



**IMU Board of Trustees
May 12, 2014
City Hall Council Chambers
5:30 p.m.**

Agenda

1. Roll Call
2. Consent
 - A. Claims
 - B. Minutes
 - C. 2011 Hwy 65/69 Underground Conversion Project - Service Reconnection Contract Change Order #1
 - D. Streetlights on The Square
3. Reports
 - A. General Manager
 - B. Chairperson
 - C. Financials
 - D. IMU Partners
4. 2014 W. Hwy 92 Transmission Relocation Project
 - A. Approval of Addendum to IDOT contract
 - B. Consider Contract with Vanderpool Construction for Demolition & Right of Way Clearing
5. 2014 Head Tank Aerator Assembly Replacement Project
 - A. Approval of Contract & Bond
 - B. Any other items thereto
6. Review of Economic Development Programs
 - A. Consider Amendments to Revolving Loan Fund

- B. Revolving Loan Fund Committee
- 7. Discuss Cost of Energy Adjustment Considerations
- 8. Other Business
- 9. Adjourn

IMU Regular Downstairs
Meeting Date: 05/12/2014

2. A.

Information

Subject

Claims

Information

The May 5, 2014 Claims List was distributed last week.

Financial Impact

N/A

Staff Recommendation

IMU Regular Downstairs
Meeting Date: 05/12/2014

2. B.

Information

Subject

Minutes

Information

Minutes of the 04/28/14 meeting are attached.

Financial Impact

N/A

Staff Recommendation

Attachments

Minutes

BOARD OF TRUSTEE MINUTES
REGULAR SESSION – APRIL 28, 2014

The Board of Trustees met in regular session at 5:30 p.m. on April 28, 2014 in the City Hall Council Chambers. Chairperson Eric Vander Linden called the meeting to order and on roll call the following members were present: Heather Hulen, Grant Johnson, Pat Reding and Eric Vander Linden. Absent: Bob Lester.

The consent agenda consisting of the following was approved on a motion by Reding and seconded by Johnson. Question was called for and on voice vote the Vice Chairperson declared the motion carried unanimously.

April 21, 2014 claims

April 14 and April 21, 2014 minutes

Amounts to be forwarded to the State Offset Program \$20,913.08 (electric) and \$5,165.68 (water)

Chris Longer, Program Coordinator, presented highlights of the Reliable Public Power Provider Award report which IMU received a Platinum-level designation.

The March 2014 Treasurer's Report was approved on a motion by Reding and seconded by Hulen. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

Arlen Schrum, Shull and Co., presented the FY 2013 Annual Report. A motion was made by Johnson and seconded by Reding to approve the FY 2013 Annual Report. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

Chairperson Vander Linden discussed holding both Board of Trustee meetings in the City Hall Council Chambers which will broadcast. General Manager Todd Kielkopf will meet with Mayor Kelly Shaw to set up joint meetings with the City Council.

The following change orders for the 2014 West Highway 92 Transmission Relocation Project were approved on a motion by Johnson and seconded by Hulen. Question was called for and on voice vote the Chairperson declared the motion carried unanimously.

- Change order #3 – a deduct of \$6,750 for changing the route line
- Change order #4 – an increase of \$28,472 change in anticipated construction date from March 1, 2014 to May 1, 2014-due to changes in availability of manpower from the time Michels was originally going to construct this project-will have increased number of hours/week to retain manpower

The Board discussed the Streetlights on The Square. Staff issued new specifications for a plain black steel pole with a decorative arm which brought the total project cost to \$57,659.18. The Board discussed the base of the steel pole which would be a decorative shell for a total cost of \$9,750. It was the consensus of the Board to present this option to the Keep Indianola Beautiful committee for a possible fund raiser for them to purchase the decorative shell.

Continued on Page 114

BOARD OF TRUSTEE MINUTES
REGULAR SESSION – APRIL 28, 2014 (Continued)

Meeting adjourned on a motion by Reding and seconded by Hulen.

Eric Vander Linden, Chairperson

Diana Bowlin, City Clerk

Information

Subject

2011 Hwy 65/69 Underground Conversion Project - Service Reconnection Contract Change Order #1

Information

P&E is recommending staff/contractor's identified need to replace a blower motor at a customer's premise. This type of work is being done as a result of the voltage change from 4.160 kV to 13.2 kV inherent in this project. It was anticipated that not all of the motors impacted were identified in 2011 when designing/bidding the project.

Change Order #1 in the amount of \$1,024 is attached and the new contract amount is \$58,306.40.

Financial Impact

N/A

Staff Recommendation

Attachments

Change Order



Allan R. Powers, P.E. Richard D. Kline, P.E.
Timothy G. Ernst, P.E.

245 S. 5th St., PO Box 620, Carlisle, IA 50047
p.515-989-3083 f.515-989-3138 pe@peengr.com

CHANGE ORDER NO. 1

Owner: Indianola Municipal Utilities
Contractor: Vanderpool Plumbing and Heating Inc
2011 Hwy 65/69 Underground Conversion Project, Service
Project: Reconnection Contract
Date: May 8, 2014

Original Contract Amount	\$	57,282.40
Previous Change Order Adjustments	\$	-
Amount of this Change Order	\$	1,024.00
Current Value of Contract	\$	58,306.40

Items included in this Change Order

Item	Description	Amount
1	Add 2 ea 2.0 kVA booster transformers on air blower motor circuit at the car wash located at 504 N. Jefferson Way.	\$ 1,024.00

Total Value of Change Order (not including tax) \$ 1,024.00

Recommended for Approval

Allan Powers, PE
P & E Engineering Co.

Date 5/8/2014

Approved

For Indianola Municipal Utilities

Date _____

Accepted by Contractor

For Vanderpool Plumbing and Heating Inc

Date _____

Subject: imu locat #1189 car wash
From: Vanderpool Plumbing and Heating <joeanddanpool@gmail.com>
To: peengr@peengr.com

al

bob says i need change order for #1189 to add big blower motor.

add two t-1-11685 acme 2.0 kva buck n boost transformers

at \$416 each

=

\$832.00

labor &
material

\$192.00

\$1024.00

plus tax

thanks joe v

Information

Subject

Streetlights on The Square

Information

IMU staff met with the Keep Indianola Beautiful Committee (which includes Parks & Rec staff) to discuss the proposed project.

The recommendation is to purchase 13 streetlight poles without the decorative clam shell base from Millerbernd Manufacturing as and 21 Holophane LED luminarie as distributed by RESCO in an amount not to exceed \$61,000 plus shipping.

Staff will order materials after July 1 for a fall 2014 installation, with a goal of having the project completed by Nov. 1 so street signage is complete by mid-November.

Financial Impact

N/A

Staff Recommendation

Information

Subject

Administrative News Items

Information

News Items for the week are attached.

Financial Impact

N/A

Staff Recommendation

Attachments

News Items

NEWS ITEMS

TO: IMU Trustees
FROM: IMU Administrative Staff
DATE: May 9, 2014

- 1. Storm Damage:** Damage from Thursday night's storm was minimal inside Indianola. However a 69kV pole near Patterson (not one scheduled for removal) snapped causing the 69kV line to be down overnight. Michels was dispatched to replace the pole and reattach the 69kV line & MEC distribution lines since they had crews & equipment in the area for the construction project.
- 2. Cross-State Air Pollution Ruling:** The U.S. Supreme Court ruled that the EPA can indeed impose and enforce new cross-state air pollution standards on U.S. utilities. According to S&P (bond rating service), older coal-fired generation facilities in 28 states are most at risk. Some utilities have been waiting for this ruling before firming up decommissioning plans, so capacity forecasts, already tight for 2016+, may be revised lower next year.
- 3. ICAP Renewal:** The renewal quote indicates a stable premium for auto/general liability/property insurance for FY 2015. An alternate quote that saves \$30,000 per year is available for increasing the deductible from \$10,000 to \$30,000. Given the low claims event history (few events at a high dollar amount) and the availability of insurance & other reserves for smaller events, it appears to be cost effective over the long run. This is the direction staff will pursue unless otherwise commented on, with Trustee action to approve the policy in June.
- 4. MCG/Signups:** MCG reports continued high signups at the multi-dwelling units where service was made available via the western overhead line extension. Currently, almost 50% of the units have MCG service installed vs. Mediacom, Qwest DSL, or no service at all. The investment in the line & building equipment will have a shorter than normal payback period even if churn rates are higher than normal over the next year. Also, MCG service will soon be installed at the SportsPage, providing more exposure opportunities when local advertising is available.
- 5. Howard Street Extension:** IMU staff is assembling quotes to extend IMU Network Services to the Howard St. electric conversion area. IMU would primarily pull and splice fiber currently in inventory (leftover from recent projects), into the existing conduit and tie into other cabinets where necessary. Only one new switching cabinet would be installed. Once costs are known, the project could proceed in June & July. Much more funds are budgeted for the project (\$100,000) than what will likely be necessary (less than \$50,000). This area was identified as the next logical and lowest-cost per customer extension since the cost for the conduit has already been incurred.
- 6. Country Club Substation Property:** The old lot & building north of the driving range is now for sale by IMU. The plan is to first determine interest and then set a minimum price when needed. An appraisal may or may not be necessary given few likely uses for the lot.

Information

Subject

IMU Partners

Information

Attached is a summary on how the IMU Partners program intends to leverage the value of the IMU Network Services. Components of this multifaceted approach were first presented to Trustees in the fall of 2011 and updated periodically since.

A key aspect is how synergies are attained by combining the efforts of different groups around a core of several specific public purposes, broadly defined within the IMU Partners 28E. These purposes include increasing IMU's retail telecom lease revenue, providing competitive advantages for IMU & local businesses, promoting both IMU and broadband use through community engagement, and enhancing the growth of local businesses & forming new tech ventures within the metro ecosystem.

An example is that coordinating local support of STEM activities can result in local video content produced by students, which in turn can be combined with Chamber of Commerce infomercials about community events to form Indianola's first local commercial TV channel. Content can also include self-promotion about IMU's energy efficiency programs, renewable energy, underground conversion projects, and the benefits of public power.

MCG will partner to have that channel both in their TV channel lineup and also available as an internet-based channel available to all citizens, regardless of their access to the IMU network. Content can be developed through leveraging the combination of IMU Partner dues, local sponsors, budgeted funds in the IMU Communications Utility & other marketing funds, and in-kind donations. Efficiencies are gained by commonly marketing & administering these activities.

Taking the concept further, students (including those at the high school) can then work on STEM-related Emerge team ventures, possibly for college credit. Those ventures can in turn use the high bandwidth capacity of the IMU network with MCG service to test market ideas that solve problems and raise capital for new & existing local businesses. It can become a sustainable flow of financial activity and growth opportunities.

As an update:

1. MCG, through Re:Sourceful Communications with IMU staff guidance, launched a new campaign this week to promote use of broadband services. Doug Pals will be helping tell the IMU Partners story in future marketing efforts.
2. The IMU Partners group is having its first meeting on 5/14 to formalize, set direction, and discuss a proposed sponsorship/dues structure. The group will be requesting an initial appropriation (of budgeted funds) from IMU Trustees at the 5/27 Trustee meeting so partnering groups can begin making & implementing plans over the summer. IMU Trustees would then receive periodic reports on use of those funds & progress.
3. IMU & IDA staff have held meetings with potential partners on topics surrounding a fall 2014 event that would center on Indianola's technology efforts in our community and interactivity with the metro tech ecosystem. The West Des Moines Incubator would cross-promote the event with IMU Partners through Simpson's presence there. Simpson College, Indianola Chamber members, the

high school STEM programs and Emerge ventures' activities could also be highlighted. Having this type of event would focus efforts & attract participation.

4. An initial meeting of a "Technology Integration" working group was held this week that will be focusing to guide efforts to support for STEM activities into IMU Partners. The HyperStream and "Studio I" programs at the high school are being targeted initially. Discussion was also held about how support for those programs could be showcased via partnering with athletic-related activities also in need of access to technology.
5. The IMU Partners license to use the Emerge Hub platform will be implemented by the IDA within Indianola and by Simpson College on-campus. There will be a joint Steering Committee that will help both efforts coordinate so students have opportunities with Indianola businesses/mentors and Indianola businesses/mentors have access to students. Also, the Emerge@Simpson moved into an impressive new space in Dunn Library. Last, there is now interest by 3 local technology entrepreneurs (Jason Cross, Jason Trotter, and Mike Vesey) to explore how they can become active and form venture teams.
6. The idea of a local center is attractive, however it is increasingly apparent that it will be difficult to remain a priority over the rest of this calendar year given other funding needs and political concerns. The first priority is the Founder's Board fund, now established at Simpson College, comprising of those contributing \$5,000 in cash towards the first \$150,000 (includes those that gave the first \$60,000 already raised) that extends the project through December 31, 2014. A similar program is being formed to attract in-kind investments by professionals where Emerge needs internal services, such as legal, financial & marketing, in order to raise funds & launch franchises. Franchise discussions are being actively held with 4 groups, which would help sustain the program in 2015.

Financial Impact

N/A

Staff Recommendation

Attachments

IMU Partners Draft Summary

INDIANOLA MUNICIPAL UTILITIES

LEVERAGING THE VALUE OF COMMUNITY BROADBAND

Indianola, Iowa is a city of 15,000 people located fifteen minutes south of the Des Moines metro. Indianola is a vibrant, forward thinking community in which to innovate with access to a state-of-the-art fiber optic network, an excellent education system and lifestyle amenities.

Indianola Municipal Utilities is the proprietor of central Iowa's largest locally-owned and managed fiber-to-the premise network. Interconnections between regional wholesale providers at local points of presence bring ample capacity and redundancy to Indianola customers. IMU has the ability to lease dark fiber and extend the network at bandwidth levels to meet customers' needs. MCG of Oskaloosa is a licensed network services partner that delivers state-of-the-art telecom and broadband services to commercial and residential customers via IMU's fiber network.

IMU's Partners Program is drawing other advanced retail services, such as cloud storage, virtualization, media content delivery, mobile platforms and more. This collaborative partnership lowers the cost of market entry which is attractive to new partners, all the while promoting the network's ongoing deployment.

Over the past two years, IMU has led the effort to form an assessment team that worked together to apply for and receive Iowa's first Certified Connected Community designation under the Connect Iowa program. This partnership team continues to lead ongoing efforts to promote technology access as a key pillar to our community's development strategy.

IMU is also taking part in the initiative to improve the flow of tech-oriented ideas and opportunities between Indianola, the metro and Ames. The first milestone was opening the EMERGE@Simpson College program, which brings students and metro-area tech entrepreneurs together to nurture business concepts and work on technology startups in various phases of development.

IMU's mission is to provide our community with essential services that put the customer first in terms of reliability and value. Adding IMU Network Services and our collaborative programs places Indianola atop the list of Iowa cities to innovate over the next several decades. That innovation is being spurred by converging connectivity, our business community and entrepreneurial spirit to position Indianola as a destination location for thriving in the modern economy.

Find out more information at <http://www.i-m-u.com/network-services/partners-program.aspx>

THE VALUE OF COMMUNITY BROADBAND



IMU and MCG partner to provide world-class broadband services on central Iowa's largest fiber-to-the-premise network.

A common goal is to promote the use of these broadband services and to maintain community support for expanding IMU's network over the next decade. This involves marketing collaboration and cross-promotion activities, including defining the multifaceted value of the network to Indianola and IMU customers.

Developing this sense of local investment helps drive new sales and reduces customer churn rates.



The fiber network partnership brings an opportunity to attract providers of auxiliary data & video services such as home security, utility management, local commercials on national TV shows, and local TV channels.

These new services are valuable economic tools by helping local businesses better engage with local customers, using video content to promote local events, and informing citizens on local issues.

This wider array of services provides competitive advantages for all. There is much potential for synergy between service providers, community engagement efforts, and Emerge.



Indianola has many organizations able to promote broadband use and adoption by collaborating on community outreach programs.

Examples include-

- Improving Indianola's image as an integrated metro technology destination to attract new businesses, partners, and services as the "Carver Connection" initiative
- Sponsoring STEM activities such as the local HyperStream program and "Studio I"
- Encouraging digital literacy at the Indianola Library and Activity Center

Community engagement develops visibility to customers of all services and the potential for student-produced video content that benefits Indianola.



IMU is collaborating with Simpson College and others to enhance the growth of local businesses & form new ventures. The Emerge project consists of-

- A license to a regional incubator-in-a-box virtual platform in order to attract ideas, mentors, and financial capital to Indianola
- On-campus college programs to engage students with ventures and integrate them into the metro economy
- Developing a proposal for a local center where ideas, ventures, and opportunities are refined and grow

LEVERAGING THE COMMUNITY AS IMU PARTNERS

DRAFT

INDIANOLA MUNICIPAL UTILITIES



Promote the use of these broadband services and to maintain community support for expanding IMU's network over the next decade:

- IMU – Todd Kielkopf, Chris Longer, Chelle Klootwyk
- MCG – Frank Hansen, Mark Falck, Eddie Pearson
- Contracted – Doug Pals, Re:Sourceful Communications



Attract providers of auxiliary data & video services:



- IMU Partners Administration – Chris Longer, IMU
- PoP and Service Provider/Video content development – Todd Kielkopf, Mike Metcalf, Frank Hansen, Chris Longer, Chelle Klootwyk, Indianola Chamber of Commerce
- IMU Partners Members Council recruitment – IDA Board, Jerry Kelley, Chelle Klootwyk, Chris Longer



Promote broadband use and adoption by collaborating on community outreach programs:

- Carver Connection Committee – Chelle Klootwyk, Chris Longer, Todd Kielkopf, Jerry Kelley/IDA Board members, Indianola Chamber of Commerce staff, Simpson College staff, West Des Moines Incubator staff, Iowa State University staff
- IDA Members Council Indianola Tech Integration Committee – Todd Kielkopf, Jason Cross (Nolasoft), Jason Trotter (Progressive Intelligence Technologies), Mike Vesey (IntegriVault), Drew Gocken (formerly of DMACC), teachers (2), Jerry Kelley
- ID Members Council Digital Literacy – Indianola Library staff & Friends of the Indianola Library (TBD), Indianola Schools (TBD), and IMU (TBD)



**SIMPSON
COLLEGE**

Enhance the growth of local businesses & forming new ventures:

- Hub Platform capacities –
 - Founders Board (currently 12, seeking 18 more)
 - Professional Partners (Catchwind, Meidh, others TBD)
 - Franchise Development – Chris Draper
 - Alternative Platform Use Licenses – Todd Kielkopf, Chris Draper, Jerry Kelley, Joe Vande Kieft
- Indianola EmERGE Hub license utilization –
 - EmERGE @ The IDA – Jerry Kelley, IDA Board/committees
 - EmERGE @ Simpson College – Dean (Steve Griffith), Steering Committee (7), Program Director (Chris Draper), Professors (4), Development/Marketing/Recruitment staff
 - Advisors & Students (50+ thru end of term)
 - Ventures (27)
 - Mentors in Residence Program – Steve Griffith, Jerry Kelley
 - WCEDC integration – Todd Kielkopf, Hollie Askey
 - Metro Affiliations/integration – West Des Moines Incubator staff, Iowa Startup Accelerator staff, Iowa Innovation Corp. staff/VentureNet, Chris Draper
- EmERGE Center –
 - Jerry Kelley, Todd Kielkopf, Warren Co. Board/staff, USDA RD/staff

Information

Subject

2014 W. Hwy 92 Transmission Relocation Project

Information

P&E Engineering prepared the attached memo recommending adoption of the following two agenda items. These will allow the project to proceed in a timely and efficient manner for all parties involved.

Financial Impact

N/A

Staff Recommendation

Attachments

P&E Memo



Allan R. Powers, P.E. Richard D. Kline, P.E.
Timothy G. Ernst, P.E.

245 S. 5th St., PO Box 620, Carlisle, IA 50047
p.515-989-3083 f.515-989-3138 pe@peengr.com

May 8, 2014

Mr. Todd Keilkopf
Indianola Municipal Utilities
PO Box 356
Indianola, Iowa 50125

Dear Todd,

The new right of way that has been acquired by the DOT for the Hwy 92 widening project must be cleared before relocation of the IMU 69 kV line can be started. This clearing work was to be completed by the DOT by the middle of March, but has been delayed until the fall of 2014. The IMU 69 kV line contractor (Michels Power) is now completing the I-35 relocation work and would like to start work on the Hwy 92 project within the next two weeks.

The DOT asked IMU to perform the clearing work for them to expedite the schedule. This would allow the IMU contractor to proceed with the 69 kV relocation work, and would also allow other utilities to complete their relocation work during the 2014 construction season. The DOT agreed that IMU could retain a contractor on a time and expense basis under a maximum price contract to complete the clearing work, and that the DOT would reimburse IMU for all costs related to the clearing contract.

I prepared the attached contract including the scope of work and obtained a proposal from Vanderpool Construction for the work. This proposal was submitted to and accepted by the DOT. The DOT then prepared the attached addendum to the previously signed reimbursement agreement to cover the cost of the clearing contract.

I recommend that IMU approve the Contract with Vanderpool Construction and the DOT reimbursement agreement addendum. This will allow the IMU 69 kV line relocation contractor to start work immediately and will avoid unnecessary delays in completing the relocation work.

Sincerely,

Allan Powers, P.E.

cc: Chris Longer
Bob Miller

Information

Subject

Approval of Addendum to IDOT contract

Information

The P&E -recommended addendum to the IDOT reimbursement agreement for the clearing scope of work (see next agenda item) is attached. This provides for 100% reimbursement to IMU by IDOT for the contracted work.

Financial Impact

N/A

Staff Recommendation

Simple motion approving the addendum to the IDOT reimbursement agreement for the project, as presented, is in order.

Attachments

IDOT Contract



Iowa Department of Transportation

ADDENDUM TO AGREEMENT

Agreement No. U-2013-14969 Addendum

IT IS AGREED, by and between the State of Iowa, Iowa Department of Transportation, Highway Division (hereafter DOT), and **Indianola Municipal Utilities**, a corporation, with offices in Indianola, Iowa, (hereafter Company) as follows:

1. The DOT shall proceed with proposed grading and pavement replacement in accord with its plans and specifications, which the DOT has designated as Project **STPN-092-5(50)--2J-91 (ROW)** **NHSX-092-5(51)--3H-91 (CONST)**. The plans and specifications are made a part of this agreement.
2. The DOT and the Company previously entered into a utility reimbursement agreement signed by the DOT on July 16, 2013 in the amount of \$1,939,452.00 (\$1,127,365.00, DOT share), for the relocation of the 69 kV transmission line owned and operated by the Company partially located on its own easements upon privately owned land affected by the project.
3. The agreement in effect between the Company and the DOT, for the performances of certain work on the above project shall be changed in the following particulars. The acceptance of this addendum by the Company and its approval by the DOT shall constitute a mutual agreement as a part of the original agreement binding upon both parties in the same manner as though the essence of the addendum had originally been in the agreement.
4. **The additional estimated cost added to the project in relocating company facilities and DOT participation in such costs is shown on attached Exhibit "AB", \$65,974.00.**
5. **The revised total estimated cost is now \$2,005,426.00 (\$1,193,339.00, DOT share).**
6. **The scope of the relocation has been increased to include clearing, on multiple parcels and demolition of 3 buildings on one parcel.**
7. All other clauses of the original agreement shall remain in full effect. If any clause in this addendum is declared invalid, it shall not void the entire agreement.
8. This addendum may be executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original.

IN WITNESS WHEREOF the Parties hereto have caused this addendum to be executed by their duly authorized officers on the dates below indicated.

Executed by the Company this _____ day of _____, 2014

INDIANOLA MUNICIPAL UTILITIES

By _____
(Print Name/Title)

State of **IOWA**
County of _____ ss

This instrument was acknowledged before me on this _____ day of _____, 2014,
by _____, as _____ of _____.
(Name) (Title) (Company)

Notary Public in and for said State

Executed by the Iowa Department of Transportation this _____ day of _____, 2014

STATE OF IOWA
IOWA DEPARTMENT OF TRANSPORTATION

By _____
Steve Gent, Director
Office of Traffic & Safety

State of Iowa
County of Story ss

This instrument was acknowledged before me on this _____ day of _____, 2014,
by Steve Gent, as Director, Office of Traffic & Safety of the Iowa Department of Transportation.
(Name) (Title)

Notary Public in and for said State

Information

Subject

Consider Contract with Vanderpool Construction for Demolition & Right of Way Clearing

Information

Attached is the demolition scope of work and contractual terms for Vanderpool Construction to provide demolition services to clear the right of way for the project. Due to timing needs, IDOT was not able to let the demolition contract themselves and requested IMU to competitively quote and let the contract, as it being in the best interest of the public to do so. IMU engineers made a good faith effort to solicit quotes for the demolition scope of work, however given the nature of the timetable during peak construction season, Vanderpool Construction is the only firm able to get the demolition work done without delaying (at a likely higher cost) the end date of the construction of the line.

Financial Impact

N/A

Staff Recommendation

Simple motion approving the demolition & right of way clearing contract with Vanderpool Construction is in order.

Attachments

Vanderpool Quote
Contract



To: Indianola Municipal Utilities
111 South Buxton Street
Indianola , Iowa 50125

4/25/2014

Revised 5/5/2014

Revised 5/7/2014

Project: **2013 W HWY 92 TRANSMISSION RELOCATION PROJECT, INDIANOLA, IOWA.**

Addenda: 1 acknowledged

Drawing #E8958-R500-503, Dated 3-25-14, Revision B

Parcel 8 - Adams

Mobilization	1	LS	500.00	500.00	
Komatsu PC200 Track Excavator	6	Hr	175.00	1,050.00	
Caterpillar 953C Track Loader	6	Hr	160.00	960.00	
Dump Truck-Tandem	0	Hr	90.00	-	
Tractor/Sidedump	6	Hr	120.00	720.00	
Laborer, Chainsaw	2	Hr	90.00	180.00	
Laborer	3	Hr	75.00	225.00	3,635.00

Parcel 13 - Woltz

Mobilization	1	LS	150.00	150.00	
Komatsu PC200 Track Excavator	20	Hr	175.00	3,500.00	
Caterpillar 953C Track Loader	20	Hr	160.00	3,200.00	
Dump Truck-Tandem	10	Hr	90.00	900.00	
Tractor/Sidedump	20	Hr	120.00	2,400.00	
Laborer, Chainsaw	6	Hr	90.00	540.00	
Laborer	5	Hr	75.00	375.00	11,065.00
Remove Barn (after May 23, 2014)	1	LS	4,500.00	4,500.00	4,500.00

Parcel 17 - Janes

Mobilization	1	LS	175.00	175.00	
Komatsu PC200 Track Excavator	2	Hr	175.00	350.00	
Caterpillar 953C Track Loader	2	Hr	160.00	320.00	
Dump Truck-Tandem	0	Hr	90.00	-	
Tractor/Sidedump	1	Hr	120.00	120.00	
Laborer, Chainsaw	0	Hr	90.00	-	
Laborer	1	Hr	75.00	75.00	1,040.00

EXHIBIT AB
1 of 4

Project: **2013 W HWY 92 TRANSMISSION RELOCATION PROJECT, INDIANOLA, IOWA.**

Addenda: 1 acknowledged

Drawing #E8958-R500-503, Dated 3-25-14, Revision B

Parcel 22 - Coons

Mobilization	1	LS	150.00	150.00	
Komatsu PC200 Track Excavator	20	Hr	175.00	3,500.00	
Caterpillar 953C Track Loader	20	Hr	160.00	3,200.00	
Dump Truck-Tandem	10	Hr	90.00	900.00	
Tractor/Sidedump	30	Hr	120.00	3,600.00	
Laborer, Chainsaw	5	Hr	90.00	450.00	
Laborer	20	Hr	75.00	1,500.00	13,300.00

Parcel 25 - Ely/Rodgers

Mobilization	1	LS	100.00	100.00	
Komatsu PC200 Track Excavator	6	Hr	175.00	1,050.00	
Caterpillar 953C Track Loader	6	Hr	160.00	960.00	
Dump Truck-Tandem	0	Hr	90.00	-	
Tractor/Sidedump	8	Hr	120.00	960.00	
Laborer, Chainsaw	2	Hr	90.00	180.00	
Laborer	5	Hr	75.00	375.00	3,625.00

Parcel 28B - Hayden

Mobilization	1	LS	50.00	50.00	
Komatsu PC200 Track Excavator	1	Hr	175.00	175.00	
Caterpillar 953C Track Loader	0	Hr	160.00	-	
Dump Truck-Tandem	0	Hr	90.00	-	
Tractor/Sidedump	1	Hr	120.00	120.00	
Laborer, Chainsaw	1	Hr	90.00	90.00	
Laborer		Hr	75.00		435.00

Parcel 27, 27A - Archer

Mobilization	1	LS	350.00	350.00	
Komatsu PC200 Track Excavator	20	Hr	175.00	3,500.00	
Caterpillar 953C Track Loader	20	Hr	160.00	3,200.00	
Dump Truck-Tandem	5	Hr	90.00	450.00	
Tractor/Sidedump	30	Hr	120.00	3,600.00	
Laborer, Chainsaw	5	Hr	90.00	450.00	
Laborer	20	Hr	75.00	1,500.00	13,050.00

EXHIBIT AB
2 of 4

Project: **2013 W HWY 92 TRANSMISSION RELOCATION PROJECT, INDIANOLA, IOWA.**

Addenda: 1 acknowledged

Drawing #E8958-R500-503, Dated 3-25-14, Revision B

Parcel 34 - Vaught

Mobilization	1	LS	200.00	200.00	
Komatsu PC200 Track Excavator	6	Hr	175.00	1,050.00	
Caterpillar 953C Track Loader	6	Hr	160.00	960.00	
Dump Truck-Tandem	0	Hr	90.00	-	
Tractor/Sidedump	8	Hr	120.00	960.00	
Laborer, Chainsaw	1	Hr	90.00	90.00	
Laborer	2	Hr	75.00	150.00	3,410.00

Parcel 33 - Peterson

Mobilization	1	LS	100.00	100.00	
Komatsu PC200 Track Excavator	2	Hr	175.00	350.00	
Caterpillar 953C Track Loader	0	Hr	160.00	-	
Dump Truck-Tandem	2	Hr	90.00	180.00	
Tractor/Sidedump	0	Hr	120.00	-	
Laborer, Chainsaw	1	Hr	90.00	90.00	
Laborer	2	Hr	75.00	150.00	870.00
Bond	1	LS	994.00	994.00	
Traffic Control	1	LS	600.00	600.00	1,594.00

Parcel 13 - Woltz - Addendum

Move proposed ROW south 12'-15'

Demo Existing House, Basement, Garage Only

Additional 3-4 Large Trees

Komatsu PC 200 Track Excavator	12.0	Hr	175.00	2,100.00	
Caterpillar 953C Track Loader	12.0	Hr	160.00	1,920.00	
Dump Truck-Tandem	10.0	Hr	90.00	900.00	
Tractor/Sidedump	30.0	Hr	120.00	3,600.00	
Laborer, Chainsaw	2.0	Hr	90.00	180.00	
Laborer	10.0	Hr	75.00	750.00	9,450.00

Total Revised Estimate

\$ 65,974.00 \$ 65,974.00

EXHIBIT AB
3 of 4

Project: **2013 W HWY 92 TRANSMISSION RELOCATION PROJECT, INDIANOLA, IOWA.**

Addenda: 1 acknowledged

Drawing #E8958-R500-503, Dated 3-25-14, Revision B

Notes:

The above are estimates only, pay quantities will be actual time and equipment expended.

We reserve the right to sub-out certain tree removal areas, as needed.

Survey, ROW, tree marking by others.

Trees/brush to be taken to City brush yard. No hazardous materials are anticipated on these sites.

Finish grading, erosion control, if any and seeding by others.

Fence removal/replacement by others.

House Demo - all debris will go to the Winterset landfill.

Thank you.

EXHIBIT AB
4 of 4

INDIANOLA MUNICIPAL UTILITIES
2013 Hwy 92 Relocation Project
Clearing Contract
Section 00000 – Contract Index

SECTION	TITLE
00000	Index (This Page)
00520	Agreement
00610	Performance Bond
00615	Payment Bond
00700	General Conditions of the Contract {This is the Standard General Conditions of the Construction Contract as published by the Engineers Joint Contract documents Committee (EJCDC) as Document No. 1910-8 (2002 Edition)}
00800	Supplementary Conditions
00850	Safety Manual for the City of Indianola and Indianola Municipal Utilities
01000	Specifications
Drawings	E8958-R500 through -R503, Rev-0

INDIANOLA MUNICIPAL UTILITIES
2013 Hwy 92 Transmission Relocation Project
Section 00520 – AGREEMENT

THIS AGREEMENT is by and between Indianola Municipal Utilities (Owner) and
Vanderpool Construction, Inc. (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

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

Clear and grub trees and demolish a barn along Hwy 92 from Kennedy St. to R-63 as shown on the project drawings.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2013 Hwy 92 Relocation Project

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by P & E Engineering Co. (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

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

4.02 Dates for Substantial Completion

- A. The Work except for clearing on DOT Parcel 28B must be substantially completed on or before June 15, 2014, on the condition that a Notice to Proceed for all Work except Parcel 28B is issued on May 13, 2014.
- B. All Work must be substantially completed on or before July 7, 2014, on the condition that a Notice to Proceed for work on Parcel 28B is issued on June 23, 2014.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents on a time and expense basis.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the First day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 below. All such payments will be based on actual work hours and expenses as documented by the Contractor.

1. Contractor's fee shall be determined as follows:

A. Labor costs to be paid at the hourly rates shown in the Contractor's Proposal

B. Material and equipment costs to be paid based on actual cost of materials that Contractor purchases for the specific use in completing the Contract and the hourly equipment rates shown in the Contractor's Proposal.

C. Amounts paid to Subcontractors.

2. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions:

a. **95** percent of Work completed (with the balance being retainage). and;

b. **95** percent of cost of materials and equipment stored on site but not yet incorporated in the Work (with the balance being retainage).

3. Following Substantial Completion, partial payment of retainage may be made in accordance with the Contract Documents and applicable State Law.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 14.07 of the General Conditions.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) conditions at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Project Documents, and safety precautions and programs incident thereto.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations 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.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

INDIANOLA MUNICIPAL UTILITIES
2013 Hwy 92 Transmission Relocation Project
Section 00520 – AGREEMENT

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive).
2. Performance bond.
3. Payment bond.
4. General Conditions (Section 00700, pages 1 to 41, inclusive).
5. Supplementary Conditions (Section 00800, pages 1 to 5, inclusive).
6. Specifications and drawings as listed in the table of contents of the Project Manual.
8. Exhibits to this Agreement (enumerated as follows):

a. Contractor's Proposal

9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed.
- b. Work Change Directive(s).
- c. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

INDIANOLA MUNICIPAL UTILITIES
2013 Hwy 92 Transmission Relocation Project
Section 00520 – AGREEMENT

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, 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.

10.03 Successors and Assigns

A. Owner and 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.

10.04 Severability

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

INDIANOLA MUNICIPAL UTILITIES
2013 Hwy 92 Transmission Relocation Project
Section 00520 – AGREEMENT

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

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

OWNER:

CONTRACTOR

_____ Indianola Municipal Utilities

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

_____ Indianola Municipal Utilities

_____ 111 S. Buxton St.

_____ P.O. Box 356

_____ Indianola, IA 50125

License No. (Where Applicable)

If Contractor is a corporation or partnership,
attach evidence of authority to sign.

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):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-610 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. 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.

2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.

3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:

3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 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

3.2. 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 3.1; and

3.3. Owner has agreed to pay the Balance of the Contract Price to:

1. Surety in accordance with the terms of the Contract;
2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.

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

4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or

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

4.3. 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 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or

4.4. 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.

5. If Surety does not proceed as provided in Paragraph 4 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 4.4, 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.

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 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 a 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:

6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

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

7. 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.

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

9. 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.

10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

11. 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.

12. Definitions.

12.1 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.

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

12.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 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 comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
Surety Agency or Broker
Owner's Representative (engineer or other party)

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):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-615 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

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 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 use 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 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 addresses 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 Contractor, or not received within 30 days of furnishing the above notice any 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 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. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
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 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 Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the 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 the 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 Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses 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 use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of 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 comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
Surety Agency or Broker:
Owner's Representative (engineer or other party):

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

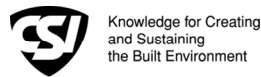
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The Associated General Contractors of America



Construction Specifications Institute

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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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's 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.A 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. The General Requirements pertain to all sections 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 in connection with the Work.

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. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

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

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

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

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

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

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

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

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

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

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

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

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following 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 requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 which 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*

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.

2.07 *Initial Acceptance of Schedules*

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

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

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

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended 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, or Engineer, or any of, their Related Entities, 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 may discover 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 any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, 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 knew or reasonably should have known 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, code, or instruction (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 or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, 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 Engineer's consultants, including electronic media editions; or

2. reuse any of 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 adaption by Engineer.

B. The prohibition 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. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

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

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

4.01 *Availability of Lands*

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

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general 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 Related Entities 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 at or contiguous to the Site 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, Owner and Engineer, and any of their Related Entities 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.

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; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general 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 Related Entities 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.

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 to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, 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, 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 current 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 must be accompanied by a certified copy of the agent's authority to act.

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 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 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.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other 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, include as additional insured (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, 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 completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. 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);

6. 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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. 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, 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 an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, 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 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 additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery 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, 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 an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with 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 additional insured 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 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 to be listed as insureds or additional insureds (and the officers, directors, 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 additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, 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 to be listed as insured or additional insured (and the officers, directors, 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, 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, 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 insureds, 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. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or

received from the superintendent shall be binding on Contractor.

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,

3) it has a proven record of performance and availability of responsive service; and

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 that 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 in 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 or not 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 or not 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;

4) and 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 either a Change Order for a substitute or 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 item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the 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 anything in the Contract Documents 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 an additional insured 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, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, 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, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, 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 primary 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, 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. 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. 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 Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , 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).

D. 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 acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

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

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

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 determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have 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.

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 Drawing's 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 Related Entities 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, 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 respective consultants, agents, officers, directors, partners, or employees 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, 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 via 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, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall 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 their work and will only cut or alter their 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 actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's 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 in respect of 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 in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in 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 in 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. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

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 and will not be changed without written consent of Owner and Engineer.

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 believe 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.

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.B.

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 notice 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) is required by the provisions of any bond to be given to a surety, 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 Time 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 include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

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 at the Site. 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, 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, expresses, 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 and 11.01.B.

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 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 Paragraph 12.01.C.2.a 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 the Related Entities of each of them 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. All 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, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site 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 said 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, it must, if requested by Engineer, be uncovered 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 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 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 on the Site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to 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. that 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 corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

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

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

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial

Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to 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 will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion 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.7;

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 or Owner's property might in any way be responsible 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 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 their 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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Section 00800 – SUPPLEMENTARY CONDITIONS

GENERAL

1. These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-00700, 2002 Edition) 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.
2. Terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

3. Additional Terms

Owner: Indianola Municipal Utilities

Engineer: P & E Engineering Co., Carlisle, Iowa

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02 Amend the first sentence of Paragraph 2.02 of the General Conditions to read as follows:

Owner shall furnish to Contractor printed or hard copies of the Drawings as required.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.07 Add the following new paragraphs to the General Conditions immediately after Paragraph 3.06:

3.07 Drawings

A. The Drawings, in general, are to scale, but all clearing boundaries shall be determined by field staking of ROW and property boundary lines and identification of individual trees.

C. Engineer will give Contractor reasonable assistance in interpreting the Drawings and Specifications, but such assistance shall not relieve Contractor from any responsibility for his work.

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

SC-4.02 Add the following new paragraph to the General Conditions immediately after Paragraph 4.02.B:

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C. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or Engineer.

SC-4.04 Add the following new paragraph to the General Conditions immediately after Paragraph 4.04.B:

C. Locates: All existing utilities must be located before any excavation is started. Regardless of other utility contacts, Contractor must notify One-Call of Iowa and Owner at least 48 hours before beginning work at any particular location.

SC-4.05 Add the following new paragraph(s) to the General Conditions immediately after Paragraph 4.05.A:

B. Owner will provide staking for the Project as defined in the General Requirements, Staking and Layout Section.

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 are known to Owner or Engineer.

ARTICLE 5 - BONDS AND INSURANCE

SC-5.01 Bonds may be submitted on the forms provided with this Contract, or may be provided on the standard forms utilized by the Surety.

SC-5.03 Add the following new paragraphs to the General Conditions immediately after Paragraph 5.03.B:

C. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. By requiring such insurance and insurance limits herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

SC-5.04 Add the following new paragraph to the General Conditions immediately after Paragraph 5.04.B:

C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

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1. Workers' Compensation and related coverages under Paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal Statutory
 - c. Employer's Liability \$1,000,000
2. Contractor's General Liability under Paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under care, custody and control of Contractor:
 - a. General Aggregate: \$2,000,000
 - b. Products – Completed operations Aggregate: \$2,000,000
 - c. Personal and Advertising Injury \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverage where applicable.
 - f. Excess or Umbrella Liability
 - 1) General Aggregate \$4,000,000
 - 2) Each Occurrence \$4,000,000
3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
 - a. Bodily Injury:
Each Person \$500,000
Each Accident \$1,000,000
 - b. Property Damage:
Each Accident \$500,000
 - c. Combined Single Limit of: \$1,000,000

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4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions:
 - a. Bodily Injury:

Each Accident	\$1,000,000
Annual Aggregate	\$2,000,000
 - b. Property Damage:

Each Accident	\$1,000,000
Annual Aggregate	\$2,000,000
5. All policies must name the following as additional insured, in accordance with Paragraph 5.04.B.1 of the General Conditions
 - a. Indianola Municipal Utilities (Owner)
 - b. P & E Engineering Co. (Engineer)
 - c. Iowa Department of Transportation

SC-5.06 Delete Paragraph 5.06 of the General Conditions in its entirety.

SC-5.10 Delete Paragraph 5.10 of the General Conditions in its entirety.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITY

SC-6.02 Add the following new paragraph to the General Conditions immediately after Paragraph 6.02.B:

C. The Contractor shall notify Owner 24 hours before starting operations under this contract.

SC-6.10 Add the following new paragraph to the General Conditions immediately after Paragraph 6.10.A:

B. Owner is subject to State and Local Sales and Use Taxes. The proposal prices shall include all applicable State or Local Sales and Use Taxes.

SC-6.13 Add the following new paragraph to the General Conditions immediately after Paragraph 6.13.D.

E. Contractor will be required to follow all IMU safety rules. All pertinent safety rules are shown on pages 12 & 14 attached to and made a part of this Contract. The entire Safety Manual for the City of Indianola and IMU can be viewed at the IMU main office.

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SC-6.17 Delete Paragraphs 6.17.A, 6.17.B, 6.17.C, 6.17.D, and 6.17.E in their entirety.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.05 Delete Paragraph 14.05 of the General Conditions in its entirety.

SC-14.07 Delete paragraph 14.07.A.2.d in its entirety.

Delete paragraph 14.07.A.3 in its entirety.

Delete paragraph 14.07.C.1 in its entirety and replace with the following.

1. The balance of the amount due under the Contract will be paid not earlier than 31 days from final acceptance of the improvements by Owner, subject to the conditions and in accordance with the provisions of Chapter 384 and 573 of the Code of Iowa.

End of Section 00800

Safety Manual

**For The
City of Indianola
And
Indianola Municipal Utilities**

DATE: MARCH 27, 2006

(Page 12)

Outside Contractors

In hiring short-term contractors, the City of Indianola and/or Indianola Municipal Utilities will require the contractors to submit proof of their safety programs and successful safety training. Before a contractor commences work in the City of Indianola or Indianola Municipal Utilities workplace, the project coordinator and/or supervisor who controls the work area will be responsible for informing all outside contractors of the elements of all safety programs of the city/IMU that affect the project.

Contractors who fail to follow safety program requirements will be asked to leave the premises. Contractors with an insufficient program will not be allowed to begin work until their program meets or exceeds the requirements of this program.

(Page 14)
Basic Safety Rules

General Safety Rules

1. Each employee will be required to comprehend and abide by the contents of this safety program.
2. All accidents, incidents and near misses no matter how minor, shall be reported immediately to the supervisor.
3. All hazardous conditions, actions and/or practices shall be reported to the supervisor.
4. Work areas, including the inside and outside of vehicles and buildings, shall be kept clean and orderly at all times.
5. Employees are only to operate equipment/tools that they are trained and authorized to operate.
6. Smoking is prohibited in areas where there is a danger to equipment, materials, coworkers or buildings, or where "No Smoking" signs are posted.
7. Employees must use all safety devices and personal protective equipment provided for their protection.
8. Employees shall wear clothing and shoes suitable for the particular work they are doing.
9. Employees must use assisted lifting devices or obtain assistance from a coworker when lifting heavy objects.
10. Guards are never to be removed except when authorized to make repairs or adjustments. Replace guard immediately upon completion of work.
11. The use of drugs and alcohol during working hours is prohibited. Any employee reporting for work under the influence of alcohol or controlled substances is subject to disciplinary action.
12. Any employee taking prescription drugs or over-the-counter drugs that could impair assigned work shall report this fact to the supervisor.
13. Employees shall not engage in practical jokes or horseplay that could result in injury to themselves, others or cause property damage.

Specific Safety Programs and Procedures

Employees will be trained on specific programs and procedures in their departments that may include the following:

- A. Personal Protective Equipment
- B. Respiratory Protection
- C. Hearing Conservation
- D. Lockout/Tagout
- E. Confined Spaces Entry
- F. Hazardous Communications
- G. Blood-Borne Exposure Control Plan

Indianola Municipal Utilities
Hwy 92 Right of Way Clearing
Specifications and Requirements

1. Contractor shall clear right of way as required for construction of new 69 kV transmission line and installation of other underground utilities as shown on attached drawings E8958-R500 through -R503, Rev-0.
 - A. Clear and grub trees as shown
 - B. Remove barn, garage, and house on DOT Parcel 13, west of County Road R57
 - C. Trim trees that are not being removed as shown
2. Contractor shall take possession of all removed materials, including trees and building rubble. All such materials are to be disposed of by the Contractor. The location and method of disposal is at the discretion of the contractor, using any legal means.
3. All stumps, and the barn and garage floor and foundations shall be removed to clear area for installation of underground utilities.
4. The house foundation shall be removed to a minimum of 18" below grade, and the basement filled to grade with fill dirt.
5. Disturbed ground shall be restored by rough grading. Finish grading and seeding will be performed by the DOT.
6. The DOT will inspect the barn for asbestos or other hazardous materials and file the required notification with the DNR. If any hazardous materials are identified, the cleanup and removal of any such materials will be the responsibility of the DOT.
7. Except for the specific work areas listed below, a Notice to Proceed is expected to be issued on May 13, 2014.
 - A. The barn is expected to be available for demolition May 19, 2014.
 - B. The trees on Parcel 28B (shown on drawing E8958-R503) cannot be removed until after June 23, 2014
8. All Contract Documents as listed on Index 00000-1 will apply to all work.



REV	DATE	DESIG	DFTR	APP	DESCRIPTION
0	05-08-14	P&E	ARP	ARP	UPDATED LAND STATUS, ISSUED FOR CONSTRUCTION
B	04-14-14	P&E	RWB	ARP	ADDED CLEARING AND GRUBBING
B	03-25-14	P&E	RWB	ARP	ORIGINAL ISSUE

P & E ENGINEERING CO.
POWER SYSTEM ANALYSIS AND DESIGN
245 S. 5th
P.O. Box 620
Carlisle, IA 50047
Office: 515-989-3083
Fax: 515-989-3138
peengr@peengr.com



DATE	03-25-14
DESIGNED	P&E
DRAWN	RWB
APPROVED	JWE
APPROVED	ARP

INDIANOLA MUNICIPAL UTILITIES
HIGHWAY 92 DOT PROJECT
TREE REMOVAL

SCALE:
AS NOTED

REV
0

DWG NO
E8958-R500



0" 150' 300'



REV	DATE	DESC	DFTR	APP	DESCRIPTION
O	05-08-14	P&E	ARP	ARP	UPDATE LAND STATUS, ISSUED FOR CONSTRUCTION
C	05-02-14	P&E	RWB	ARP	ADDED SHED AND HOUSE DEMOLITION
B	04-14-14	P&E	RWB	ARP	ADDED CLEARING AND GRUBBING
A	03-25-14	P&E	RWB	ARP	ORIGINAL ISSUE

P & E ENGINEERING CO.
POWER SYSTEM ANALYSIS AND DESIGN
245 S. 9th
P.O. Box 520
Carlisle, IA 50047
Office: 515-989-3083
FAX: 515-989-3138
peengr@peengr.com



DATE	03-25-14
DESIGNED	P&E
DRAWN	RWB
APPROVED	JWE
APPROVED	ARP

INDIANOLA MUNICIPAL UTILITIES
HIGHWAY 92 DOT PROJECT TREE REMOVAL

SCALE: AS NOTED	REV 0
DWG NO E8958-R501	

P&E ANSI, D 10-14-10



REV	DATE	DESIG	DFTR	APP	DESCRIPTION
0	05-08-14	P&E	ARP	ARP	UPDATED LAND STATUS, ISSUED FOR CONSTRUCTION
B	04-14-14	P&E	RWB	ARP	ADDED CLEARING AND GRUBBING
A	03-25-14	P&E	RWB	ARP	ORIGINAL ISSUE

P & E ENGINEERING CO.
POWER SYSTEM ANALYSIS AND DESIGN
245 S. 5th
P.O. Box 820
Carlisle, IA 50047
Office: 515-989-3083
FAX: 515-989-3138
psengr@psengr.com



DATE	03-25-14
DESIGNED	P&E
DRAWN	RWB
APPROVED	JWE
APPROVED	ARP

INDIANOLA MUNICIPAL UTILITIES
HIGHWAY 92 DOT PROJECT TREE REMOVAL

SCALE:	AS NOTED
--------	----------

REV
0

DWG NO
E8958-R502



REV	DATE	DESIG	DFTR	APP	DESCRIPTION
C	05-08-14	P&E	ARP	ARP	UPDATED LAND STATUS, ISSUED FOR CONSTRUCTION
B	04-14-14	P&E	RWB	ARP	ADDED CLEARING AND GRUBBING
A	03-25-14	P&E	RWB	ARP	ORIGINAL ISSUE

P & E ENGINEERING CO.
POWER SYSTEM ANALYSIS AND DESIGN
245 S. 5th
P.O. Box 620
Carlisle, IA 50047

Office: 515-989-3083
Fax: 515-989-3138
psengr@psengr.com

INDIANOLA MUNICIPAL UTILITIES
IMU
Electric • Network Services • Water

DATE	03-25-14
DESIGNED	P&E
DRAWN	RWB
APPROVED	R
APPROVED	ARP

INDIANOLA MUNICIPAL UTILITIES
HIGHWAY 92 DOT PROJECT
TREE REMOVAL

SCALE:
AS NOTED

REV
C
DWG NO
E8958-R503

Information

Subject

Approval of Contract & Bond

Information

The resolution approving the contract & bond is attached, as are the documents themselves.

Financial Impact

N/A

Staff Recommendation

Roll call vote approving the contract & bond of Weidner Construction for the 2014 Head Tank Aerator Assembly Replacement Project is in order.

Attachments

Resolution

Contract

RESOLUTION APPROVING CONSTRUCTION CONTRACTS AND BONDS

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE INDIANOLA MUNICIPAL UTILITIES:

Section 1. The construction contract and bond executed by _____ dated the _____ day of _____, 2014, for the 2014 Head Tank Aerator Assembly Replacement Project for Indianola Municipal Utilities, Indianola, Iowa, described in the Plans and Specifications previously adopted by the Board of Trustees, and which have been signed by the IMU General Manager and City Clerk on behalf of the Board of Trustees, be approved.

PASSED AND APPROVED this _____ day of _____, 2014.

ERIC VANDER LINDEN, Chair

ATTEST:

DIANA BOWLIN, City Clerk

CONTRACT

THIS AGREEMENT, made and entered into this 14th day of April, 2014,
by and between the Indianola Municipal Utilities, Indianola, Iowa, party of the first part,
hereinafter referred to as the "Owner", and
WEIDNER CONSTRUCTION, INC.,
party of the second part, hereinafter referred to as the "Contractor".

WITNESSETH: THAT WHEREAS, the Owner has heretofore caused to be prepared certain
plans, specifications and proposal blanks, dated the 12th day of March, 2014,
for the Head Tank Aerator Assembly Replacement under the terms and conditions therein
fully stated and set forth, and,

WHEREAS, said plans, specifications and proposal blanks accurately and fully describe the
terms and conditions upon which the Contractor is willing to perform the work specified:

NOW, THEREFORE, IT IS AGREED:

1. That the Owner hereby accepts the proposal of the Contractor for the work, as
follows:

HEAD TANK AERATOR ASSEMBLY REPLACEMENT

Construct Head Tank Aerator Assembly Replacement including all labor, materials,
and equipment necessary to provide 16-inch bypass piping, 16-inch and 24-inch
butterfly valves, removal of existing aerator, fabrication and installation of new
aerator, and miscellaneous associated work, including cleanup for the sum of
Seventy-nine Thousand Nine Hundred Ninety and 00/100 Dollars (\$79,990.00)
based on the lump sum price as shown on the Proposal.

Contract

2. That this contract consists of the following component parts which are made a part of this agreement and contract as fully and absolutely as if they were set out in detail in this contract:

2.1 Contract Documents, including:

- 2.1.1 Notice of Hearing and Letting
- 2.1.2 Instructions to Bidders
- 2.1.3 Proposal
- 2.1.4 Bond
- 2.1.5 General Conditions
- 2.1.6 Special Conditions
- 2.1.7 Plans List
- 2.1.8 Detailed Specifications
- 2.1.9 Numbered addenda issued to the foregoing.

2.2 This Instrument.

2.3 The above components are complementary and what is called for by one shall be as binding as if called for by all.

3. That payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this contract.

4. That this contract is executed in triplicate.

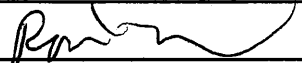
IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals the date first written above.

CONTRACTOR:

INDIANOLA MUNICIPAL UTILITIES
INDIANOLA, IOWA

WEIDNER CONSTRUCTION, INC.

By _____
Chairperson, Board of Trustees

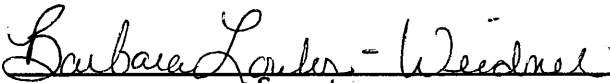
By 

Title Vice Pres

ATTEST:

ATTEST:

Title _____


Secretary

BOND

KNOW ALL MEN: That we, WEIDNER CONSTRUCTION, INC.
of Marshalltown, Iowa, hereinafter called the Principal, and

hereinafter called the Surety, are held and firmly bound unto the Indianola Municipal Utilities, Indianola, Iowa, hereinafter called the Owner, in the sum of

Seventy-nine Thousand Nine Hundred Ninety and 00/100

Dollars (\$79,990.00), for the payment whereof the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written Agreement dated April 14, 20 14, entered into a Contract with the Owner for the Head Tank Aerator Assembly Replacement, which Agreement includes a guarantee of all work against defective workmanship and materials for a period of two (2) years from the date of final acceptance of the work by the Owner, a copy of which Agreement is by reference made a part hereof;

Now Therefore, the condition of this Obligation is such that, if the Principal shall faithfully perform the Contract on his part and shall fully indemnify and save harmless the Owner from all cost and damage which he may suffer by reason of failure so to do and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default,

And Further, that if the Principal shall pay all persons who have contracts directly with the Principal for labor or materials, failing which such persons shall have a direct right of action against the Principal and Surety under this Obligation, subject to the Owner's priority,

Then this Obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided, however, that no suit, action or proceeding by reason of any default whatever shall be brought on this Bond after three (3) years from the date of final acceptance of the work.

And Provided, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alteration, extension or forbearance being hereby waived.

And Further Provided, the Principal and Surety on this Bond hereby agree to pay all persons, firms, or corporations having contracts directly with the Principal or with subcontractors all just claims due them for labor performed or material furnished, in the performance of the Contract on account of which this Bond is given, when the same are not satisfied out of the portion of the contract price which the Owner shall retain until completion of the improvements, but the Principal and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portions of the contract price shall have been established as provided by law.

Bond

The Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

- a. To the extension of time to the Principal in which to perform the Contract.
- b. To changes in the plans, specifications, or Contract, when such changes do not involve an increase of more than twenty percent (20%) of the total contract price, and shall then be released only as to such excess increase.
- c. That no provision of this Bond or of any other contract shall be valid which limits to less than three (3) years from the date of final acceptance of the work the right to sue on this Bond for defects in workmanship or materials not discovered or known to the Owner at the time such work was accepted.

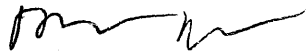
The Bond is executed in triplicate.

Signed and Sealed this 14th day of April, 2014.

PRINCIPAL:

WEIDNER CONSTRUCTION, INC.

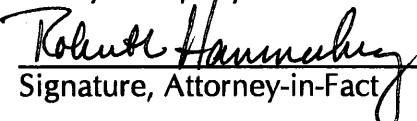
Contractor


Signature

Vizepro
Title

SURETY:

Nationwide Mutual Insurance Company
Surety Company


Signature, Attorney-in-Fact

Robert L. Hammerberg

Name of Attorney-in-Fact

First Iowa Insurance Agency
Company Name

4101 Glass Rd Cedar Rapids, IA 52406
Company Address (Including Zip Code)

319-393-5262

Company Telephone Number

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation
Farmland Mutual Insurance Company, an Iowa corporation
Nationwide Agribusiness Insurance Company, an Iowa corporation

AMCO Insurance Company, an Iowa corporation
Allied Property and Casualty Insurance Company, an Iowa corporation
Depositors Insurance Company, an Iowa corporation

hereinafter referred to severally as the "Company" and collectively as the "Companies," each does hereby make, constitute and appoint:

ROBERT L. HAMMERBERG

RONALD W. HAMMERBERG

CEDAR RAPIDS IA

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

THREE MILLION AND NO/100 DOLLARS

\$ 3,000,000.00

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

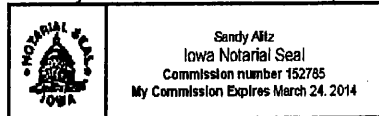
IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the
11th day of November, 2011.

Gary A. Douglas, President and Chief Operating Officer of Nationwide Agribusiness Insurance Company and Farmland Mutual Insurance Company; and **Vice President** of Nationwide Mutual Insurance Company, AMCO Insurance Company, Allied Property and Casualty Insurance Company, and Depositors Insurance Company

ACKNOWLEDGMENT

STATE OF IOWA, COUNTY OF POLK: ss

On this 11th day of November, 2011, before me came the above-named officer for the Companies aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Companies aforesaid, that the seals affixed hereto are the corporate seals of said Companies, and the said corporate seals and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Companies.



Notary Public
My Commission Expires
March 24, 2014

CERTIFICATE

I, Robert W Horner III, Secretary of the Companies, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Gary A. Douglas was on the date of the execution of the foregoing power of attorney the duly elected officer of the Companies, and the corporate seals and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary, and affixed the corporate seals of said Companies this 14th day
of April, 20 14.

Secretary

This Power of Attorney Expires 04/23/16

BDJ 1 (11-11) 00



WEIDN-1

OP ID: SP

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/24/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER First Iowa Insurance Agency 4101 Glass RD NE, PO Box 997 Cedar Rapids, IA 52406-0997 Robert L. Hammerberg		Phone: 319-393-5262 Fax: 319-393-3161	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
INSURED Weidner Construction, Inc. Robin Weidner 2607 255th Street Marshalltown, IA 50158		INSURER(S) AFFORDING COVERAGE INSURER A: General Casualty Companies INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:		
		NAIC # 24414		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	X		CCI0259397	07/01/2013	07/01/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	X		CBA0259397	07/01/2013	07/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X		CCU0716617	07/01/2013	07/01/2014	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ N/A			CWC0259397	07/01/2013	07/01/2014	WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Lease/Rented Equip			CCI0259397	07/01/2013	07/01/2014	50,000
A	Installation Fitr.			CCI0259397	07/01/2013	07/01/2014	25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Job: Indianola Municipal Utilities Indianola, Iowa.
Head Tank Aerator Assembly Replacement Water Treatment Facilities
Contract Documents.
Certificate holder and owner Indianola Municipal Utilities are named as additional insured on the General, Auto and Excess Liability.

CERTIFICATE HOLDER**CANCELLATION**

VEEN001 Veenstra & Kimm, Inc. 3000 Westown Parkway West Des Moines, IA 50266-1320	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Robert L. Hammerberg</i>
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Information

Subject

Review of Economic Development Programs

Information

Trustees have not reviewed the 3 economic development programs in detail in several years, although the policy manual containing them has been periodically adopted. It is a good practice to review these programs so both Trustees and other policymakers are aware of the substantial contribution IMU can make, and has made in the past, to the development of Indianola using traditional funding methods. These programs are attached and consist of-

1. In-kind and other donations for projects that don't qualify under the Economic Incentive program. Historical uses include community-based projects and those that don't create tax base.
2. Economic Incentive program for those projects that, in partnership with support by the City of Indianola, create jobs and tax base. Historical uses primarily include infrastructure improvements such as the Industrial Park, Summercrest Hills development, and transformers/services for prospective customers in those areas.
3. Revolving Loan Fund (RLF) for projects where incentives can involve local participation to leverage state & federal funds. There are two RLF funds - (a) an IMU fund derived from ratepayer dollars retained over time with a balance of \$103,000 and (b) a USDA-Rural Development fund derived from a combination of a federal grant (\$300,000) and local match (\$75,000). The second fund has a balance of \$150,000 because the initial loan was made to Simpson for the Blank Performing Arts Center, as it received priority points under the grant criteria. The rest will be repaid by October 2017.

Staff's ongoing strategy has been to not aggressively pursue RLF applications in order to possibly submit a second \$300,000 USDA-RD grant application for another priority project should the opportunity arise. The local match for that grant would be derived from the IMU fund described in 3(a) above. The USDA-RD loan fund can be loaned out at any time and perhaps it is time to more aggressively seek applicants.

Financial Impact

N/A

Staff Recommendation

Attachments

Programs

IN-KIND & OTHER DONATION POLICY

The purpose of this policy is to provide guidance regarding contributions to projects that benefit the community, non-profit entities, and private entities and do not qualify for economic incentives. Nothing within this policy requires the IMU Board of Trustees to provide funding for any project, regardless of that project's ability to meet eligibility guidelines. Furthermore, nothing in this policy prohibits members of the public from approaching the board to consider funding for a project. Any project making application must be located in the designated service territory from which funds will be expended.

Goal

The goal of these in-kind and other donation programs is to effectively encourage efficient utility usage and growth within the applicable service territories, including projects that enhance the community.

This primarily shall involve assisting worthwhile projects throughout the year, but one time per year may provide assistance to a single, large, project.

Uses of Funds and Resources

Use of utility funds and resources for these programs shall be limited to the following:

- Construction of utility services and donation of related equipment and fixtures
- Forgiveness of all or a portion of Contributions in Aid of Construction
- Up to \$5,000 in direct financial assistance to be used to enhance energy efficiency in new construction or remodeling projects above and beyond the funding available under the utility's energy efficiency program

Property Use Eligibility and Project Funding Priority Criteria

There is no limit to the uses of property that may apply. However, priority will be given to the following, in order:

1. Projects on property owned by the City of Indianola
2. Projects on other public property
3. Projects on property owned by non-profit entities as defined under Iowa Code
4. Projects on all other properties

Project Eligibility Criteria

The following project characteristics shall be the primary factors in considering funding for eligible properties:

- Budgetary impact to the utility
- Positive impact to the community
- Improvements to the efficient use of natural resources including reducing demand below what it would otherwise be without assistance under this program
- Ability to use IMU's funds to match other public and private contributions, incentives, grants, and commitments
- Degree of support for a project within the community as determined by supporting resolutions of public governing bodies, citizen petitions, and any other means as determined appropriate and relevant

Application Procedures

- Application forms are available in the IMU Administrative Office at 111 South Buxton and shall be submitted to the IMU General Manager
- Applications for direct funding of \$5,000 or more shall be submitted by April 30 of each calendar year for funding the following July 1
- The application shall be reviewed by the General Manager for completeness
- The General Manager may approve any project that meets eligibility criteria under the following conditions:
 - The requested direct funding is less than \$5,000; and
 - Total fiscal year-to-date funding commitments are less than amounts budgeted or re-estimated, excluding projects budgeted or committed in a prior fiscal year but not completed; and
 - Analysis and certification of the project's effectiveness towards this program's goal has been completed and properly documented
- The General Manager shall forward all other applications, with a recommendation for approval or denial, to the Board of Trustees for its consideration of the application

ECONOMIC INCENTIVE POLICY

The purpose of this policy is to provide guidance regarding the forgiveness of utility contributions in aid of construction to enhance economic development within IMU service territories. Nothing within this policy requires the IMU Board of Trustees to provide funding for any project, regardless of that project's ability to meet eligibility guidelines. Any project making application must be located in the designated service territory from which funds will be expended.

Goal

The goal of this economic development program is to effectively encourage new utility usage growth within the applicable service territories.

Uses of Funds

Use of utility funds shall be limited to the following:

- Construction of public infrastructure that is required to provide appropriate utility services to land with industrial or commercial development potential, based on zoning classification or the classification assigned in the city's comprehensive plan.
- Forgiveness of all or a portion of private service installation costs.

Property Use Eligibility Criteria

Properties that benefit from these economic development programs shall be limited to the following:

- Properties owned by public entities whose primary purpose is to enhance the quality of life in Indianola, serve a public purpose, and stimulate economic development.
- Properties owned by the Indianola Development Association or any public/private partnership that serves a public purpose compatible with the project objectives of a particular Urban Renewal Plan on file in the City Clerk's office.
- Properties with any proposed industrial usage.
- Properties with proposed commercial office or retail usage with combined taxable valuation of all lots that exceeds \$10 million.
- Properties with proposed retail development with a taxable valuation under \$10 million and all residential development properties are explicitly excluded from receiving funds under these economic development programs.

Project Eligibility Criteria

The following project characteristics shall be the primary factors in considering funding for eligible properties:

- Does not create undue stress on utility or other public infrastructure.
- Does not create an unfair advantage for the property owner over existing property owners in the community.
- Property owners or developers agree to construction timetables and other criteria within a development agreement.
- Property owners shall construct public infrastructure in accordance with utility & City specifications, and upon completion, dedicate such to the utility or city as appropriate.

Funding Procedures & Guidelines

Procedures and guidelines are:

- The utility shall prepare a Contribution in Aid of Construction for the entire cost to serve the qualifying project or property.
- Direct assistance of 100% of cost shall be considered for improvements that-
 - Improve an area larger than a specific property or project.
 - Fairly allocates the costs of improvements to the system as a whole vs. serving a specific property or project.
 - Meets the service needs of an entire area, not necessarily the minimum for a specific property or project. Examples include-
 - Looping and redundant switching
 - 3-phase electric service where appropriate
 - Water service that includes fire suppression
 - Communications service designed for multi-directional fiber
- Direct assistance of 100% of cost shall be considered for street lights that-
 - Meet minimum lighting requirements as determined by the utility
 - Comply with the decorative lighting goal of the utility, which is to coordinate the cosmetic aspect of business corridor roadways:
 - North/South Highway: Hwy. 65/69 on urban-designed roadways
 - Business Districts: Commercial areas designated by the utility which are located adjacent to the North/South Highway corridor.
- Maximum assistance-
 - 100% of labor and materials for normal streetlights and 0% of the increased cost for decorative streetlights in areas not designated as a Business District by the utility.
 - 100% of labor and materials for projects that exceed \$12,000 per year in average projected annual electric or water service revenue (per service) over a 5-year period.
 - 100% of labor and 50% of materials for projects that have less than \$12,000 per year in average projected annual electric or water service revenue (per service) over a 5-year period.
- Priorities-
 1. Public infrastructure improvements adjacent to or within undeveloped property or proposed redevelopment.
 2. Direct assistance where local funds are used to match other public and private economic development incentives.
 3. Direct assistance without local funds matching other economic development incentives.
 4. Declaration of surplus for the City Council to utilize utility funds as part of an economic development incentive under the City of Indianola's eligibility criteria

Application Procedure

- Application forms are available in the IMU Administrative Office at 111 S. Buxton
- Applications shall be submitted as soon as possible in the development process.
- The application shall be reviewed by the General Manager for completeness.
- The General Manager shall forward the application, with a recommendation for approval or denial, to the Board of Trustees for its consideration of the application.
- If the Board of Trustees approves the application, the General Manager shall, where necessary, prepare a Development Agreement, which shall contain the necessary financial and legal considerations. The cost to prepare the Developer Agreement shall be paid for by the applicant, including any outside counsel retained by the board for purposes of negotiating, drafting, approving or executing said Agreement.
- Once a Development Agreement is negotiated between the Applicant and the General Manager, the Board of Trustees will take action on the agreement. The board must find that a bona fide public purpose will reasonably be accomplished by the project.

**Indianola Municipal Utilities
Economic Incentive Application**

This application must be completed for any project that requests financial assistance from Indianola Municipal Utilities under the economic incentive program. Please use additional or attached sheets to provide any information requested in this application.

Applicant Name: _____
Mailing Address: _____

Telephone# _____
FAX# _____
E-mail address _____

Property Use

- | | |
|---|---|
| <p>☐ Public entity
☐ Indianola Development Assoc.
☐ Other public/private partnership</p> | <p>☐ Proposed industrial use
☐ Commercial office in excess of \$10M
☐ Other eligible use</p> |
|---|---|

Zoning classification: _____

Project Description

Description of the project (Physical location, building square feet, unique architectural aspects, etc.):

Incentives Requested

- | | | |
|---|----|-------|
| ☐ Infrastructure improvements | \$ | _____ |
| ☐ Electric service installation | \$ | _____ |
| ☐ Water service installation | \$ | _____ |
| ☐ Communication service installation | \$ | _____ |

Projected Utility Usage

Description of projected utility use over the next five years (use attached sheets if necessary):

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Electric	\$	\$	\$	\$	\$
Water	\$	\$	\$	\$	\$
Communications	\$	\$	\$	\$	\$

Other information (types of employment, benefits, etc.):

Dollar value of property improvements to be constructed: \$_____

Description of compatibility with the community and surrounding properties:

Description of uses of public infrastructure or municipal services (utilities, special public safety considerations:

FOR UTILITY USE ONLY:

Received by the City: _____

Reviewed by the General Manager: _____

Referred to Board of Trustees for Action: _____(YES) _____(NO)

Signed: _____
(General Manager)

Date: _____

REVOLVING LOAN FUND POLICY

The purpose of this policy is to provide guidance regarding loans from a revolving loan fund (RLF) to private and public entities for projects that benefit the community. Nothing within this policy requires the IMU Board of Trustees (IMU) to provide funding for any project, regardless of that project's ability to meet eligibility guidelines. Furthermore, nothing in this policy prohibits members of the public from approaching the board to consider funding for a project.

Goal

The goal of this program is to effectively encourage efficient utility usage and growth within the electric service territory, including projects that enhance the community.

Limitations

The RLF is not intended to compete with other lenders and will collaborate with interested lenders to develop a viable financing package that advances a qualified project and minimizes use of the RLF.

The RLF is intended to spur new commercial growth. Projects where more than 20% of the total new investment is for residential housing development are not eligible. Other ineligible uses include refinancing existing debt, financing payments to business owners, activities deemed to be for investment purposes, general needs unrelated to new development, and any illegal activities.

The IMU Board of Trustees is the sole authority for approval or denial of loans from the RLF.

RLF loans are available on a first-come, first considered basis.

RLF loans are not tied to subscribing to IMU electric or telecommunications utility services.

A RLF loan will not be made to any City of Indianola or IMU official and is subject to conflict of interest provisions of applicable city and state laws. IMU shall not make an RLF loan for an IMU-related project unless it has a bona-fide public purpose and does not create a conflict of interest.

IMU will be an equal opportunity lender and requires loan recipients to adhere to all equal opportunity laws.

Eligibility Criteria and Uses of Funds

Eligible projects can include those proposed by any business venture, governmental body, or non-profit entity developing a community or economic development project.

A community or economic development project are those that have any of the following impacts:

- Create or retain employment
- Increase the property tax base of the City of Indianola
- Provides community facilities and services with demonstrated public support
- Enhance the efficient or cost-effectiveness of utility services
- Create or retain tourist attractions

Uses of RLF loan proceeds may be for land, buildings, machinery, equipment, and infrastructure improvements. Working capital loans will only be considered in conjunction with the purchase or construction of other assets.

Loan Criteria

An “initial loan” is federal funds applied for by IMU through the USDA-RD. A “subsequent loan” is a loan using proceeds repaid to the utility from an “initial loan”.

The minimum RLF loan will be for \$25,000 and the maximum subsequent RLF loan will be 80% of the total amount of funds available in the RLF.

RLF projects must include a minimum of 40% funding from other sources. Other sources may include those from other IMU utility funds, which may have different eligibility criteria.

Terms of an initial RLF loan will be 0% for 5 years. Subsequent loans shall not exceed the prevailing prime rate and 10 years.

A loan administrative fee of 1% of the borrowed balance will be charged on subsequent loans. The utility may waive the fee for projects that enhance energy efficiency in new construction or remodeling projects.

Loan proceeds will be disbursed in a timely manner using standard cash management policies and procedures following approval of the initial loan.

All attorney fees, filing fees, etc. will be paid by the loan recipient.

Delinquent amounts will be charged a monthly fee equal to the percentage charged to delinquent utility account holders.

Consideration for making an RLF loan will be based on:

- Compatibility with Indianola’s communitywide economic development goals
- Demonstrated financial need
- Probability of repayment
- Overall financial benefit to the City of Indianola
- Number and quality (in terms of pay & benefits) of jobs to be created or retained
- Improvement to the education, safety, technology, and medical care of residents

Probability of repayment will consider varying degrees of collateral and insurance including:

- Mortgage lien on real property
- Letter(s) of credit from acceptable financial institutions(s)
- Securities eligible to be held under the IMU Investment Policy and Iowa law
- Accounts receivable, inventory, machinery, and equipment
- Short-term pledges from creditworthy donors and personnel guarantees
- Insurance requirements appropriate for physical assets and personal guarantees

This institution is an equal opportunity provider and employer. If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or e-mail at program.intake@usda.gov.

The IMU Board of Trustees shall appoint a RLF committee (The Committee) comprised of:

- 2 Trustees selected by the Board
- 1 utility customer appointed by the IMU Board of Trustees
- General Manager
- Program Coordinator

The Committee will make available and receive application materials and procedural guidelines, which may contain additional limitations on uses of funds than those set forth in this policy.

The Committee will make a recommendation on the terms, collateral, and covenants of subsequent loans for IMU Board of Trustee consideration. The Committee will meet at least annually and provide the IMU Board of Trustees in its annual report the status of the RLF program or its fund balance.

Once a loan agreement has been approved by the Board of Trustees:

- The General Manager or designee is authorized to process a claim for fund disbursement under normal cash management procedures.
- All conditions placed on the applicant must be met prior to the release of funds.
- Funds shall be released within 30 days of the applicant meeting all conditions.
- Requests for cash advances from USDA-RD shall be the minimum amounts needed for the actual, immediate cash required for carrying out the project.
- Cash management policies and procedures of Indianola Municipal Utilities and the City of Indianola and shall be followed.
- USDA-RD funds shall be deposited into the City of Indianola bank account and recorded in the appropriate RLF accounting fund. Revenues, expenditures and transfers related to RLF activities shall be separately recorded in an appropriate fund as set forth under Generally Accepted Accounting Principles.

The General Manager or designee is authorized to implement monitoring and collection procedures on behalf of IMU as needed. Amounts deemed uncollectable by the General Manager require approval of the IMU Board of Trustees prior to being removed from active status in the RLF program.

**Indianola Municipal Utilities
Revolving Loan Fund Application**

This application must be completed for any project that requests financial assistance from Indianola Municipal Utilities under the revolving loan fund program. Please use additional or attached sheets to provide any information requested in this application and supplemental information requested in the Loan Criteria section of the program policy.

Applicant Name: _____

Mailing Address: _____

Telephone# _____

FAX# _____

E-mail address _____

Property Use

☐ Public entity

☐ Indianola Development Assoc.

☐ Other public/private partnership

☐ Proposed industrial use

☐ Commercial office in excess of \$10M

☐ Other eligible use

Zoning classification: _____

Project Description

Description of the project (Physical location, building square feet, unique architectural aspects, etc.):

Projected Utility Usage

Description of projected utility use over the next five years (use attached sheets if necessary):

Service	Year 1	Year 2	Year 3	Year 4	Year 5
Electric	\$	\$	\$	\$	\$
Water	\$	\$	\$	\$	\$
Communications	\$	\$	\$	\$	\$

Other information (types of employment, pay, benefits, etc.):

Dollar value of property improvements to be constructed: \$ _____

Dollar value of loan being requested: \$ _____

Description of loan terms being requested:

Description of compatibility with the community and surrounding properties:

Description of uses of public infrastructure or municipal services impacted:

Attach written description describing, as needed:

- Compatibility with Indianola's communitywide economic development goals
- Demonstrated financial need
- Probability of repayment
- Overall financial benefit to the City of Indianola
- Number and quality (in terms of pay & benefits) of jobs to be created or retained
- Improvement to the education, safety, technology, and medical care of residents

Applicants will be scored on a ranking of 1 (low) to 5 (high) for each category.

Probability of repayment will consider varying degrees of collateral and insurance including:

- Mortgage lien on real property
- Letter(s) of credit from acceptable financial institutions(s)
- Securities eligible to be held under the IMU Investment Policy and Iowa law
- Accounts receivable, inventory, machinery, and equipment
- Short-term pledges from creditworthy donors and personnel guarantees
- Insurance requirements appropriate for physical assets and personal guarantees

Applicants will be scored on a ranking of 1 (low) to 5 (high) for each category.

This institution is an equal opportunity provider and employer. If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or e-mail at program.intake@usda.gov. Program Implementation

FOR UTILITY USE ONLY:

Received by the City or Utility: _____

Reviewed by the General Manager: _____

Referred to Board of Trustees for Action: _____(YES) _____(NO)

Signed: _____
(General Manager)

Date: _____

Information

Subject

Consider Amendments to Revolving Loan Fund

Information

A updated nondiscrimination statement was added to the policy and an application form was added, which documents the procedure that implements the policy.

Financial Impact

N/A

Staff Recommendation

Simple motion approving the amended Revolving Loan Fund Program is in order.

Information

Subject

Revolving Loan Fund Committee

Information

The RLF Committee comprises of staff representatives Todd Kielkopf and Chris Longer. Pat Reding (current board member and commercial lender by profession) and Clark Raney (past board member, could fill the community representative spot) have also served in a similar role in the past for the City of Indianola and on various economic development committees.

Given the lack of a current standing committee and an upcoming USDA-RD review of the RLF program, staff recommends formally updating the committee appointments. Given the tenure schedule of Trustees, Grant or Heather would be logical choices for this advisory (yet required) committee.

Financial Impact

N/A

Staff Recommendation

Simple motion appointing the 5-person Revolving Loan Fund Committee is in order.

Information**Subject**

Discuss Cost of Energy Adjustment Considerations

Information

IMU last raised retail rates in November 2012. Wholesale electric rates began rising in April 2012 and rose again in April 2013 and April 2014. Transmission rates also increased substantially during that time period. Only a portion of the April 2012 increase had been included in the November 2012 rate increase.

The result is that today's rates are not sustaining total O&M costs of purchasing, distributing, reading meters, billing, and administering the activity of selling the electricity being consumed. The utility is using other revenue sources, many of which result from owning assets that need replaced over time, to supplement retail rates.

While the utility is at break-even today according to last month's variance report, that will decrease as more kWh are consumed at an even higher cost to provide.

Based on discussions at prior and recent meetings, it appears to be Trustees' consensus to proceed with a cost of energy adjustment clause to recover these increased wholesale energy costs. As such, staff has been working with rate consultant JK Energy on a method that balances several variables and goals. These include-

- Rate stability and predictability in light of unpredictable purchased energy & transmission costs
- Simplicity in explaining the methodology to the public and staff while recognizing a complex set of set cost-related factors such as summer & winter wholesale rates (which may change later this year), both wholesale demand & energy rates, and unreimbursed fuel costs to run the turbines
- Protection of financial ratios including debt service coverage and days liquidity

JK Energy is recommending a method used in the past by the Nebraska Public Power District and others in which a rolling "bank" of wholesale energy costs is tracked. "Withdrawals" are essentially the actual cost of energy/transmission incurred, net of those included in a wholesale base rate per kWh and any unpredicted wholesale costs. "Deposits" are monies collected from retail customers through the cost of energy adjustment.

The negative "balance" of the bank is calculated on a per kWh and becomes the cost of energy adjustment. If the balance becomes positive, then credits per kWh are issued the subsequent quarter. The adjustment would only change on a quarterly basis.

The advantage to this method is that the total amount of deficit (regardless of the month-to-month variability) is recovered over a more extended time, which makes the adjustment and rate more stable and predictable. There would be parameters that the adjustment couldn't increase more than \$.00xx/kWh in any given quarter over the previous quarter without Trustee approval.

Trustees could also override the adjustment at any time to begin recovering costs if needed to protect the bond rating. Also, Trustees could make additional "deposits" into the bank (and reduce the cost of energy adjustment) if non-rate revenue sources such as capacity payments or budget surpluses from increased kWh sales were available and it was desired to reduce rates.

From a formula standpoint, the COE adjustment = $-\text{"Bank Balance"} / \text{Budgeted Annual Energy Sales in kWh}$

From an explanatory standpoint, the form filed with the City Clerk's Office would read something to the effect of "The cost of energy adjustment is based on the actual cost of wholesale energy used by customers, minus that included in base rates. Costs exceed those rates by at least \$.000x per kWh for this quarter. If and when those costs are fully recovered, then IMU no longer collects an adjustment to recover them. At this time, there are \$yyy,yyy.yy of total costs yet to be recovered."

If this method is acceptable, IMU staff will draft a more formal policy for consideration at the 5/27 Trustee meeting. Financial trends and projections will also be presented to Trustees that will help the public understand that starting in April 2014 (when MEAN's new wholesale rates were imposed), the utility began incurring costs that are not being recovered in base rates.

Financial Impact

N/A

Staff Recommendation
