140008 - CUTTING PAVEMENT**

### **DESCRIPTION:**

The contractor shall cut existing asphalt pavement, concrete pavement, asphalt surface course, or asphalt concrete overlay on concrete pavement at the locations indicated and detailed on the plans and as directed by the Engineer.

### **MATERIALS:**

None specified.

### **CONSTRUCTION DETAILS:**

Existing pavement and overlay shall be cut perpendicular to the roadway surface along neat lines, and to the depth indicated on the plans and typical sections, using appropriate equipment. After the pavement has been cut through, the Contractor may use pry bars, pneumatic tools or other methods, to pry loose the pavement to be removed from the pavement that is to remain. A pavement breaker may be used to break up the pavement to be removed after the pavement has been completely cut through and completely free from the pavement to remain.

When pavement cutting is called for in the Contract documents, if a neat vertical face with minimal shatter is obtained by performing an adjacent operation (such as milling) which eliminates the need to perform a separate pavement cutting operation, payment will be made for both the pavement cutting item and the item for the adjacent operation.

Any existing pavements and curbs not indicated to be removed that are damaged by the contractor's operations, shall be repaired at no additional cost to the State. Pavement cutting that the contractor chooses to do for his/her own convenience shall not receive any additional payment from the State.

### **METHOD OF MEASUREMENT:**

The quantity to be measured will be the number of linear feet of pavement cutting satisfactorily completed.

### **BASIS OF PAYMENT:**

The unit price bid per linear foot of pavement cutting shall include the cost of all labor, materials, and equipment necessary to satisfactorily complete the work.

Payment for prying, breaking, removal and disposal of cut pavement shall be made through other appropriate items.

**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

**1.0 DESCRIPTION**

This work shall consist of furnishing and installing a Rectangular Rapid Flashing Beacon (RRFB) assembly in accordance with the contract documents or as directed by the Engineer. All materials and labor required to provide a complete functioning system are to be included.

**1.1 General Requirements**

- 1.1.1 RRFB unit shall consist of two rapidly flashed, rectangular-shaped yellow indications with an LED-array-based light source. It shall be designed, located, and operated in accordance with the detailed requirements of the contract and as specified below.
- 1.1.2 Each RRFB shall conform to all provisions of the MUTCD.
- 1.1.3 Each RRFB shall be a complete assembly consisting of supporting structure (pole, breakaway transformer base, sign, cabinet, and solar panel supports), indications, signage, cabinet, solar panel, and electrical components (wiring, solid-state circuit boards, etc.).
- 1.1.4 Each RRFB shall be supplied with all required hardware to install assembly.
- 1.1.5 Each RRFB shall be ADA compliant.
- 1.1.6 Each RRFB shall be rated for 90 mph wind conditions.
- 1.1.7 All components shall be designed to operate under ambient temperature conditions from -30 to 165 °F.

**1.2 Functional Requirements**

- 1.2.1 The RRFB shall be normally dark, shall initiate operation only upon pedestrian actuation, and shall cease operation after a predetermined period of operation. The predetermined period of operation shall be based on the procedures provided in Section 4E.06 of the current MUTCD for the timing of pedestrian clearance times for pedestrian signals.
- 1.2.2 When actuated, all RRFB units associated with a given crosswalk shall simultaneously commence operation of their rapid-flashing indications within 120 milliseconds. All RRFB units associated with a given crosswalk shall simultaneously cease operation of their rapid-flashing indications within 120 milliseconds.
- 1.2.3 During activation, a small light, directed at and visible to pedestrians in the crosswalk, shall be installed integral to the RRFB to give confirmation that the RRFB is in

**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

operation. The pedestrian indication shall flash concurrently with one of the vehicle indications to give confirmation that the RRFB is in operation.

- 1.2.4 Upon actuation, the two or four yellow indications in each RRFB unit shall flash in a sequence of 75 cycles per minute. The left and right RRFB indications shall operate using the following sequence during each 800-millisecond cycle:

The RRFB indication on the left-hand side shall be illuminated for approximately 50 milliseconds.

Both RRFB indications shall be dark for approximately 50 milliseconds.

The RRFB indication on the right-hand side shall be illuminated for approximately 50 milliseconds.

Both RRFB indications shall be dark for approximately 50 milliseconds.

The RRFB indication on the left-hand side shall be illuminated for approximately 50 milliseconds.

Both RRFB indications shall be dark for approximately 50 milliseconds.

The RRFB indication on the right-hand side shall be illuminated for approximately 50 milliseconds.

Both RRFB indications shall be dark for approximately 50 milliseconds.

Both RRFB indications shall be illuminated for approximately 50 milliseconds.

Both RRFB indications shall be dark for approximately 50 milliseconds.

Both RRFB indications shall be illuminated for approximately 50 milliseconds.

Both RRFB indications shall be dark for approximately 250 milliseconds.

- 1.2.5 The flash rate of each individual RRFB indication, as applied over the full flashing sequence, shall not be between 5 and 30 flashes per second to avoid frequencies that might cause seizures in anyone viewing the activated RRFB.

- 1.2.6 The light intensity of the yellow indications during daytime conditions shall meet the minimum specifications for Class 1 yellow peak luminous intensity in the current Society of Automotive Engineers (SAE) Standard J595 (Directional Flashing Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles).

**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

- 1.2.7 To minimize excessive glare, an automatic signal dimming device shall be used to reduce the brilliance of the RRFB indications during nighttime conditions.

## **2.0 MATERIALS**

All provisions of §709-01, §715, §723, §724 and §730 shall apply except as detailed below:

### **2.1 Indicators:**

- 2.1.1 Each RRFB facing shall consist of two rectangular-shaped yellow indications each with an LED-array-based light source. The size of each RRFB indication shall be at least 5 inches wide by at least 2 inches high and shall be aligned horizontally, with the longer dimension horizontal and with a minimum space between the two indications of at least 7 inches, measured from the nearest edge of one indication to the nearest edge of the other indication.
- 2.1.2 The outside edges of the RRFB indications, including any housings, shall not project beyond the outside edges of the signage of the RRFB.
- 2.1.3 Indicators shall be mounted in a housing constructed of durable, corrosion resistant, powder-coated aluminum with stainless steel fasteners.
- 2.1.4 Mounting hardware shall be stainless steel.
- 2.1.5 The indicator housing shall be located between and immediately adjacent to the bottom of the crossing warning sign and the top of the supplemental downward diagonal arrow plaque (or, in the case of a supplemental advance sign, the AHEAD or distance plaque).
- 2.1.6 All RRFB light bars shall be field adjustable to maximize the field of view on each vehicle approach.
- 2.1.7 Shall be rated for a minimum 15-year life span.

### **2.2 Radio Network Controller and Cabinet:**

- 2.2.1 The local equipment controlling the components of the beacon assembly shall be housed in a lockable, weatherproof, vandal and tamper resistant NEMA 3R rated aluminum enclosure, intended for outdoor use, primarily to provide a degree of protection against corrosion, windblown dust and rain, splashing water, hose-directed water, and damage from ice formation.
- 2.2.2 The cabinet shall be mounted on the pole and a work pad shall be provided, in accordance with signal system details. Cabinet shall not intrude into sidewalk or obstruct the pedestrian push button.
- 2.2.3 The cabinet shall be mounted on the side of the pole away from approaching traffic at a height between 3.5 – 4.5 feet from the bottom of the cabinet to the ground. In unpaved areas a concrete work pad shall be installed in front of the cabinet door not to exceed 5 feet by 5 feet by 4 inches deep and shall abut the pole foundation.

**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

- 2.2.4 The cabinet shall be of sufficient size to house all required equipment.
- 2.2.5 Cabinet locking mechanisms shall meet NYSDOT standards currently used by the regional traffic signal groups. All keys to installed locking mechanisms shall be supplied to the Engineer upon acceptance of the work. The cabinet shall be secured with a Corbin lock and keyed as directed by the Regional Traffic Engineer for securing the cabinet door.
- 2.2.6 The controller shall be replaceable independently of other components.

**2.3 Controls:**

- 2.3.1 Controls shall include integrated constant current LED drivers with a minimum of two output channels for driving one or two assemblies.
- 2.3.2 Controls shall be completely programmable:
  - 2.3.2.1 To run for a user specified time period when activated via switch, button contact closure, or when triggered from an external sensor such as a wireless transmitter, radar detector, presence detector, or wireless walk through bollard with a compatible sensor output.
- 2.3.3 Controls shall be capable of being programmed for alternate flash rates and patterns with a minimum resolution of 0.25s per trigger action.
- 2.3.4 Controls shall seamlessly integrate with the wireless transceiver to form a network of connected devices.
- 2.3.5 Controls shall allow adjustable and programmable light intensity levels for the beacons. Intensity level programming shall allow for manual and automatic modes. Manual mode shall allow the light intensity to be configured for a constant output on every available intensity level. Automatic mode shall allow for automatic intensity adjustment based upon assembly's ambient light conditions. Assemblies shall have a minimum of two brightness intensities available, exclusive of any unlit condition.
- 2.3.6 Controls shall include data-logging capabilities with selectable interval from one minute to one day with at least a 60-day logging period.
- 2.3.7 Controls shall include an RS232 serial interface and ethernet interface for local programming. Controls may include USB cable interfaces for supplemental data connections.
- 2.3.8 Controls shall be locally programmable using software for Microsoft Windows 2007 or later or web based program.
- 2.3.9 The controller software shall allow programmable operation of the Assembly. Direct control of functions such as lighting controls shall be possible.

**2.4 Transceiver:**

- 2.4.1 Shall provide wireless communication between the assemblies to integrate the

**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

- pushbutton activation of indications.
- 2.4.2 Shall seamlessly integrate with the controller to ensure sequential activation of other radio-equipped devices in the system.
- 2.4.3 Shall synchronize the system components to activate the indications within 120 ms of one another and remain synchronized throughout the duration of the flash (timeout) cycle.
- 2.4.4 Shall include network-wide modification of sign controller settings and output durations using programmability from any networked transceiver without the use of additional equipment or software.
- 2.4.5 Shall be capable of operating as a parent (gateway) or child (node or repeater).
- 2.4.6 Shall be capable of providing site-survey data for verification of signal strength between network devices.
- 2.4.7 Shall operate on the license-free ISM band.
- 2.4.8 Radio control shall operate on an FCC approved 900 MHz frequency, hopping spread spectrum network with a normal operating range of ~1000 feet.
- 2.4.9 Shall operate from 3.3 to 15 VDC input.
- 2.4.10 Shall comply with 47 CFR Part 15.
- 2.4.11 Shall be replaceable independently of other components.
- 2.4.12 The product must be FCC certified to comply with all 47 CFR Part 15 Subpart B Emission requirements.

**2.5 Emergency Shutoff:**

- 2.5.1 One toggle-type power switch, for either the AC or solar power source, shall be provided for emergency shutoff at the local cabinet on the pole.

**2.6 Power Supply:**

- 2.6.1 The power supply shall be either solar or 120 VAC and meet all applicable codes.
- 2.6.2 With the exception of conduits run for service entrance cables as detailed in NFPA 70: National Electric Code, the assembly shall contain no externally mounted wiring or wiring conduits.
- 2.6.3 Autonomy with a fully charged battery shall be at least 30 days of continuous operation without charging at an ambient temperature of 70 °F with at least ten actuations per hour.
- 2.6.4 Battery:
  - 2.6.4.1 Shall have a nominal output voltage of 12 VDC and a capacity of 48 Ah at a C100 discharge rate.
  - 2.6.4.2 Shall be sealed and spill proof.
  - 2.6.4.3 Shall have terminals that accept screws or bolts for secure wiring connections.
  - 2.6.4.4 Shall be replaceable independently of other components.

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**ASSEMBLY**

2.6.4.5 Shall be fused for short circuit protection.

**2.7 Solar Power:**

- 2.7.1 One solar array with a bracket for mounting to the top of the pole.
- 2.7.2 Flexible, liquid tight conduit shall be used from the solar panel to the weather head/pole cap or as instructed by the solar panel manufacturer's instructions.
- 2.7.3 The solar panel shall be affixed to an aluminum plate and bracket, adjustable at an angle of 45 – 60 degrees to facilitate adjustment for maximum solar collection and optimal battery strength.
- 2.7.4 The solar panel assembly (panel, plate and bracket) shall be secured to a pole cap mount, capable of 360-degree rotation, to facilitate adjustment for maximum solar collection and optimal battery strength.
- 2.7.5 The solar panel shall be capable of withstanding operating temperatures of -30 to 165 °F.
- 2.7.6 If an Accessible Pedestrian Signal (APS) system is called for in the contract documents, all provisions for the continuous operation of the APS will be accounted for in the solar power system.
- 2.7.7 Solar Charge Controller:**
  - 2.7.7.1 Shall automatically provide Low Voltage Disconnect (LVD) to protect diminished power batteries.
  - 2.7.7.2 Shall automatically provide Load-Reconnection once battery levels have been restored to an acceptable power level.
  - 2.7.7.3 Shall protect against and automatically recover from short circuits, overloads, reverse polarities, high temperatures, lightning and transient surges, and voltage spikes.
  - 2.7.7.4 Shall be independently replaceable of other control panel components.

**2.8 Electrical Power:**

- 2.8.1 The AC input terminals shall be equipped with a 210 J (joule) capacity power line surge suppressor. The suppressor shall have noise blanking capability.
- 2.8.2 Where required by the contract documents, or as required by the utility company, a meter shall be included.
- 2.8.3 All electrical components and wiring shall be approved to CSA or UL standards as applicable.
- 2.8.4 AC Power shall have electrical service disconnect.

**2.9 Pole Shaft:**

- 2.9.1 Shall be a standard 4.5-inch OD galvanized steel pole as per §724 with 4 bolt base plate with a 12.75-inch bolt circle.
- 2.9.2 Shall meet MUTCD height requirements.



**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

**2.10 Pole Pedestal Base:**

- 2.10.1 Shall conform to §723-15 and mount on a concrete foundation attached by four anchor 'J' bolts that are to be imbedded in a concrete foundation.
- 2.10.2 Shall meet or exceed AASHTO break-away requirements for traffic signal supports.

**2.11 Pedestrian Push Buttons:**

- 2.11.1 A piezo pushbutton shall be ADA compliant, and shall operate as normally open (n/o) circuit.

**2.12 Static Signs:**

- 2.12.1 All signs shall conform to the MUTCD and the NYS Supplement to the MUTCD.
- 2.12.2 All sign panels and plaques shall conform to the requirements of §645-2.02 of the NYS Standard Specifications.
- 2.12.3 Sign sheeting shall conform to the requirements in §645-2.02.
- 2.12.4 All sign assemblies shall use anti-vandal fasteners and tools to mount components to sign and sign to fixture.
- 2.12.5 Crossing sign assemblies shall consist of one of the following with the appropriate plaque: Pedestrian Crossing (W11-2), a School Crossing (S1-1), or a Trail Crossing (W11-15).
- 2.12.6 R10-25 shall be furnished, at least a size of 9 by 12 inches, to be mounted adjacent to and above each pedestrian pushbutton.

**3.0 CONSTRUCTION DETAILS**

- 3.1 All provisions of §645 and §680 shall apply except for all electrical wiring and as modified below.
- 3.2 Electrical and communication wires shall be run in separate conduits.
- 3.3 Prior to any fabrication or installation of any of the components of the Flashing Beacon Assembly, the Contractor shall submit detailed specifications, parts lists, manufacturer's cut sheets, instruction sheets, and wiring diagrams to the Engineer for approval at least 14 calendar days before installation.
- 3.4 The Contractor shall install and position the beacon assembly in such a manner as to optimize visibility for roadway traffic, and optimize incident light for the solar assembly, using the manufacturer's recommendations and instructions for installation.

**ITEM 680.8225XY10 - RECTANGULAR RAPID FLASHING BEACON (RRFB)**  
**ASSEMBLY**

3.5 If the Engineer determines that the unit is not functioning properly, the Contractor shall secure the services of the manufacturer's representative for installation and testing.

3.6 Where new work is to meet existing infrastructure, the Contractor's methods shall provide for neat lines, to achieve a satisfactory installation.

**4.0 METHOD OF MEASUREMENT**

This work will be measured as the number of RRFB assemblies furnished and installed in accordance with the Contract Documents, or as directed by the Engineer.

**5.0 BASIS OF PAYMENT**

5.1 The unit price bid shall include the cost of furnishing all labor, materials, and equipment necessary to satisfactorily complete the work, including the signs shown in the associated details.

5.2 Note:

X= 2 = two forward beacons,

4 = four beacons, two forward facing beacons, and two rearward facing beacons;

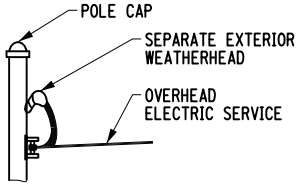
Y= 1 = AC powered (overhead supply),

2 = AC powered (underground supply),

3 = Solar powered

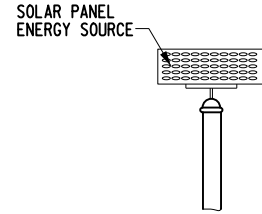
2 OR 4 - AMBER LED SIGNAL INDICATIONS

**TOP VIEW**



**OVERHEAD ELECTRICAL (120V) SERVICE DETAIL OPTION**

(SEE DETAIL ON SHEET 2 AND NOTE 9 ON SHEET 3)



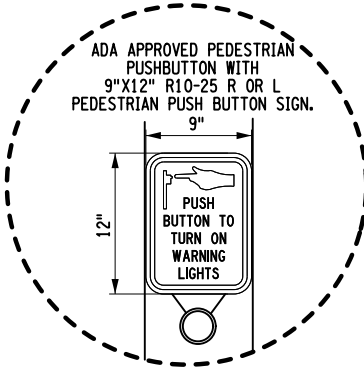
**SOLAR PANEL DETAIL OPTION**

SEE OVERHEAD ELECTRICAL (120V) SERVICE & SOLAR PANEL DETAIL OPTIONS ON THIS SHEET

W16-7P SUPPLEMENTAL SIGN (SEE NOTES 4 ON SHEET 3)

FOR ELECTRICAL (120V) SERVICE OPTIONS: METER PAN (SEE DETAIL ON SHEET 2 AND NOTE 9 ON SHEET 3)

FOR ELECTRICAL (120V) SERVICE OPTIONS: WATERTIGHT DISCONNECT BOX (SEE DETAIL ON SHEET 2 AND NOTE 9 ON SHEET 3)



ADA APPROVED PEDESTRIAN PUSHBUTTON WITH 9"X12" R10-25 R OR L PEDESTRIAN PUSH BUTTON SIGN.

GALVINIZED STEEL SIGNAL POLE (SEE NOTE 11 ON SHEET 3)

GROUND TERMINAL  
BREAKAWAY TRANSFORMER BASE (SEE NOTE 11 ON SHEET 3)



SIGN (SEE NOTES 4 & 5 ON SHEET 3)

2" MAX.  
2" MAX.

12"

POLE-MOUNTED RADIO NETWORK CONTROLLER WITH WORK PAD (SEE NOTE 8 ON SHEET 3)

6'-0" MIN. (SEE NOTE 8 ON NYSDOT STANDARD SHEET 645-03)

3'-6" MIN. 4'-0" MAX.

1'-6"

1'-6" MIN.

1'-6" MIN.

GROUNDWIRE (SEE NOTE 10 ON SHEET 3)  
NUMBER AND SIZE OF CONDUIT AS SPECIFIED ON THE PLANS

CONCRETE FOUNDATION (SEE NOTE 11 ON SHEET 3)

6'-6"

2'-6"

**FRONT VIEW**

SEE NOTES ON SHEET 3 OF 3

SHEET 1 OF 3

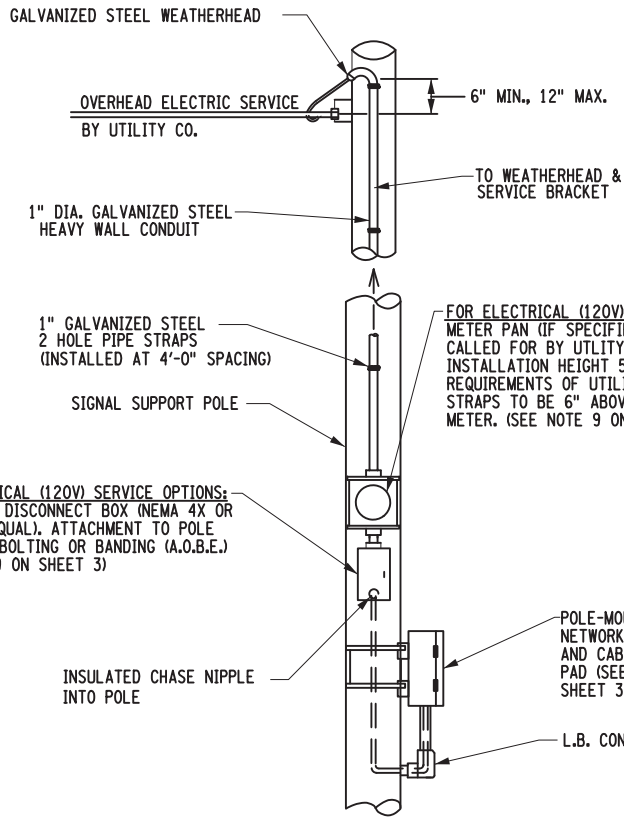
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**Department of Transportation**

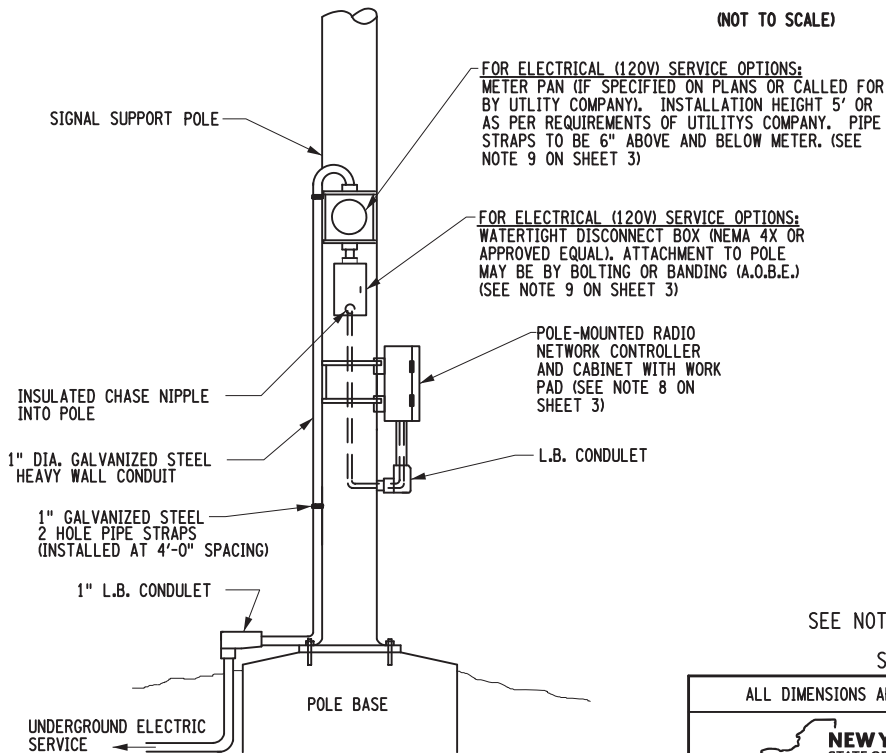
ITEM 680.8225XY10- RECTANGULAR RAPID FLASHING BEACON (RRFB) ASSEMBLY

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**OVERHEAD ELECTRICAL SERVICE DETAIL  
(POLE MOUNTED CABINET)**

(NOT TO SCALE)



**UNDERGROUND ELECTRICAL SERVICE DETAIL  
(POLE MOUNTED CABINET)**

(NOT TO SCALE)

SEE NOTES ON SHEET 3 OF 3

SHEET 2 OF 3

ALL DIMENSIONS ARE IN FT UNLESS OTHERWISE NOTED



**Department of  
Transportation**

ITEM 680.8225XY10- RECTANGULAR RAPID FLASHING BEACON (RRFB) ASSEMBLY

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NOTES:

1. NOTIFY DIG SAFELY - NEW YORK AT (800) 962-7962 PRIOR TO ANY EXCAVATION.
2. WIDTH OF SOLAR PANEL AND LED SIGNAL INDICATION ASSEMBLY SHALL NOT EXCEED THE WIDTH OF SIGN PANEL.
3. WHEN MULTIPLE UNITS ARE USED AT A LOCATION CONTRACTOR SHALL USE DIFFERENT RADIO FREQUENCIES TO AVOID COMMUNICATION ISSUES.
4. SEE CONTRACT DOCUMENTS FOR THE TYPE(S) AND LOCATION(S) OF PROPOSED RRFB ASSEMBLIES . IN THE ITEM NUMBER:

X INDICATES IF IT IS A FORWARD FACING ASSEMBLY ONLY OR FORWARD AND REARWARD FACING (BACK-TO-BACK) ASSEMBLY WHERE:

X=2 A FORWARD FACING ASSEMBLY CONSISTING OF 2 AMBER LED BEACON INDICATIONS WITH 1-W11-2 OR S1-1 OR W11-15 CROSSING SIGN AND 1-W16-7P SUPPLEMENTAL SIGN.

X=4 FOR A FORWARD AND REARWARD FACING (BACK-TO-BACK) ASSEMBLY CONSISTING OF 4 AMBER LED BEACON SIGNAL INDICATIONS (TWO FORWARD FACING AND TWO REARWARD FACING) WITH 2-W11-2 OR S1-1 OR W11-15 CROSSING SIGNS AND 2-W16-7P SUPPLEMENTAL SIGNS (ONE SET OF EACH FACING FORWARD AND REARWARD),

Y IS METHOD OF PROVIDING ELECTRICAL SERVICE WHERE:

Y=1 FOR OVERHEAD ELECTRICAL SERVICE

Y=2 FOR UNDERGROUND ELECTRICAL SERVICE.

Y=3 FOR SOLAR POWER

SEE DETAILS ON SHEET FOR ADDITIONAL REQUIREMENTS.

5. CROSSING SIGNS AND SUPPLEMENTAL PLAQUES SHALL UTILIZE FLUORESCENT YELLOW-GREEN TYPE IX SHEETING. SIGN AND PLAQUE SIZES SHALL CONFORM TO THE MUTCD. ALL SIGNS AND PLAQUES SHALL CONFORM TO THE MATERIAL REQUIREMENTS IN SECTION 645 OF THE STANDARD SPECIFICATIONS.
6. WHEN USED IN PAIRS/SET (SUCH AS ON BOTH TERMINUS POINT OF A CROSSWALK) ACTIVATION OF ONE SHALL ACTIVATE THE OTHER(S) IN THE SET/SYSTEM.
7. POLE PENETRATING MOUNTING DEVICES (RELATING TO LIGHTS, SIGNS, CABINETS, CONDUITS, CLAMPS, BUTTONS, ETC.) SHALL NOT SIGNIFICANTLY DEGRADE THE INTEGRITY OF THE SIGNAL POLE.
8. THE POLE-MOUNTED RADIO NETWORK CONTROLLER CABINET SHALL NOT INTRUDE INTO THE SIDEWALK AREA OR OBSTRUCT THE PEDESTRIAN PUSHBUTTON. THE CABINET SHALL BE MOUNTED ON THE SIDE OF THE POLE AWAY FROM APPROACHING TRAFFIC AT A HEIGHT BETWEEN 3.5-4.5 FROM THE BOTTOM OF THE CABINET TO THE FINISHED GROUND SURFACE. IN UNPAVED AREAS A CONCRETE WORK PAD SHALL BE CONSTRUCTED IN FRONT OF THE CABINET DOOR (AOBE) NOT TO EXCEED 5'X5'X4" DEEP AND SHALL ABUT AND BE FLUSH WITH THE POLE FOUNDATION. THE CABINET SHALL BE OF SUFFICIENT SIZE TO HOUSE ALL REQUIRED EQUIPMENT.
9. ELECTRICAL SERVICE MAY ALSO BE PROVIDED UNDERGROUND AND ENTER THROUGH THE BASE AS SPECIFIED ON THE PLANS. WHERE ELECTRICAL SERVICE IS PROVIDED OVERHEAD, THE POLE HEIGHT SHALL BE AS NECESSARY TO ACHIEVE MINIMUM SERVICE CABLE CLEARANCES AND/OR AVOID CONFLICTS. SEE DETAILS ON SHEET 1 & 2 FOR ADDITIONAL REQUIRMENTS.
10. SEE NOTES 3.6 & 3.7 ON STANDARD SHEET 680-04 FOR ADDITIONAL GROUNDING REQUIREMENTS.
11. THIS ASSEMBLY SHALL INCLUDE A GALVINIZED STEEL POLE WITH AN APPROVED BREAKAWAY TRANSFORMER BASE AND CONCRETE FOUNDATION MEETING ALL THE MATERIAL REQUIREMENTS OF STANDARD SPECIFICATION SECTION 680-2 AND BE SUITABLE TO HANDLE THE STATIC & DYNAMIC LOADING OF THE ASSEMBLY AS PER MANUFACTURER REQUIREMENTS. FOR FOUNDATION REINFORCEMENT, SEE STANDARD SHEET FOR TRAFFIC SIGNAL POLE FOUNDATIONS, CODE J-2.

SHEET 3 OF 3

ALL DIMENSIONS ARE IN FT UNLESS OTHERWISE NOTED



**Department of  
Transportation**

ITEM 680.8225XY10- RECTANGULAR RAPID FLASHING  
BEACON (RRFB) ASSEMBLY

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**SECTION 6 – PREVAILING WAGE**

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## WAGE RATE DETERMINATION

A. The project is public works governed by the prevailing wage rate. Each workman, laborer, or mechanic shall be paid or provided not less than the prevailing wage rate in effect at the time the work is performed. The Contractor is responsible for obtaining up to date rates schedules.

B. Contractors may obtain up to date prevailing wage rates for the project by logging on to the New York State Department of Labor Website at:

<https://applications.labor.ny.gov/wpp/showFindProject.do?method=showIt> and entering the project specific Prevailing Rate Case Number (PRC#): **2022002986**

The Owner will not be responsible for any of the Contractor's increased labor costs which result from defects in the Wage Rate Schedule, or from amendments to the Prevailing Wage Rate Schedule, whether that increase occurs before advertisement, before Bid opening, before award of the Contract, after the Contract has been let, or during construction. No change in the contract price shall be allowed to the Contractor for any such increases.



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## **SECTION 7 – SPONSOR CONTRACT AGREEMENT**

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## AGREEMENT BETWEEN OWNER AND CONTRACTOR

This AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ by and between the Village of Watkins Glen, a municipal subdivision of the State of New York, (hereinafter called OWNER or Village) and \_\_\_\_\_ (hereinafter called the CONTRACTOR).

WITNESSETH that the OWNER and CONTRACTOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

### ARTICLE 1 – WORK

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

**Watkins Glen DRI  
East 4<sup>th</sup> Street Improvements (NY Route 414)**

### ARTICLE 2 – ENGINEER

The Project has been designed by LaBella Associates, DPC who is hereinafter called ENGINEER and who is to act as OWNERS representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### ARTICLE 3 - CONTRACT TIME

- 3.1. The Work will be substantially completed on or before September 29, 2023, and completed and ready for final payment in accordance with Section 14.07 of the General Conditions on or before October 27, 2023.
- 3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize delays, expense and difficulties involved in proving the actual loss suffered by the OWNER is not completed on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Liquidated Damages assessed in accordance with the current NYSDOT Standard Specifications, Section 108-03 and/or Table 108-1 "Schedule of Liquidated Damages" included below. If Section 108-03 and or Table 108-1 are amended during the project, the amended provision shall control. The Reference to the "Commissioner of Transportation" shall be read to mean OWNER.

<b>Table 108-1 - SCHEDULE OF LIQUIDATED DAMAGES</b>		
<b>Original Total Contract Bid Price</b>		<b>Liquidated Damages per Calendar Day</b>
<b>From More Than</b>	<b>To and Including</b>	
\$0	\$100,000	\$500
\$100,000	\$500,000	\$1,000
\$500,000	\$2,000,000	\$1,500
\$2,000,000	\$5,000,000	\$2,000
\$5,000,000	\$10,000,000	\$2,500
\$10,000,000	\$20,000,000	\$4,000
\$20,000,000	-	\$7,000

**ARTICLE 4 - CONTRACT PRICE**

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 and 4.2 below:

- 4.1. for all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work time the estimated quantity of that item as indicated in the Bid Summary Forms:

TOTAL OF ALL UNIT PRICES \_\_\_\_\_ \$ \_\_\_\_\_ dollars  
*(Use words)* *(figures)*

- 4.2. As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.C of the General Conditions.

**ARTICLE 5 – PAYMENTS**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions, Applications for Payment will be processed by the ENGINEER as provided in the General Conditions.

- 5.1. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR’S Applications for Payment as recommended by the ENGINEER, on or about the 15 th day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in General Requirements.

- (a) As the work progresses in accordance with the contract and in a manner that is satisfactory to the OWNER, the OWNER hereby agrees to make payments to the CONTRACTOR therefore, based upon the proposal attached hereto and made a part hereof, as follows: The OWNER shall once in each month and as on such days as it may fix, determine the quantity of work completed and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the CONTRACTOR the monies due as determined by the ENGINEER. No monthly payment shall be rendered unless the value of the work completed equals 5% of the contract amount or \$1,000, whichever is the lesser. Semi-monthly payments may be rendered provided the value of work performed in two successive weeks is more than \$50,000 or (b)the ENGINEER deems it to be on the best interest of the OWNER to do so. The CONTRACTOR shall not hold any retainage from any Subcontractor.

- 5.1.2. When in the opinion of the ENGINEER, a CONTRACTOR has fully performed the work under the contract, the ENGINEER shall recommend to the OWNER the acceptance of work so completed. If the OWNER accepts the recommendation of the ENGINEER, he/she shall thereupon by letter notify the CONTRACTOR, with copies to the other interested parties, of such acceptance. Prior to the final acceptance of the work by the OWNER, the contract work may be inspected, accepted and approved by other agencies and/or (municipalities who will have jurisdiction of the

work after final acceptance.

- 5.2. The Village reserves the right, at any time, to modify or change the Plans or Specifications as deemed necessary, and the Agreement shall not be invalidated thereby, however;
- 5.3. If the CONTRACTOR considers that he is being required to perform extra work for which no Change Order has been issued, he shall serve Written Notice upon the Village prior to such extra work is performed. On failure to serve this Notice, all rights of the CONTRACTOR to be paid therefore shall be forfeited.
- 5.4. Upon final completion and acceptance of the work in accordance with section 14.07 of the General Conditions, the Village shall pay the remainder of the Contract Price as recommended by the ENGINEER as provided in said section 14.07.

## **ARTICLE 6 - INTEREST**

All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the statutory rate of New York State.

## **ARTICLE 7 - CONTRACTOR REPRESENTATIONS.**

In order to induce the OWNER to enter into this Agreement the CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including Addenda listed in Article 8) and other related data identified in the Bidding Documents including "technical data."
- 7.2 CONTRACTOR as visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of the General Conditions. CONTRACTOR accepts the determination set forth on paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions. CONTRACTOR acknowledges that such reports and drawing are not Contract Documents and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations test, studies and data concerning conditions (surface, subsurface, Underground Facilities) at or contiguous to the site or otherwise which may affect the cost, progress, performance, or furnishing of the Work or which relate to any aspect of

the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions, and programs incident thereto.

CONTRACTOR does not consider that any additional examinations, investigations, explorations, test, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6 CONTRACTOR has correlated the information known to the CONTRACTOR, information and observation obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to the CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 8 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between the OWNER and the CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement
- 8.2. Performance, Payment and other Bonds
- 8.3. Notice to Proceed
- 8.4. General Conditions
- 8.5. Supplementary Conditions
- 8.6. All technical specification as set forth in the Table of Contents
- 8.7. Drawings consisting of a cover sheet and sheets numbered 2 through 27, inclusive with each sheet bearing the following general title:

**Watkins Glen DRI  
East 4<sup>th</sup> Street Improvements (NY Route 414)**

- 8.8. Addenda numbers \_\_\_to\_\_\_, inclusive
- 8.9. The latest revisions of the NYS Standard Specifications maintained by the department, which are current on the date of advertisement for bids, shall be considered to be in effect.
- 8.10. The latest revisions of the NYS Standard Sheets maintained by the department, which are current on the date of advertisement for bids, shall be considered to be in effect. All pay items and work contained in the contract and any additional pay items and work encountered during the course of the contract shall be subject to the applicable standard sheet(s) unless otherwise specified in the contract documents.

- 8.11. Standard Clauses for New York State Contracts.
- 8.12. CONTRACTOR'S Bid Pages as set forth in the Bidders Checklist.
- 8.13. Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.14. State Prevailing Wage Schedules, as applicable.
- 8.15. All other documents set forth in this project manual except Supplemental Information Available to Bidders.
- 8.16. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

#### **ARTICLE 9 - MISCELLANEOUS.**

- 9.1. Terms used in this Agreement shall have the same meanings which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3. Neither the Village nor the CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents and, specifically, the CONTRACTOR shall not assign any monies due or to become due without the prior written consent of the Village
- 9.4. The Village and the CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.5. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and unenforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.6. OTHER PROVISIONS

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the OWNER, its boards, officers, employees and volunteers against any and all losses, claims, actions, demands, damages, liabilities, or expenses, including but not limited to attorney's fees and all other costs of defense, by reason of the liability imposed by law or



otherwise upon the OWNER, its boards, officers, employees and volunteers for damages because of bodily injuries, including death, at any time resulting therefrom, sustained by any person or persons, including Contractor's employees, or on account of damages to property including loss of use thereof, arising directly or indirectly from the performance of Contractor's work or from any of the acts or omissions on the part of the Contractor, its employees, agents, representatives, materialmen, suppliers, and/or subcontractors. If such indemnity is made void or otherwise impaired by any law controlling the construction thereof, such indemnity shall be deemed to conform to the indemnity permitted by law, so as to require indemnification, in whole or in part, to the fullest extent permitted by law. The OWNER and the CONTRACTOR shall notify each other in writing within thirty (30) days of any such claims or demands and shall cooperate in the defense of any such actions.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have assigned this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR, or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_(which is the Effective Date of the Agreement).

**OWNER**

**CONTRACTOR**

\_\_\_\_\_

\_\_\_\_\_

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

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

[COPORATE SEAL]

[CORPORATE SEAL]

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

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

Address for giving notices

Address for giving notices

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(If **OWNER** is a public body, attached evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

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

Agent for services of process: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(If **CONTRACTOR** is a corporation, attach evidence of authority to sign).

ACKNOWLEDGMENT OF Village

State of New York} ss  
Village of Watkins Glen} ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, as Mayor of the Village of Watkins Glen, Schuyler County, New York, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and that said \_\_\_\_\_ duly acknowledged to me that he executed the same pursuant to the power and authority vested in him by the Village of Watkins Glen, and that by his signature on the instrument he executed the instrument pursuant to the authority vested in him.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF CONTRACTOR

State of .....}ss  
County of .....}ss

On this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State personally came and appeared \_\_\_\_\_,

personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, who, being by me duly sworn, did depose and say that he / she resides at \_\_\_\_\_ and that he/ she is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he / she knows the seal of said corporation, that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he / she signed his / her name thereto by like order.

\_\_\_\_\_  
Notary Public

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**CERTIFICATE OF ATTORNEY - OWNER**

I, the undersigned

---

the duly authorized and acting legal representative of the

---

do hereby certify that I have examined the foregoing contract and the Surety Bond attached thereto and the manner of execution thereof, and that I am of the opinion that each of the aforesaid agreements has been executed by the proper representatives, and that said representatives have respectively the full power and authority to execute said agreements on behalf of the respective parties named therein, and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions and provisions thereof.

Signed: \_\_\_\_\_

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

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

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**AFFIDAVIT OF WORKERS COMPENSATION**

State of \_\_\_\_\_

SS: \_\_\_\_\_

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

\_\_\_\_\_

of \_\_\_\_\_

being duly sworn, deposes and says that he now carries or that he has applied for a Workers Compensation Policy to cover the operations, as set forth in the preceding contract, and to comply with the provisions thereof.

Signed: \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

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## **ADDENDUM A**

This is a State funded contract subject to the approval of the New York State Department of State (NYSDOS).

The low bidder will be required to complete a New York State Uniform Contracting Questionnaire, which must be approved by the NYSDOS.

Whenever local requirements differ from State requirements, the State requirements will prevail.



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**CONSTRUCTION PAYMENT BOND**

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*): Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, NY 14891

**CONTRACT**

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

**BOND**

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

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

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

\_\_\_\_\_(Seal)  
Surety's Name and Corporate Seal

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

By: \_\_\_\_\_ Signature  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

Surety under this Bond, subject to Owner's priority to use the funds for completion of the Work.

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

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

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

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

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

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

#### 15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for us in the performance of the Contract. The intent of this Bond shall be to include within limitation in the terms of "labor, materials or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

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

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

FOR INFORMATION ONLY – (*Name, Address and Telephone*) Surety Agency or Broker:

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

**CONSTRUCTION PERFORMANCE BOND**

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

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*): Village of Watkins Glen  
303 North Franklin Street  
Watkins Glen, NY 14891

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

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

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

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

\_\_\_\_\_(Seal)  
Surety's Name and Corporate Seal

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

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

5. After OWNER has terminated CONTRACTOR'S right to complete the Contract, and if SURETY elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of SURETY to OWNER shall not be greater than those of CONTRACTOR under the Contract, and the responsibilities of OWNER to SURETY shall not be greater than those of OWNER under the Contract. To the limit of the amount of this Bond, but subject to commitment by OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, SURETY is obligated without duplication for:
  - 5.1 The responsibilities of CONTRACTOR for correction of defective Work and completion of the Contract;
  - 5.2 Additional legal, design professional, and delay costs resulting from CONTRACTOR'S Default, and resulting from the actions of or failure to act of SURETY under Paragraph 3; and
  - 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of CONTRACTOR.
6. SURETY shall not be liable to OWNER or others for obligations of CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than OWNER or its heirs, executors, administrators, or successors.
7. SURETY hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after CONTRACTOR Default or within two years after CONTRACTOR ceased working or within two years after SURETY refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
9. Notice to SURETY, OWNER, or CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
11. Definitions.
  - 11.1 Balance of the Contract Price: The total amount payable by OWNER to CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to CONTRACTOR of any amounts received or to be received by OWNER in settlement of insurance or other Claims for damages to which CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of CONTRACTOR under the Contract.
  - 11.2 Contract: The agreement between OWNER and CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
  - 11.3 CONTRACTOR Default: Failure of CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

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

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

SURETY Agency or Broker:

OWNER'S Representative *(Engineer or other party)*:



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***SECTION 8 – MISCELLANEOUS***



## **GENERAL CONDITIONS**

### **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. **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.
  12. **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.
  13. **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).
  14. **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.
  15. **Contractor**—The individual or entity with whom Owner has entered into the Agreement.
  16. **Cost of the Work**—See Paragraph 11.01 for definition.
  17. **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.

18. **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.
19. **Engineer**—The individual or entity named as such in the Agreement.
20. **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.
21. **General Requirements**—Sections of Division 1 of the Specifications.
22. **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.
23. **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.
24. **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.
25. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. **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.
27. **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.
28. **Notice to Proceed**—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. **Owner**—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. **PCBs**—Polychlorinated biphenyls.
31. **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.
32. **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.
33. **Project**—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. **Project Manual**—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. **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.
36. **Resident Project Representative**—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. **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.
38. **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.
39. **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.

40. **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.
41. **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.
42. **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.
43. **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.
44. **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.
45. **Successful Bidder**—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. **Supplementary Conditions**—That part of the Contract Documents which amends or supplements these General Conditions.
47. **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.
48. **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.
49. **Unit Price Work**—Work to be paid for on the basis of unit prices.
50. **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.
51. **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 Paragraph 1.02.B through 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 Paragraph 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 therefore.
  - 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:** Reference is made to the Supplementary Conditions for identification of:

1. **Subsurface Conditions:** those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. **Physical Conditions:** 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 Paragraph 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 therefore 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 therefore 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 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 Property Insurance**

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners,



employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### **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.

- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers,

directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

**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; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their 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 Paragraph 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.

**I. 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 utility 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 Paragraphs 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.
- 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 in the Agreement.

##### **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. Ten 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 and subject to interest as provided in the Agreement.

**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.

## **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 Work not fully completed or corrected is less than the retainage stipulated in the Agreement, 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, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 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, including interest thereon. 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. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- 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. The date of termination of the mediation

shall be determined by application of the mediation rules referenced above.

- 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.

### **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.

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## **SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contracts and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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

The term used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the Standard General Conditions.

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

SC-2.01A

Amend the first sentence of paragraph 2.01A of the Standard General Conditions to read as follow:

Within fifteen (15) days of notice of award, CONTRACTOR shall deliver to OWNER with copies to each additional insured identified in the Supplementary Conditions, Certificates of Insurance (and any other evidence of insurance which OWNER or additional insured may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

And as so amended paragraph 2.01 A remains in effect.

### **ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONSL REFERENCE POINTS**

SC-4.02

Delete Paragraphs 4.02.A and 4.02.B in their entirety and insert the following:

No reports of explorations or tests of subsurface conditions at or contiguous to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

SC-4.02.A

Amend the first sentence of paragraph 4.02.A of the General Conditions to read as follows:

Reports and drawings: Reference is made to the "Supplemental Information Available to Bidders" for identifications of:

And so amended paragraph 4.02.A remains in effect.

SC-4.02.B

Amend the second sentence of paragraph 4.02.B of the General Conditions to read as follows:

Such "technical data" is identified in the Supplemental Information Available to Bidders.

And so amended paragraph 4.02.B remains in effect.

SC-4.06

Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. Not Used.

### **ARTICLE 5 – BOND AND INSURANCE**

#### **New Bond and Insurance Provisions**

SC-5

Article 5 of the General Conditions is hereby deleted in its entirety and replaced with the following provisions.

#### **SC-5.01 Performance, Payment and Other Bonds**

SC-5.01.A

CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount of at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect, at a minimum, for one year after the date when the final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

SC-5.01.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 current list of "Companies



Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended) by the U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agents authority to act.

#### SC-5.01.C

If the surety on any Bond furnished by CONTRACTOR files a petition in bankruptcy, becomes insolvent, is reasonably likely to become insolvent in the near future, 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 5.06, CONTRACTOR shall within ten days thereafter substitute another bond and surety, both of which must be acceptable to the OWNER.

#### SC-5.02 Licensed Sureties and Insurance

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.

#### SC-5.03 Certificates of Insurance

Within fifteen days of Notice of Award, CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, Certificates of Insurance (and other evidence of insurance reasonably requested by the OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with the Contract Documents. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, Certificates of Insurance (and other evidence of insurance reasonably requested by the CONTRACTOR or any additional insured) which OWNER is required to purchase and maintain in accordance with the Contract Documents.

Each Certificate of Insurance shall be endorsed to provide for 30 days notice of cancellation, non-renewal or material change to the Certificate Holder and each additional insured except where Laws and Regulations require otherwise. The endorsement shall

read: “No cancellation of or change in this policy shall become effective until after thirty (30) days notice by issuing company.”

#### SC-5.04 CONTRACTOR’s Liability Insurance

CONTRACTOR shall, at his own cost and expense, take out and maintain for the life of the project and cause his Subcontractors to obtain and maintain for the life of their subcontracts, the following insurance:

##### Commercial General Liability Insurance

#### SC-5.04.A

Commercial General Liability (CGL) with limits of insurance of not less than:

Limits of Liability

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate Limit  
(Per Project – CG 25 0311/85)  
\$2,000,000 Products/Completed Operations  
\$1,000,000 Advertising/Personal Injury  
\$10,000 Premises Medical Payments

CONTRACTOR’s CGL policy shall include the following coverage’s: Products/Completed Operations, Contractual Liability and Explosion, Collapse and Underground Damage.

OWNER and ENGINEER and the people of the State of New York, the New York Commissioner of Transportation and all employees of the Commissioner of Transportation, both officially and personally shall be included as insured on the CONTRACTOR’s CGL, using ISO Additional Insured Endorsement CG20 10 11 85 or an endorsement providing equivalent coverage to the additional insured. The CGL insurance for the additional insured’s shall be as broad as the coverage provided for the named insured CONTRACTOR. It shall apply as primary and non-contributing insurance before any insurance maintained by the additional insured’s.

CONTRACTOR shall maintain CGL coverage for itself and all additional insured’s for the duration of the project and maintain Completed Operations coverage for itself and all additional insured’s for at least 3 years after completion of the work.

Said insurance coverage required to be purchased and maintained by the Contractor under this agreement and all certificates of insurance, with the exception of Workers’ Compensation, shall list the following parties as Additional Insured Parties on a primary, non-contributory basis:

- Village of Watkins Glen, its boards, officers and employees are named as additional insured on a primary, non-contributory basis on the Contractor's insurance policy, with the exception of Workers' Compensation
- Cattaraugus County, New York
- People of the State of New York
- New York Commissioner of Transportation and employees
- LABELLA ASSOCIATES

**Automobile Liability Insurance**

SC-5.04.B

Business Automobile Liability (AL) with limits of insurance of not less than \$1,000,000, Combined Single Limit. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

OWNER and ENGINEER and the people of the State of New York shall be included as additional insured's on the CONTRACTOR's AL policy. The AL coverage for the additional insured shall apply as primary and non-contributing insurance before any insurance maintained by additional insured's

**Workers Compensation and Employers Liability Insurance**

SC-5.04.C

Workers Compensation (WC) as required by statute in the state where the project is located.

Employers Liability (EL) with limits of insurance of not less than \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.

The Policy shall include an All States coverage endorsement. Where applicable, the U.S. Longshore and Harbor workers Compensation Act Endorsement shall be attached to the policy. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy. Where applicable, the Stop Gap Endorsement shall be attached to the policy.

Proof of this coverage shall be provided on Form C-105.2, gsi-105.2, SI-12 or U-26.3.

**Commercial Umbrella Liability Insurance**

SC-5.04.D

Commercial Umbrella Liability (UL) with limits of insurance of not less than \$5,000,000

**Builder's Risk Insurance**

SC-5.04.E

CONTRACTOR shall purchase and maintain Builder's Risk Insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to a deductible no more than \$500). This Builder's Risk insurance shall:

SC 5.04.E.1

Include the interests of OWNER, CONTRACTOR, SUBCONTRACTORS, ENGINEER and ENGINEER's consultants and any other person or entities identified in the Supplementary Conditions each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC 5.04.E.2

Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least insure for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism, malicious mischief, water damage, earthquake, collapse, debris removal and demolition occasioned by enforcement of Laws and Regulations and such other perils as may be specifically required in the Supplementary Conditions.

SC 5.04.E.3

Include expenses insured in the repair or replacement of any insured property (including, but not limited to, fees and charges of the ENGINEER and architect).

SC 5.04.E.4

Cover Material and equipment in transit for incorporation in the Work or stored at the site or at another location provided that such materials and equipment have been included in an Application for Payment recommended by the ENGINEER.

SC 5.04.E.5

Be maintained in effect until final payment is made unless otherwise agreed to in writing by the OWNER, CONTRACTOR, and ENGINEER with thirty days written notice to each insured or additional insured to whom Certificate of Insurance has been issued.

## **Pollution Liability Coverage**

### SC-5.04.F

Pollution Legal Liability (PLL) with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. The maximum deductible shall not exceed \$25,000.

CONTRACTORS's PLL policy shall include coverage for damage to soil, surface water or plant and animal caused by the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or containment, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.

OWNER and ENGINEER shall be included as insured's on the CONTRACTOR's PLL, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the additional insured's. The PLL insurance for the additional insured's shall be as broad as the coverage provided for the named insured CONTRACTOR. It shall apply as primary and non-contributing insurance before any insurance maintained by the additional insured's.

## **Disability Benefits**

### SC-5.04.G

Where and as required by law, CONTRACTOR will provide disability benefits during the duration of the contract for the employees to be covered.

Proof of this coverage shall be provided on Form D-120, DB-820/829 or DB-155

## **Waiver of Subrogation**

### SC-5.05

CONTRACTOR waives all rights against OWNER and ENGINEER and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the CGL, UL, AL, WC, PLL, and EL insurance maintained per the requirements set forth above.

All of the above insurance requirements shall be provided by an insurance carriers licensed to do business in the state where the project is located and

have an A.M. Best Rating of A- or better determined by the most recent A.M. Best Publication.

## **Required Insurance Carriers**

### SC-5.06

All of the above insurance requirements shall be provided by an insurance carrier licensed to business in the state where the project is located and have an A.M. Best Rating of A- or better as determined by the most recent A.M. Best Publication.

## **Effect of Insurance Coverage; Claims in Excess of Coverage**

### SC-5.07.A

Upon failure of the CONTRACTOR to furnish, deliver and maintain such insurance as required above, this Contract may, at the election of the OWNER, be forthwith declared suspended, discontinued or terminated. Failure of the CONTRACTOR to take out or maintain or the taking out or maintenance of any required insurance, shall not relieve the CONTRACTOR's liability under the contract nor shall the insurance requirements be construed to the limit the obligations of indemnification or contribution.

### SC5.07.B

In the event that claims in excess of the amounts provided by insurance are filed by reason of any operations under the Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due to or become due the CONTRACTOR until such time as the CONTRACTOR shall furnish additional security covering such claims as may be determined by the OWNER.

## **Waiver of Rights**

### SC-5.08

Amend the first paragraph of 5.07 A of the Standard General Conditions to read as follows:

Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.04 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.

#### **Receipt and Application of Insurance Proceeds**

##### SC-5.09.A

Any insured loss under the policies of insurance required by Paragraph 5.04 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.

##### SC5.09.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 fifteen 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 proper performance of such duties.

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

##### SC-5.10

If either party (OWNER and 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 ten days after receipt of the certificates (or other evidence requested) required by paragraph

2.7. 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.

#### **Partial Utilization – Property Insurance**

##### SC-5.11.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 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 – CONTRACTORS RESPONSIBILITIES**

##### SC-6.01

Add a new paragraph immediately after Paragraph 6.01.B:

##### SC-6.01C

CONTRACTOR shall observe recognized safety standards, such as those of the National Fire Protection Association and the American National Standards Institute, ensure safety on the site, through safe working practices and an effective safety management program, maintain safe equipment and material storage and employ good site housekeeping and fire prevention practices, establish a safe traffic flow for pedestrians and vehicles and employ measures to prevent falling or collapsing items in the vicinity, and require that CONTRACTORS make their SUB- CONTRACTORS follow the same safe work practices.

#### SC-6.10

Delete paragraph 6.10.A in its entirety and substitute the following:

The Owner is exempt from payment of sales and compensating use taxes of the State of New York and of cities and counties thereof on all materials and supplies sold to the OWNER pursuant to the provisions of the Contract. Those tools, machinery, equipment or other property leased by or to the CONTRACTOR or a SUBCONTRACTOR, or supplies and materials which even though they are consumed, are not incorporated into the completed project are not tax exempt. The CONTRACTOR and his SUBCONTRACTORS shall be responsible to pay all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, and equipment, or other property and upon all such unincorporated supplies and materials.

#### SC-6.17 Shop Drawings and Samples

Reviews of multiple resubmissions of Shop Drawings and other submittals may increase Project costs. To mitigate this, the following language may be used:

Add the following new paragraphs immediately after Paragraph 6.17.E:

#### SC-6.17.F

Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.

#### SC-6.17.G

In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

### **ARTICLE 9 - ENGINEERS STATUS DURING CONSTRUCTION**

#### SC-9.03 Project Representative

Add the following new paragraphs immediately after Paragraph 9.03.A:

#### SC-9.03.B

The Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The RPR shall:

1. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
2. **Conferences and Meetings:** Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. **Liaison:**
  - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
4. **Interpretation of Contract Documents:** Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

**5. Shop Drawings and Samples:**

a. Record date of receipt of Samples and approved Shop Drawings.

b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

**6. Modifications:** Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

**7. Review of Work and Rejection of Defective Work:**

a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

**8. Inspections, Tests, and System Startups:**

a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

**9. Records:**

a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

b. Maintain records for use in preparing Project documentation.

**10. Reports:**

a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.

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

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

**13. Completion:**

a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor’s superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

**ARTICLE 11 - COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

Add the following:

The Contract Price may only be changed by a Change Order or by a Written Amendment

**ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

Add the following:

The Contract Price may only be changed by a Change Order or by a Written Amendment

**ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

SC-14.02 C

Amend paragraph 14.02 C of the Standard General Conditions to read as follows:

OWNER shall promptly pay the CONTRACTOR’s Application for Payment. Where the OWNER is other than the Village of New York, the term “promptly pay” shall mean payment within thirty days, excluding legal holidays, of receipt of an Application for Payment, unless such Application is not approved. Notwithstanding the foregoing, where the OWNER is other than the Village of New York and is a municipal corporation which requires an elected official to approve progress payments, “promptly pay” shall mean payment within forty-five days excluding legal holidays, of receipt of an Application for Payment.

And so amended, paragraph 14.02 C

**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

SC-15.02.A

Add additional subparagraphs to paragraphs 15.02 A of the General Conditions as follows:

SC-15.02.A.5

If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

SC-15.02 A.6

If a petition is filed against any CONTRACTOR under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

SC-15.02 A.7

If CONTRACTOR makes a general assignment for the benefit of creditors;

SC-15.02 A.8

If a trustee, receiver, custodian, or agent of CONTRACTOR is appointed under applicable law or under contract, who’s appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such

property for the benefit of the CONTRACTORS  
creditors;

SC-15.02 A.9

If CONTRACTOR admits in writing an inability to  
pay its debts generally as they become due.

**ARTICLE 16 – DISPUTE RESOLUTION**

SC -16 Delete Article 16 of the Standard General  
Conditions in its entirety.



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# SUBMITTAL COVER

(Attach to each submittal)

#
Submittal No.

Contractor: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Phone / Fax: ( ) \_\_\_\_\_ ( ) \_\_\_\_\_

Engineer Project Number: \_\_\_\_\_  
 Contractors Number: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Date returned: \_\_\_\_\_

<p><b>TYPE OF SUBMITTAL</b> (Check one)</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Product Data</td> <td><input type="checkbox"/> Color Selection</td> <td><input type="checkbox"/> O&amp;M Manual</td> </tr> <tr> <td><input type="checkbox"/> Shop Drawings</td> <td><input type="checkbox"/> Sample</td> <td><input type="checkbox"/> Record Document</td> </tr> <tr> <td><input type="checkbox"/> Other</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table> <p><b>SUBSTITUTION</b>                      <b>YES</b>                      <b>NO</b>          See General Conditions</p> <p><b>PRODUCT IDENTIFICATION</b></p> <p>Specification Section No.: _____          Contract Dwg. No.: _____          Product Name: _____          Part/Paragraph: _____          Detail Reference: _____          Manufacturer: _____</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Product Data	<input type="checkbox"/> Color Selection	<input type="checkbox"/> O&M Manual	<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Sample	<input type="checkbox"/> Record Document	<input type="checkbox"/> Other	<input type="checkbox"/>	<input type="checkbox"/>	<p><b>DATE OF SUBMITTAL:</b> _____</p> <p><b>RESUBMITTED:</b> _____</p> <p><b>NUMBER OF ATTACHED:</b> _____</p> <p><b>CONTRACTOR APPROVAL</b></p> <p>Identify that this submittal has been reviewed and approved by the Contractor in accordance with the General Conditions</p> <p>By: _____ Date: _____</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											
<input type="checkbox"/> Product Data	<input type="checkbox"/> Color Selection	<input type="checkbox"/> O&M Manual											
<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Sample	<input type="checkbox"/> Record Document											
<input type="checkbox"/> Other	<input type="checkbox"/>	<input type="checkbox"/>											

<b>DEVIATION FROM CONTRACT DOCUMENTS:</b>

<b>CONTRACTOR COMMENTS:</b>

<p><b>FOR USE BY LABELLA ASSOCIATES SHOP DRAWING</b></p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> No Exception Taken</td> <td><input type="checkbox"/> Revise &amp; Resubmit</td> </tr> <tr> <td><input type="checkbox"/> Furnish as Corrected</td> <td><input type="checkbox"/> Rejected</td> </tr> </table> <p>Corrections or comments made on the shop drawings during this review do not relieve the Contractor from compliance with the requirements of the drawings and specifications. This check is only for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor is responsible for: confirming and correlating all quantities and dimensions; selecting fabrication processes and techniques of construction; coordinating his work with that of all other trades; and performing his work in a safe satisfactory manner.</p> <p><b>LABELLA ASSOCIATES</b></p> <p>Date: _____ By: _____</p>	<input type="checkbox"/> No Exception Taken	<input type="checkbox"/> Revise & Resubmit	<input type="checkbox"/> Furnish as Corrected	<input type="checkbox"/> Rejected	<p><b>ENGINEER'S COMMENTS:</b></p> <div style="border: 1px solid black; height: 80px; margin-bottom: 10px;"></div> <p><b>Received Stamp</b></p>
<input type="checkbox"/> No Exception Taken	<input type="checkbox"/> Revise & Resubmit				
<input type="checkbox"/> Furnish as Corrected	<input type="checkbox"/> Rejected				



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# Change Order

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

Date of Issuance: \_\_\_\_\_ Effective Date: \_\_\_\_\_

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

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description:

**Attachments (list documents supporting change):**

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$ \_\_\_\_\_

[Increase] [Decrease] from previously approved  
Change Orders No. \_\_\_\_\_ to No. \_\_\_\_\_:

\$ \_\_\_\_\_

Contract Price prior to this Change Order:

\$ \_\_\_\_\_

[Increase] [Decrease] of this Change Order:

\$ \_\_\_\_\_

Contract Price incorporating this Change Order:

\$ \_\_\_\_\_

**CHANGE IN CONTRACT TIMES:**

Original Contract Times:  Working days  Calendar days

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

[Increase] [Decrease] from previously approved Change Orders  
No. \_\_\_\_\_ to No. \_\_\_\_\_:

Substantial completion (days): \_\_\_\_\_

Ready for final payment (days): \_\_\_\_\_

Contract Times prior to this Change Order:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

Contract Times with all approved Change Orders:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

RECOMMENDED:

By: \_\_\_\_\_  
Engineer (Authorized Signature)

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

Approved by Funding Agency (if applicable):

ACCEPTED:

By: \_\_\_\_\_  
Owner (Authorized Signature)

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

ACCEPTED:

By: \_\_\_\_\_  
Contractor (Authorized Signature)

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

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

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# Notice of Award

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

Project: \_\_\_\_\_

Owner: \_\_\_\_\_

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

Contract: \_\_\_\_\_

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

Bidder: \_\_\_\_\_

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

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

*[Indicate total Work, alternates, or sections of Work awarded.]*

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

*[Insert appropriate data if unit prices are used. Change language for cost-plus contracts.]*

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

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

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

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

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

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

\_\_\_\_\_  
Owner  
By: \_\_\_\_\_ Authorized Signature

\_\_\_\_\_  
Title

Copy to Engineer

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# Notice to Proceed

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

Project: \_\_\_\_\_

Owner: \_\_\_\_\_

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

Contract: \_\_\_\_\_

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

Contractor: \_\_\_\_\_

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

You are notified that the Contract Times under the above Contract will commence to run on \_\_\_\_\_. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement, the date of Substantial Completion is \_\_\_\_\_, and the date of readiness for final payment is \_\_\_\_\_ [(or) the number of days to achieve Substantial Completion is \_\_\_\_\_, and the number of days to achieve readiness for final payment is \_].

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

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

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

\_\_\_\_\_

Owner

Given by:

\_\_\_\_\_

Authorized Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

Copy to Engineer

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