

Design Guidelines and
Minimum Standard Requirements for

T-HANGAR

Projects





Foreword

This document was produced by the Florida Department of Transportation (FDOT) Central Aviation Office to provide airports in Florida with standardized design guidelines and minimum requirements for airport T-hangar construction projects. This publication also provides airport owners and operators with information and guidelines for a standardized T-hangar bid package. This includes financial information to assist with the various stages of T-hangar development.

These guidelines provide commonly accepted design criteria and minimum requirements for aircraft T-hangars, as well as a generic set of T-hangar covenants that have enforceable power to address activities considered to be potentially hazardous given the construction and applicable fire codes.

This document provides generic standard specifications and minimum requirements for T-Hangar construction that can be tailored to account for differences in local conditions, laws, or regulations and unique requirements of an airport based on its operations and conditions.

Disclaimer

The State of Florida *Design Guidelines and Minimum Standard Requirements for T-Hangar Projects* has been approved by the Florida Department of Transportation, Central Aviation Office.

The information contained in this publication is subject to constant review in the light of changing requirements and regulations. No subscriber or other reader should act on the basis of any such information without referring to current applicable laws, statutes, regulations, codes, and appropriate professional advice.

While reasonable care has been taken in preparing these general performance specifications, no responsibility is accepted for errors of facts or for any opinion expressed herein.

It is not intended that this document be used as a set of bid-ready documents, but rather as a guide to help airports develop the documents needed to go to bid. It is recommended that airports and airport operators consult with a qualified professional engineer, licensed in the state of Florida, during the bidding process.

The T-Hangar Guidebook consists of several components that can each serve as stand-alone documents. Because of this, these components include separate page numbering systems. In addition to the component-specific page numbering, an overall page numbering system is included to assist with navigation of the entire Guidebook. The document-wide page numbering is included on the bottom center of each page. These document-wide page numbers are reflected in the Table of Contents for the Guidebook included on page 2.



Table of Contents

Introductory Sections Page 1

 Foreword Page 1

 Table of Contents..... Page 2

 FDOT Design Guidelines for Construction of T-Hangars Page 3

 Components of the T-Hangar Guidelines Page 4

Generic Bid Package Page 5

 Generic T-Hangar Layouts and Drawing Details Page 459

Declaratory Statements Page 469

 Hernando County Airport Authority Page 472

 Eagle Aviation, LLC Page 481

Sample Rental Agreement/Storage Policy..... Page 491

Resources and Reference Materials..... Page 503

 Advisory Circular 150/5370-2F - Operational Safety on Airports
 During Construction Page 504

 The Florida Aviation Project Handbook Page 504

 National Fire Prevention Association (NFPA) 409: Standard on
 Aircraft Hangars Page 504

 Standard Specifications for Construction of General Aviation Airports..... Page 504



FDOT Design Guidelines for Construction of T-Hangars

Introduction

The Florida aviation system is a very important part of Florida's economy and the intermodal transportation system that facilitates business, personal, and tourist travel, as well as freight movement.

To meet the demands of growth (new construction) and maintenance and rehabilitation of existing airports, approximately 1/3 of the airports have ongoing construction activities. The construction, maintenance, and rehabilitation activities rely on guidelines published by the Federal Aviation Administration (FAA) in Advisory Circular 150/5370-10F. FDOT codifies this guidance in the *State of Florida Standard Specifications for Construction of General Aviation Airports*. It is FDOT's responsibility to ensure that the construction, maintenance, and rehabilitation activities comply with this guidance.

The guidance found in this document is intended to provide information related to developing bid packages and commercial packages for T-hangar projects, as well as to develop T-hangar layout and drawing details. The four key sections of this document are:

- **Generic Bid Package:** This section includes a model bid package that can be modified to meet the specific needs of individual airports for T-hangar projects as well as generic T-hangar layouts and drawing details.
- **Declaratory Statements:** This section includes information related to declaratory statements from the Florida Division of State Fire Marshal. These statements provide official direction on the fire code when the language is not easily interpreted by airports or airport sponsors.
- **Sample Rental Agreement/Storage Policy:** This section contains examples of T-hangar rental agreements and waiting list policies. The documents included in this section can be tailored for individual airports or T-hangar facilities.
- **Resources and Reference Materials:** This section includes links to documents that may be beneficial to airports or airport sponsors when developing T-hangar bid packages.

To help improve this document, FDOT requests that users of this manual provide their comments on how to continually improve the *Design Guidelines and Minimum Standard Requirements for T-Hangar Projects* to the FDOT Central Aviation Office.

For more information, contact:

Airport Engineering Manager
Aviation Office, MS46
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450
Phone (850) 414-4510
Fax (850) 414-4508
Email: vutrinh@dot.state.fl.us



Components of the T-Hangar Guidelines

The Generic Bid Package for Design and Construction of T-Hangars contains all of the suggested sections needed to complete a tailored bid package, including notes/suggestions for edits, inclusion, or exclusion of specific sections based on specific project needs and local governing policies. The General Conditions are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and a sample Contract Agreement is included that is also based on these General Conditions as are the instructions for completing Supplementary Conditions and suggested Special Provisions. A section with Contract Document examples related to Design-Build projects is included for reference at the end of the Generic Bid Package. These General Conditions are based on EJCDC® D-700 and D-750, along with sample contracts specific to Design-Build. As stated above, this document provides all of the suggested sections needed to complete a tailored bid package; it is designed as a reference tool to be modified, as applicable, to each airport's needs. The individual airports will be responsible for creating a bid package tailored to their needs, whether they are Design-Build, Turnkey, or Design-Bid-Build. A separate Table of Contents listing each section is included as part of the Generic Bid Package. As part of this section, example layout drawings of T-Hangar design are included. These examples represent one type of hangar that can be constructed; therefore, each airport should determine the type of hangar construction that is appropriate for their airport.

The next section contains information on declaratory statements. Declaratory statements for the design and construction of T-Hangars come from the Florida Division of State Fire Marshal. For hangar construction, declaratory statements are made when either the agency responsible for constructing the hangar or the airport authority needs clarification related to the Florida Fire Prevention Code and Life Safety Code.

The section including the storage agreement and waiting list policy provides guidance on hangar rental once the facility has been completed.

Also included is a list of applicable resources and reference materials that will be beneficial to reference during the development of a bid package. These references and resources provide general outlines of what information they provide and how they can be useful when developing bid packages. Additionally, links to access the complete document are provided.



GENERIC BID PACKAGE

for

Design & Construction of T-Hangar Building
(Airport Name)

WPI Number

State Job Number

Florida Department of Transportation Aviation Office

(Date)



List of Sections

Statement of Inspection

Certification Page Section 00003A

List of Drawings..... Section 00004

Advertisement for Bids..... Section 00111

Instructions to Bidder..... Section 00301

 Bid Form Section 00301

 Bid Bond (Penal Sum Form)..... Section 00301

Bid Bond (Damages Form) Section 00302

Public Entity Crimes Statement Section 00304

Agreement Section 00520

Notice of Award..... Section 00521

Notice to Proceed..... Section 00550

Performance Bond Section 00610

 Payment Bond..... Section 00610

Application for Payment Section 00620

Certificate of Substantial Completion..... Section 00625

Minimum Insurance Requirements Section 00650

Reference Form Section 00652

Standard General Conditions of the Construction Contract..... Section 00700

Suggested Supplementary Conditions Section 00800

Special Provisions Section 00801

Work Change Directive Section 00940

Change Order..... Section 00941

Field Order..... Section 00942

Material and Equipment..... Section 01600

Contract Closeout Section 01700

Design-Build Specific Documents Sections D-500 – D-750

Statement of Inspection

Date: _____

_____ hereby certifies that its representative(s) have inspected all bid documents and work site at (*Airport Name*), and is fully informed as to the conditions to be encountered.

Name of Company Representative(s) (PLEASE TYPE OR PRINT)

Signature of Company Representative(s)

Company Name (PLEASE TYPE OR PRINT)

Company Address and Telephone Number (PLEASE TYPE OR PRINT)

Signature of Airport Owner Representative present at the Contractor's Inspection - Date

***This Document Must Be Signed and Returned to the
Airport Owner Prior to Bid Opening.***

Certification Page

Contract Documents For:

Airport Name

I certify that the contract documents contained in this booklet are the original contract documents and I have read and understood the conditions stated herein.

I further certify that I have received a copy of these contract documents and any additional information referenced to be a part thereof.

I further certify that I was afforded the opportunity to ask any questions regarding the contract documents and engineering plans at the time of the pre-bid conference.

CONTRACTOR: _____

Authorized Representative (signature)

(print name and title)

End of Section

Advertisement for Bids

[AIRPORT'S/OWNER'S NAME]

[AIRPORT'S/OWNER'S CITY AND STATE]

[PROJECT NAME AND CONTRACT DESIGNATION]

Sealed Bids for the construction of the **[insert Project name or title, and Contract or other identification number of the Project]** will be received, **[delete when not applicable: from invited Bidders only]**, by **[insert Owner's name]**, at the office of the **[insert location where Bids will be received]**, until **[insert time for receipt of Bids]** local time on **[insert date for receipt of Bids]**, at which time the Bids received will be **[insert either "publicly" or "privately" as applicable to the Project]** opened and read. The Project consists of constructing **[insert a very brief summary description of the scope of the Work]**.

Bids will be received for a single prime Contract. Bids shall be on a lump sum and unit price basis, with additive alternate bid items as indicated in the Bid Form.

[or – Version 2]

Separate Bids will be received for Contract No. 1 – General Construction; Contract No. 2 – Electrical Construction; Contract No. 3 – Plumbing; Contract No. 4 – Heating, Ventilating, and Air Conditioning Construction. Bids shall be on a lump sum and unit price basis for Contract No. 1, and on a lump sum basis for Contract Nos. 2, 3, and 4. Contract Nos. 1 and 2 include additive alternate bid items as indicated in the Bid Form.

The Issuing Office for the Bidding Documents is: **[insert name, address, and phone number of the Issuing Office, as well as contact person and that person's phone number and e-mail address]**. Prospective Bidders may examine the Bidding Documents at the Issuing Office on Monday through Friday between the hours of **[insert hours]**, and may obtain copies of the Bidding Documents from the Issuing Office as described below.

Bidding Documents may also be examined at **[insert names and addresses of plan rooms and similar locations/services]**; online at **[insert name of Internet-based construction information subscription services]**; and the office of the **[insert Airport's/Owner's name and address]**, on Monday through Friday between the hours of **[insert hours]**.

Printed copies of the Bidding Documents may be obtained from the Issuing Office, during the hours indicated above, upon payment of a deposit of \$_____ **[insert amount]** for each set. Bidders who return full sets of the Bidding Documents in good condition (suitable for re-use), within 30 days after receipt of Bids, will receive a full refund. Non-Bidders and Bidders who obtain more than one set of the Bidding Documents will receive a refund of \$_____ **[insert amount; often half of the initial deposit]** for documents returned in good condition within the time limit indicated above. Checks for Bidding Documents shall be payable to "**[insert entity name]**". Upon request and receipt of the document deposit indicated above, plus a non-refundable shipping charge, the Issuing Office will transmit the Bidding Documents via delivery service. The shipping charge amount will depend on the shipping method

selected by the prospective Bidder. The date that the Bidding Documents are transmitted by the Issuing Office will be considered the Bidder's date of receipt of the Bidding Documents. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including Addenda if any, obtained from sources other than the Issuing Office.

[or – Version 2]

Bidding Documents may be obtained from the Issuing Office during the hours indicated above. Bidding Documents are available on compact disc (as portable document format (PDF) files) for a non-refundable charge of \$____ **[insert amount]**, including shipping via overnight express service. Alternatively, printed Bidding Documents may be obtained from the Issuing Office either via in-person pick-up or via mail, upon Issuing Office's receipt of payment for the Bidding Documents. The non-refundable cost of printed Bidding Documents is \$____ **[insert amount]** per set, payable to "**[insert entity name]**", plus a non-refundable shipping charge. Upon Issuing Office's receipt of payment, printed Bidding Documents will be sent via the prospective Bidder's delivery method of choice; the shipping charge will depend on the shipping method chosen. The date that the Bidding Documents are transmitted by the Issuing Office will be considered the prospective Bidder's date of receipt of the Bidding Documents. Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including Addenda if any, obtained from sources other than the Issuing Office.

[or – Version 3]

Bidding Documents may be viewed and ordered online by registering with the Issuing Office at **[insert website URL, if any, where Bidding Documents may be registered for and downloaded]**. Following registration, complete sets of Bidding Documents may be downloaded from the Issuing Office's website as "zipped" portable document format (PDF) files. The cost of printed Bidding Documents from the Issuing Office will depend on the number and size of the Drawings and Project Manual, applicable taxes, and shipping method selected by the prospective Bidder. Cost of Bidding Documents and shipping is non-refundable. Upon Issuing Office's receipt of payment, printed Bidding Documents will be sent via the prospective Bidder's delivery method of choice; the shipping charge will depend on the shipping method chosen. The date that the Bidding Documents are transmitted by the Issuing Office will be considered the Bidder's date of receipt of the Bidding Documents. Partial sets of the Bidding Documents will not be available from the Issuing Office.

A pre-bid conference will be held at **[insert time]** local time on **[insert date]** at the **[insert location, including site name, building name if applicable, and address]**. Attendance at the pre-bid conference is highly encouraged but is not mandatory.

Note: When attendance at the pre-bid conference is mandatory (e.g., if Owner instructs that it will not accept a Bid from a Bidder that did not attend the pre-bid conference), edit the paragraph below accordingly. Coordinate with the provisions of Article 6 of the Instructions to Bidders, as required.

Bid security shall be furnished in accordance with the Instructions to Bidders.

*Note: When applicable, include a provision to the effect of, "Bids will be accepted only from Bidders prequalified by the Owner. Contact **[insert Owner contact person name and contact information]** to obtain prequalification*

requirements." Edit to suit the Project, or use alternative language when other qualifications requirements are sufficiently important to warrant including them in the Advertisement.

Bidders shall submit proof of qualifications to perform the Work as described in the Instructions to Bidders.

Airport/Owner: **[Owner's name]**
By: **[Name of individual authorized to issue notices]**
Title: **[Title of individual]**
Date: **[Date of initial publication of Advertisement]**

End of Section

Instruction to Bidders

Table of Contents

| | Page |
|---|-------------|
| Article 1 – Defined Terms | 9 |
| Article 2 – Copies of Bidding Documents | 9 |
| Article 3 – Qualifications of Bidders | 10 |
| Article 4 – Site and Other Areas; Existing Site Conditions; Examination of Site; Owner’s Safety Program; Other Work at the Site | 12 |
| Article 5 – Bidder’s Representations..... | 15 |
| Article 6 – Pre-Bid Conference..... | 16 |
| Article 7 – Interpretations and Addenda..... | 16 |
| Article 8 – Bid Security..... | 16 |
| Article 9 – Contract Times | 18 |
| Article 10 – Liquidated Damages | 18 |
| Article 11 – Substitute and “Or-Equal” Items..... | 18 |
| Article 12 – Subcontractors, Suppliers, and Others..... | 19 |
| Article 13 – Preparation of Bid | 21 |
| Article 14 – Basis of Bid | 22 |
| Article 15 – Submittal of Bid | 24 |
| Article 16 – Modification and Withdrawal of Bid | 25 |
| Article 17 – Opening of Bids | 25 |
| Article 18 – Bids to Remain Subject to Acceptance | 26 |
| Article 19 – Evaluation of Bids and Award of Contract..... | 26 |
| Article 20 – Bonds and Insurance..... | 29 |
| Article 21 – Signing of Agreement | 29 |
| Article 22 – Sales and Use Taxes..... | 29 |
| Article 23 – Contracts to be Assigned | 30 |

Article 1 - Defined Terms

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

A. Issuing Office – The office from which the Bidding Documents are to be issued.

Notes: In addition to terms specifically defined, terms with initial capital letters in the Bidding Requirements include references to identified articles and paragraphs, and the titles of other documents or forms.

Additional defined terms applicable to the Bidding Requirements should be included here and should be used uniformly throughout the Bidding Requirements with initial capitals. Additional defined terms applicable to the Contract Documents should be included in the Supplementary Conditions. Note the difference in the meanings of the terms “Bidding Requirements” and “Bidding Documents,” as defined in the General Conditions, Paragraph 1.01.A.

Article 2 - Copies of Bidding Documents

- 2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the advertisement or invitation to bid.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

Notes: Practices vary in the manner of issuing Bidding Documents, recording the names of document holders, and requiring deposits, charges, and refunding of deposits.

Many owners levy a non-refundable charge for a hard copy of the Bidding Documents, rather than using a deposit and refund system. If the Issuing Office charges a deposit, then advise potential Bidders, either in the advertisement or invitation to bid or when the copy is requested, of the terms under which the deposit will be returned (for example that the deposit will be refunded to each document holder of record that returns a complete set of Bidding Documents in good condition within 30 days after opening of Bids).

Some Owners will provide a digital version of the Bidding Documents to potential bidders or allow the Bidding Documents to be posted and accessed in plan rooms; or in some cases will make the Bidding Documents available only electronically. If Bidding Documents are provided electronically, it is typical to use a secure PDF or similar format, with caveats regarding discrepancies between the electronic copy and hard copy. In certain cases, the bidding process and the project may benefit from making some of the Bidding Documents available in accessible electronic format that allows bidders to make detailed quantity measurements and take-offs; if this is done, the Owner and Engineer must make decisions about risk allocations with respect to the accessible documents, and include appropriate terms, conditions, and disclaimers in these Instructions. Refer to General Conditions, Articles 2 and 3.

Article 3 - Qualifications of Bidders

3.01 To demonstrate Bidder’s qualifications to perform the Work, after submitting its Bid and within [____] days of the Owner’s request, Bidder shall submit (a) written evidence establishing its qualifications, such as financial data, previous experience, and present commitments, and (b) the following additional information:

- A. [Evidence of Bidder’s authority to do business in the state where the Project is located.]
- B. [Bidder’s state or other contractor license number, if applicable.]
- C. [Subcontractor and Supplier qualification information; coordinate with provisions of Article 12 of these Instructions, “Subcontractors, Suppliers, and Others.”]
- D. [Other required information regarding qualifications]

[or]

3.01 Prospective Bidders shall submit required information regarding their qualifications by ____ [insert deadline for prequalification submittals]. Owner will review the submitted information to determine which contractors are qualified to bid on the Work. Owner will issue an Addendum listing those contractors that Owner has determined to be qualified to construct the project. Bids will only be accepted from listed contractors. The information that each prospective Bidder must submit to seek prequalification includes (a) written evidence establishing its qualifications, such as financial data, previous experience, and present commitments, and (b) the following additional information:

- A. [Evidence of prospective Bidder’s authority to do business in the state where the Project is located.]
- B. [Prospective Bidder’s state or other contractor license number, if applicable.]
- C. [Subcontractor and Supplier qualification information; coordinate with provisions of Article 12 of these Instructions, “Subcontractors, Suppliers, and Others.”]
- D. [Other required information regarding qualifications]

[or]

3.01 To demonstrate Bidder’s qualifications to perform the Work, Bidder shall submit with its Bid (a) written evidence establishing its qualifications, such as financial data, previous experience, and present commitments, and (b) the following additional information:

- A. [Evidence of Bidder’s authority to do business in the state where the Project is located.]
- B. [Bidder’s state or other contractor license number, if applicable.]
- C. [Subcontractor and Supplier qualification information; coordinate with provisions of Article 12 of these Instructions, “Subcontractors, Suppliers, and Others.”]
- D. [Other required information regarding qualifications]

Notes: Use one of the three alternative Paragraphs 3.01.

As drafted, the first alternative 3.01 assumes that the Owner's request for qualifying information will be made after the Bids have been received and opened. The time allowed for the Bidder to submit Owner-requested qualifications data varies. Five to 10 days is typical. It is recommended that the qualifications be requested from the three lowest Bidders, but in some cases—for example, an exceptionally tight bid spread or low bids that seem unrealistic—the Owner may wish to request the information from all Bidders.

If the Owner will prequalify Bidders, such that only prequalified Bidders may submit Bids, then use the second alternative 3.01. The procedures and intricacies involved in the prequalification of Bidders requires careful consideration before appropriate language is drafted. Also, many governmental bodies have specific requirements with respect to the prequalification of Bidders. The second alternative 3.01 is meant to provide a starting point for prequalification; some additional drafting likely will be needed.

If the Owner prefers to obtain qualifying information from all Bidders at the time Bids are submitted, then use the third alternative 3.01.

Requirements for Bidders to obtain either authorized business status or state contractor licensing or both prior to submitting a Bid may preclude some entities, such as out-of-state corporations, from bidding due to the time required to obtain such status or license. Some Owners modify the requirement to require only that the Bidder submit evidence of its ability to obtain required authority or licenses within the time for acceptance of Bids. In all cases, the bidding requirements must be consistent with state Laws or Regulations regarding business status and licensing.

Request submittal of contractor licensing information when the state in which the Project is located requires contractor licensing for the type of Project to be constructed.

It is desirable to itemize the data that all Bidders will be required to submit in order to demonstrate their qualifications for an award. Also, standards or criteria that will be applied in Bidder evaluation should be stated. These data should appear in this Article 3 in their entirety and may include specific language required by Laws or Regulations.

It is good practice for the Owner and Engineer to discuss the Bidder qualifications that are appropriate to each Project. If a Bidder's qualification form is to be completed and submitted by Bidders, it should be provided with the Bidding Documents.

If there is a Disadvantaged Business Enterprise [DBE] requirement for the Contract, so indicate here. The DBE requirements are typically contract terms and should be stated in the Contract Documents. If reference is made here in the Instructions to Bidders to the required level of DBE participation, the criteria to be used, or other specific DBE requirements, such references must be fully consistent with the actual contract clauses.

- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify the Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of the Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.04 Bidder is advised to carefully review those portions of the Bid Form requiring the Bidder's representations and certifications.

Article 4 – Site And Other Areas; Existing Site Conditions; Examination of Site; Owner’s Safety Program; Other Work at the Site

4.01 Site and Other Areas

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by the Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by the Contractor.

Notes: Any conditions set forth in easements obtained by the Owner, including their availability to the Contractor when Notice to Proceed is given, which may affect cost or performance of the Work, should be disclosed to the Bidder. If the information is available at the time Bidding Documents are prepared, it should be added to Paragraph 4.01, and the exact language and anticipated availability of the easement or right-of-way should be included in the Contract Documents (usually the Supplementary Conditions). If important information is not yet available, appropriate statements should be made concerning assumptions to be made by the Bidder and upon which the Bidder may rely.

4.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:
 - a. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
 - b. Those drawings known to the Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
 - c. Reports and drawings known to the Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
 - d. Technical Data contained in such reports and drawings.
2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy the Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion the Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

Notes: Any cost to Bidders for obtaining copies of reports and drawings in Paragraph 4.02.A should be addressed here.

Note that the reports and drawings referenced in Paragraph 4.02 above are not Contract Documents. It is recommended that they not be bound with or attached as an Appendix or otherwise to the Contract Documents in any manner that they might give the appearance of being part of the Contract Documents.

If the Owner decides that it does not wish to identify any subsurface data in the reports and drawings furnished as Technical Data entitled to reliance by Bidders, and does not want the default definition of Technical Data to apply, then the Supplementary Conditions and these Instructions should affirmatively state that there is no data on which Bidders may rely, and the Owner should revise the General Conditions' definition of Technical Data to avoid its default operation.

If the Contract Documents include use of a Geotechnical Baseline Report, it should be furnished to the Bidder as a proposed Contract Document and included in the Project Manual. Revise Paragraph 4.02 above to include the following Paragraph 4.02.A.4:

4. Geotechnical Baseline Report: The Bidding Documents contain a Geotechnical Baseline Report (GBR). The GBR describes certain select subsurface conditions that are anticipated to be encountered by the Contractor during construction in specified locations ("Baseline Conditions"). The GBR is a Contract Document.

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

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

- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to the Owner and Engineer by owners of such Underground Facilities, including the Owner, or others.
- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

Notes: The Technical Data upon which the Bidder may rely should be identified in the Supplementary Conditions (see discussion in the Note following Paragraph 4.02 above, with respect to subsurface conditions).

In the event there are no data of the types referred to, it may be appropriate to revise the paragraphs above and expressly state that there are no such data.

4.03 Site Visit and Testing by Bidders

- A. Bidder shall conduct the required Site visit during normal working hours and shall not disturb any ongoing operations at the Site.

Notes: If Site visits are to be conducted by appointment only, so indicate, and provide instructions for arranging the visit.

Any limitations on the time, area, or other terms and conditions of access for the Site visit should be stated.

- B. Bidder is not required to conduct any subsurface testing or exhaustive investigations of Site conditions.

Notes: Ordinarily, the Owner should not require Bidders to conduct detailed Site and subsurface testing and investigation due to time constraints and other practical considerations. However, under some circumstances, it may be necessary for the Owner to require such testing and investigation. If the Owner chooses to require the Bidders to conduct testing or detailed investigations, the sentence above should be deleted and the specific testing or examination requirements inserted. Any such requirements for pre-Bid Site testing or examination should be realistic and clearly stated. Reasonable time must be allowed in the bidding period to permit Bidders to carry out these efforts. The Owner must make the Site available, and the Owner should establish terms and conditions governing the investigations and tests, addressing such issues as Bidder's liability insurance, locating and protecting existing utilities, Site restoration, and compliance with safety programs pertaining to the Site.

- C. Upon request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide the Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as the Bidder deems necessary for preparing and submitting a successful Bid. The Owner will not have any obligation to grant such access, if doing so is not practical, because of existing operations, security, or safety concerns, or restraints on the Owner's authority regarding the Site.
- D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by the Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 Owner's Safety Program

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.05 Other Work at the Site

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which the Owner is aware (if any) that is to be performed at the Site by the Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If the Owner is party to a written contract for such other work then, upon request, the Owner will provide each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

Notes: Article 8 of the General Conditions indicates that if such other work is to be performed, it will be noted in the Supplementary Conditions.

Article 5 - Bidder's Representations

5.01 It is the responsibility of each Bidder prior to submitting a Bid to:

- A. Examine and carefully study the Bidding Documents and any data and reference items identified in the Bidding Documents;
- B. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

Notes: Bidder is expected to visit the Site and conduct an alert, heads-up, eyes-open, reasonable examination of the area and the conditions under which the Work is to be performed, and that is the intent of Paragraph 5.01.B. Any special requirements for such examination are to be set forth in writing (Paragraph 4.03 is the preferable location for such requirements).

- C. Become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;

Notes: If there are no reports or drawings of the type referred to in this representation, either modify or delete the paragraph and expressly state that there are none.

- E. Consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

Notes: If the Bidding Documents do not identify any Site-related reports and drawings, modify this paragraph accordingly.

- F. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid, no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. Become aware of the general nature of the work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

- H. Promptly give the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. Agree that the submission of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

Notes: The representations by the Bidder on the Bid Form and in both of the Owner-Contractor Agreements (Stipulated Sum, and Cost-Plus) are closely coordinated with the wording in this Article so that a change in one would necessitate changes in the others.

Article 6 – Pre-Bid Conference

6.01 A pre-Bid conference will be held at the time and location stated in the invitation or advertisement to bid. Representatives of the Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. The Engineer will transmit to all prospective Bidders of record such Addenda as the Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Notes: It is recommended that the Engineer record the prospective Bidders in attendance at the beginning and at the end of the pre-bid conference and keep a record of the proceedings. If regulatory authorities having jurisdiction are also present, their attendance should be noted.

It is most common for attendance at the pre-bid conference to be encouraged but not required, though practices vary by jurisdiction. Mandatory pre-Bid conferences are not allowed in some jurisdictions. If the Owner makes it mandatory that Bidders attend the pre-bid conference, this should be made clear in the instructions above and in the advertisement or invitation to bid, and the instructions should state the consequences of failure to attend.

Article 7 – Interpretations and Addenda

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to the Engineer in writing. Interpretations or clarifications considered necessary by the Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

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

Notes: The time in which Bidders' questions must be submitted to receive consideration, set as seven days prior to the opening of bids in these documents, may be governed by Laws or Regulations and should be modified in Paragraph 7.01, if necessary.

Addenda are not to be issued after Bid opening. If the administration of the bidding procedures is not conducted by the Engineer (for example, if questions are to be submitted to the Owner or to a construction manager), it may be appropriate to amend Article 7.

Article 8 – Bid Security

- 8.01 A Bid must be accompanied by Bid security made payable to the Owner in an amount of [] percent of the Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

Notes: Reference should be made to statutory requirements and applicable governmental regulations with respect to Bid security required on public projects. It may be necessary to delete Article 8 in its entirety and replace it with specific language required by Laws and Regulations. In the event such language does not provide for the release of Bid security to Bidders who decline to substitute Subcontractors, Suppliers, or other individuals or entities requested by the Owner, as provided in Article 12 below, it may be necessary to make coordinated revisions.

Article 5 of the Bid Form should be carefully reviewed to ensure there will be no misunderstanding of the term "Bidder's maximum Bid price."

For recommended bid bond forms, see Sections 00301 (Penal Sum Form) and 00302 (Damages Form).

If a specific bid bond form, such as those provided in Sections 00301 or 00302, is required, the form should be included in the Bidding Documents.

Bid security is not universally used or required. When used, it is typically in the range of 5-10 percent.

- 8.02 The Bid security of the apparent Successful Bidder will be retained until the Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, the Owner may consider the Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be the Owner's exclusive remedy if Bidder defaults.

Notes: The remedy provided the Owner, by Paragraph 8.02, for Bidder default presumes that a certified check, money order, or a Penal Sum Form Bid Bond, such as the one shown in Section 00301, will be required.

If the Damages Form Bid Bond (Section 00302) or similar damages form is specified or permitted, the second sentence of Paragraph 8.02 should be revised to state that "...Owner may consider the Bidder to be in default, annul the Notice of Award, and exercise its rights under the Bid Bond."

- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

Notes: Retaining the Bid security of other Bidders that may be in line for contract award, in the event of default by the initial Successful Bidder, is a standard practice that provides the Owner with a similar security, if award to one of the other Bidders becomes necessary.

The "61 days" is based on the fact that, as provided in Paragraph 2.01 of the Bid Form, Bids will remain subject to acceptance "for 60 days after the Bid opening." Therefore, on the sixty-first day, the Bids are no longer effective.

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

Article 9 - Contract Times

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

[or]

9.01 Bidder shall set forth in the Bid the time by which Bidder shall achieve Substantial Completion, subject to the restrictions established in Paragraph 14.04 of these Instructions. The Owner will take the Bidder's time commitment regarding Substantial Completion into consideration during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy the Owner that it will be able to achieve Substantial Completion within the time such Bidder has designated in the Bid. **[If applicable include the following: Bidder shall also set forth in the Bid its commitments regarding the achievement of Milestones and readiness for final payment.]** The Successful Bidder's time commitments will be entered into the Agreement (or incorporated in the Agreement by reference to the specific terms of the Bid).

Notes: Use one of the two alternative Paragraphs 9.01 and delete the other. The first (and most common) alternative anticipates that the times for Milestones, if any, Substantial Completion, and completion of the Work in readiness for final payment have been set forth in the Agreement that is included in the Bidding Documents. The second alternative may be used to permit Bidders to designate the time of Substantial Completion in the Bids, as a factor in determining the Successful Bidder. In most cases, Bidders will not be asked to designate the time in which it commits to achieving Milestones or readiness for final payment, and hence the sentence in brackets above should in most cases be deleted. See note regarding price-plus-time ("A+B") bidding following Paragraph 19.03 below.

Article 10 - Liquidated Damages

10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

Notes: Liquidated damages amounts and terms should be stated in Article 4 of the Agreement.

Article 11 - Substitute and "Or-Equal" Items

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

Notes: The presumptive practice is that no substitute or "or-equal" materials or equipment will be considered until after the Effective Date of the Contract. However, some practitioners do consider, and some Laws and Regulations require, evaluations of substitutions and "or-equals" during the bidding period and issuance of Addenda when a substitute or "or-equal" is accepted. In such cases, use the second alternative Paragraph 11.01, immediately below.

[or]

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those “or-equal” or substitute materials and equipment subsequently approved by the Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by the Engineer as an “or-equal” or substitute unless written request for approval has been submitted by the Bidder and has been received by the Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. The Engineer’s decision of approval or disapproval of a proposed item will be final. If the Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

Note that the General Conditions draw a distinction between “or-equal” and substitute items of materials and equipment. Paragraph 7.04 of the General Conditions addresses “or-equals”; Paragraph 7.05 addresses substitutes.

- 11.02 All prices that the Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at the Bidder’s sole risk.

Article 12 – Subcontractors, Suppliers, and Others

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

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

- 12.03 The apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to the Owner a list of the Subcontractors or Suppliers proposed for the following portions of the Work: *[drafter should list key categories of the Work here; depending on the Project, this might include electrical, fire protection, major equipment items, etc.]*.

If requested by the Owner, such a list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If the Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, the Owner may, before the Notice of Award is given, request apparent Successful Bidder submit an acceptable substitute. In which case apparent Successful Bidder shall submit a substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and the Owner may consider such price adjustment in evaluating Bids and making the Contract award.

- 12.04 If apparent Successful Bidder declines to make any such substitution, the Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or

other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which the Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to the Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

Notes: The matter of the Owner retaining the right to disapprove of or reject certain Subcontractors, Suppliers, individuals, or entities (including those who are to furnish the principal items of material and equipment) which apparent Successful Bidder proposes for the Work has not been approached uniformly nor with unanimous endorsement by various interested organizations. Prequalification of certain Subcontractors, Suppliers, individuals, or entities prior to the submission of Bids is one approach, but the effort, procedures, and intricacies involved require careful consideration and prequalification may not be permitted on public works projects in some jurisdictions. Provisions dealing with this matter after the submittal of a Bid are contained in Paragraph 7.06 of the General Conditions. As a general principle, Contractors should be entitled to retain Subcontractors, Suppliers, individuals, or entities of their own choosing, that occasions when the Owner and Engineer will wish to either require use of specific Subcontractors, Suppliers, or personnel, or to disapprove or reject proposed or retained Subcontractors, Suppliers, or personnel will arise infrequently, and that the right to reject should be exercised only with appropriate supporting data. However, it is recognized, that there will be situations in which, as a result of the peculiarities of a given project, it will be important for the Owner and Engineer to have the right to reject certain Subcontractors, Suppliers, individuals, or entities that are proposed for or have been retained for the Work.

Provisions dealing with the prequalification of Subcontractors, Suppliers, individuals, or entities prior to the opening of Bids should be set forth in Article 12, as should provisions dealing with the Owner's right to disapprove between the time of Bids opening and Notice of Award. Coordination of the language with Article 3 and Article 19 of these Instructions should not be overlooked. It is important to remember that the Owner's right to reject will apply only to those Subcontractors, Suppliers, individuals, or entities whose identity is to be submitted to the Owner as required by these Instructions; accordingly, unless a particular trade, manufacturer, etc., has been so singled out, the right to reject would not exist (except as generally provided in Paragraph 7.06 of the General Conditions). In the event Subcontractors, Suppliers, individuals, or entities are not required to be identified, it may be appropriate to delete some or all of Article 12.

Requiring the apparent Successful Bidder to retain a substitute Subcontractor, Supplier, individual, or entity that is acceptable to the Owner and Engineer may have a serious effect on the first Bid price submitted, and there are various ways of dealing with the situation should it arise. The suggested approach is set forth in the last sentence of Paragraph 12.03. Most owners favor this approach as being more equitable to contractors and for its tendency to produce a lower initial Bid.

Others may prefer an alternative approach that does not allow a price increase, due to legal constraints applicable to public works projects or the desire to hold the initial Bid firm, even though this may generally result in higher Bids. This alternative may be accomplished by revising the last sentence of Paragraph 12.03 to state:

*"If the Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, the Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, **without an increase in Bid price.**"*

In addition, under the alternative approach, the Owner and its advisors may conclude that it would be inequitable to claim a Bid security forfeiture, hence the second sentence of Paragraph 12.04 would be revised to state:

*“Declining to make requested substitutions will **not** constitute grounds for forfeiture of the Bid security of any Bidder.”*

There are other sound ways to address these problems. The entire matter should be reviewed by the Owner and the Owner’s legal counsel prior to finalizing these Instructions.

Any restrictions or limitations on subcontracting should appear in SC 7.06, and cross-references to that location should appear here in Article 12.

Reference should be made to applicable Laws and Regulations with respect to Subcontractors, Suppliers, individuals or entities. Specific provisions may be required by Laws or Regulations, in which case Article 12 may require amending or deletion and replacement with the required language. Note also that Article 12, as written, contemplates that Subcontractors and Suppliers, required to be identified by apparent Successful Bidder prior to award of the Contract, will be listed here in the Instructions. If these requirements will instead be established in the Supplementary Conditions, the Bid Form, or other location, such specific location should be noted here in Article 12.

Article 13 – Preparation of Bid

13.01 The Bid Form is included with the Bidding Documents.

- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”

Notes: Coordinate these paragraphs carefully with the Bid Form and edit as required.

13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

A corporate seal may be required in some jurisdictions. If so, add appropriate wording. The following is an example: “The corporate seal shall be affixed and attested by the corporate secretary or an assistant corporate secretary.”

A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

13.03 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

13.04 A Bid by an individual shall show the Bidder’s name and official address.

13.05 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

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

- 13.07 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.08 Postal and e-mail addresses and telephone numbers for communications regarding the Bid shall be shown.
- 13.09 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

See Note to User 5, Paragraph 3.01.

Article 14 – Basis of Bid

14.01 Lump Sum

- A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

[or]

14.01 Base Bid with Alternates

- A. Bidders shall submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents and as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid, if Owner selects the alternate.
- B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form.

[or]

14.01 Sectional Bids

- A. Bidders may submit a Bid on any individual section or any combination of sections, as set forth in the Bid Form.
- B. Submission of a Bid on any section signifies the Bidder's willingness to enter into a Contract for that section alone at the price offered.
- C. If the Bidder submits Bids on individual sections and a Bid based on a combination of those sections, such combined Bid need not be the sum of the Bids on the individual sections.
- D. Bidders offering a Bid on one or more sections shall be capable of completing the Work covered by those sections within the time period stated in the Agreement.

Notes: Paragraph 14.01 gives three frequently used alternatives for defining the basis and determination of Bid prices. The user should select one and delete the others. For a particular project, a unique, customized set or combination of paragraphs may be necessary, following the concept shown above; for example, sectional bids together with alternates. The user should carefully review Paragraph 14.01 and compare to the final Bid Form for clarity and consistency.

Also, note the importance of including the following paragraph, 14.02, when unit prices are part of the Bid. It is common for bid forms to be structured to require lump sum prices for specified portions of the Work and unit prices for other Work items.

14.01 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity” (which the Owner or its representative has set forth in the Bid Form) for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by the Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Notes: Some lettings may be based exclusively on unit prices. As noted following Paragraph 14.01 above, it is also common for bid forms to be structured to require lump sum prices for specified portions of the Work, and unit prices for other Work items.

14.02 Allowances

- A. For cash allowances, the Bid price shall include such amounts as the Bidder deems proper for the Contractor’s overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

14.03 Price-Plus-Time Bids

- A. The Owner will consider the time of Substantial Completion commitment made by the Bidder in the comparison of Bids.
- B. Bidder shall designate the number of days required to achieve Substantial Completion of the Work and enter that number in the Bid Form as the total number of calendar days to substantially complete the Work.
- C. The total number of calendar days for Substantial Completion designated by the Bidder shall be less than or equal to a maximum of [], but not less than the minimum of []. If the Bidder purports to designate a time for Substantial Completion that is less than the allowed minimum, or greater than the allowed maximum, the Owner will reject the Bid as nonresponsive.
- D. The Agreement as executed will contain the Substantial Completion time designated in Successful Bidder’s Bid, and the Contractor will be assessed liquidated damages at the rate stated in the Agreement for failure to attain Substantial Completion within that time.
- E. [Bidder shall also designate the time in which it will achieve Milestones, and achieve readiness for final payment. Such time commitments shall be consistent with the “Time of Substantial Completion” to which the Bidder commits. The Agreement, as executed, will

contain, as binding Contract Times, Successful Bidder's time commitments regarding Milestones, as applicable, and readiness for final payment.]

Notes: Paragraph 14.04 should be used if the Bidder is permitted to designate the Contract Times and it is therefore necessary to explain the manner in which differences in completion time will be compared in determining the Successful Bidder. In the more common situation in which the Contract Times are fixed by the Owner (by setting them out in the Agreement that has been included in the Bidding Documents), delete Paragraph 14.04.

The primary purpose of this price-plus-time bidding procedure is to encourage the shortening of the construction duration. It is commonly referred to as A+B bidding. This procedure is beneficial to the Owner in situations in which it is advantageous for the Work to be completed early. The apparent low bidder is determined based on a monetary combination of the traditional Contract bid item(s) (A) and the time component (B) proposed by Bidder.

When price-plus-time (A+B) bidding is used, the date of completion in readiness for final payment should be linked in the Agreement to the date of Substantial Completion; typically Bidders should not be asked to separately designate such date of final completion. Similarly, establishing intermediate Milestones (or asking Bidders to designate times to achieve Milestones) may be difficult because of the uncertainty of the date required for Substantial Completion, pending receipt of the Bids. For these reasons, in most cases Paragraph 14.04.E will not be needed and should be deleted.

Check that the jurisdiction of the project permits consideration of the time proposed by the Bidder when determining the lowest responsive bid.

Another means of encouraging early completion is to offer a monetary incentive (bonus) for early completion.

If no liquidated damages for late completion of the Work are specified, it will be necessary to specify an adjusting amount or formula for comparing bids and Paragraph 14.04.D to be modified accordingly.

Note that the Bidder may intend to achieve the reduced project duration resulting from this price-plus-time bidding procedure by accelerated work schedules. As such, the Owner and Engineer may require increased personnel for testing and inspection, as well as other resources to accommodate the accelerated schedule.

This bidding procedure is not appropriate for all contracts. Site access limitations, safety concerns, potential third party conflicts, trade-stacking worries, and scheduling complexities (including those associated with Milestones) may make it too risky to encourage contractors to strive for an early completion.

Article 15 – Submittal of Bid

15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other required documents to be submitted under the terms of Article 7 of the Bid Form.

Notes: The language of Paragraph 15.01 may be modified to require submittal of a bound copy of the Bidding Documents intact with the Bid. This is not recommended, but may be required by Laws and Regulations.

Some public and private owners allow for some form of electronic submittal of bids, or for preparation and submittal of bids on spreadsheets or in similar formats that allow bidders to process and manage entries, particularly unit prices, with speed and accuracy. Article 15 is an appropriate location for providing instructions regarding such submittals.

- 15.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of the Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to [REDACTED].
- 15.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

Notes: Bids are usually submitted to and opened at the Owner's office. This is often different from the Issuing Office.

Practices vary with respect to the documentation required to be submitted with Bids. It is usually necessary to supplement Article 15.

Article 16 – Modification and Withdrawal of Bid

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, the Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

Notes: Paragraph 16.02 allows Bidders who withdraw bids prior to opening to submit a second bid. This may not be permitted in all jurisdictions.

Withdrawal of any Bid that is demonstrated to contain a substantial mistake is permitted under Paragraph 16.03. However, it is recognized that some Laws and Regulations or Owners' standards or policies may differ and that it may be necessary to modify or delete Paragraph 16.03.

Article 17 – Opening of Bids

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

[or]

- 17.01 Bids will be opened privately.

Notes: Two paragraphs are provided, one for public opening and one for private opening.

Article 18 – Bids to Remain Subject to Acceptance

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

Notes: Provisions on the commencement of Contract Times appear in Paragraph 4.01 of the General Conditions. Note that the period of time during which Bids are to remain open and by which a Notice of Award is to be given are interrelated with the date when the Contract Times commence to run. Any changes must be carefully coordinated among all of the Bidding Documents.

In some cases, it may be feasible to extend the time that a Bid remains subject to acceptance by mutual written agreement of the Owner and one or more Bidders and their respective sureties. Note, however, that the time for performance and completion of the Work are material terms of the Contract, and an extension could create a conflict with those terms. In many instances, it may be better practice to rebid the Work rather than issuing lengthy extensions of time for the acceptance of bids.

Article 19 – Evaluation of Bids and Award of Contract

19.01 The Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. The Owner will reject the Bid of any Bidder that the Owner finds, after reasonable inquiry and evaluation, to not be responsible. If the Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that the Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

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

The statement in Paragraph 19.02 is the prevailing rule for competitively bid public projects and is commonly used in private construction procurements as well. The clear, unequivocal statement of the basic rule for winning the award – that the contract will go to the qualified bidder submitting the low bid – will encourage participation, stimulate competitive pricing, and avoid bid disputes. If governing ordinances or statutes, or Owner preferences, require a different rule, then amend this paragraph accordingly.

19.03 Evaluation of Bids

- A. In evaluating Bids, the Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purposes of comparison, the Owner shall announce to all Bidders a “Base Bid plus alternates” budget after receiving all Bids, but prior to opening them. For comparison purposes, alternates will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded.

After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of its additive alternate Bids for which the Owner determines funds will be available at the time of award.

[or]

- B. For determination of the apparent low Bidder(s) when sectional bids are submitted, Bids will be compared on the basis of the aggregate of the Bids for separate sections and the Bids for combined sections that result in the lowest total amount for all of the Work.

[or]

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

[or]

- B. For the determination of the apparent low Bidder when cost-plus bids are submitted, Bids will be compared on the basis of the Guaranteed Maximum Price set forth by the Bidder on the Bid Form.

Notes: Paragraph 19.03.B provides alternative choices for comparison of bids. This must be carefully coordinated with the basis of Bid price set forth in Paragraph 14.03 above and on the Bid Form. With respect to cost-plus-fee contracts, see Note to User 2 following Paragraph 14.01 above.

The following should be included in these Instructions only when Paragraph 14.04, establishing a process for Bidders to commit to a shortened time for attaining Substantial Completion, will be used (price-plus-time or "A+B" bidding).

- C. Bid prices will be compared after adjusting for differences in time of Substantial Completion (total number of calendar days to substantially complete the Work) designated by Bidders. The adjusting amount will be determined at the rate set forth in the Agreement for liquidated damages for failing to achieve Substantial Completion, or such other amount that the Owner has designated on the Bid Form.
 - 1. The method for calculating the lowest bid for comparison will be the summation of the Bid price shown on the Bid Form plus the product of the Bidder-specified time of Substantial Completion (in calendar days) times the rate for liquidated damages **[or other Owner-designated daily rate]** (in dollars per day).
 - 2. This procedure is only used to determine the lowest bid for comparison and contractor selection purposes. The Contract Price for compensation and payment purposes remains the Bid price shown in the Bid Form.

Notes: The monetary value of each calendar day to complete the Work will typically be the liquidated damages amount set forth in the Agreement for failing to achieve Substantial Completion. Thus note the importance of setting and documenting the liquidated damages for late completion to a realistic value accurately reflecting the daily effect of delays to the project or benefits of earlier completion. In appropriate cases (for example, if there are no

liquidated damages stated), an alternative per-day amount can be used, such as “Monetary Value for each Calendar Day.” Regardless of the label, the Owner or its representative (drafter) should specify the per-day amount on the Bid Form before distribution to Bidders.

The required payment and performance bonds will be based on the total construction cost shown on the Bid Form – the Successful Bidder’s Bid Price including any accepted alternates.

This provision must be closely coordinated with the corresponding content of the Bid Form and the Agreement.

19.04 In evaluating whether a Bidder is responsible, the Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 The Owner may conduct such investigations as the Owner deems necessary to establish the responsibility, qualifications, and financial ability of the Bidders and any proposed Subcontractors or Suppliers.

Notes: Certain rights of the Owner stated in Article 19, such as those regarding waiver of informalities in submitted Bids, or pertaining to qualifications and experience of Subcontractors, Suppliers, individuals, and entities, may not be available in public bidding.

Note particularly, the relationship of Paragraph 19.05 to Notes to User accompanying Article 12.

Many factors not included in Article 19 as written may be important to consider in evaluating Bids for any particular project, and it will often be necessary to amend or supplement Article 19. When factors in addition to price will be significant in evaluating Bids, the manner in which evaluations will be made should be fully described in Article 19.

In the event major equipment is included in the Work, it may be appropriate to consider differences in operating efficiency and service support facilities. For example, relevant factors may include Owner-required inventory of spare parts; building design changes that may be required to accommodate the proposed equipment; experience and performance record of the Supplier or the manufacturer; and maintenance and frequency of inspections required to assure reliable performance of the equipment. Equipment-related bidding criteria may be stated in a manner similar to the following example:

“The evaluation of Supplier’s or manufacturer’s data on [] submitted with the Bid, or submitted upon request prior to the Notice of Award, will include consideration of the efficiency and related operating expense during the anticipated useful life of the equipment and the availability of service support facilities. Costs related to efficiency will be calculated as follows:

*Anticipated useful life 15 years.
Annual service 4,000 hours.
Average energy costs \$0.08/kwh.
Capitalization at 10% interest.”*

Note the time within which Notice of Award may be issued is governed by the need to allow the Successful Bidder sufficient time in which to sign the Agreement – see Article 21 below.

Section 00521, Notice of Award, is recommended for use in awarding the Contract.

Article 20 – Bonds and Insurance

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

Notes: In the event bonds are not required, it would be appropriate to modify Paragraph 20.01. For recommended Performance and Payment Bond Forms, see Sections 00610 and 00615.

Article 21 – Signing of Agreement

21.01 When the Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to the Owner. Within ten days thereafter, the Owner shall deliver one fully executed counterpart of the Agreement to the Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

Notes: Practices vary widely, and it is recognized that the procedures described in Article 21 may often require amending. It is customary for the Owner to fill in the date on the signature page of the Agreement in order to indicate when it is to become effective (the Effective Date of the Contract) so that the required bonds may be properly dated.

Additional Articles

Articles 1 through 21 of these Suggested Instructions to Bidders for Construction Contracts, when used as intended with the other related documents in this generic bid package, address the basic subject matter required for Instructions to Bidders on most projects. However, it is often necessary to supplement the Instructions to Bidders with additional articles addressing:

- 1. prevailing wage rates statements required by Laws or Regulations, funding agencies, or appropriate reference thereto;*
- 2. purchasing by the Owner and subsequent assignment of procurement contracts to the Contractor;*
- 3. Owner’s special tax exemption; or*
- 4. intended use of partnering.*

Examples of some supplementary articles are presented in Articles 22 and 23.

Article 22 – Sales and Use Taxes

22.01 The Owner is exempt from [] state sales and use taxes on materials and equipment to be incorporated in the Work. (Exemption No. []). Said taxes shall not be included in the Bid. Refer to Paragraph SC-7.09 of the Supplementary Conditions for additional information.

Notes: Public owners are exempt from sales taxes only in some states, and only under certain circumstances. Advice of the Owner's legal counsel is essential since statutory exemptions vary extensively. Note Paragraph 7.09 of the General Conditions and SC-7.09 of the Supplementary Conditions for conflicts and modify this Article, if necessary.

Article 23 - Contracts to be Assigned

Notes: When the Contractor will be required to accept assignment of a procurement contract, previously entered into by the Owner (as "Buyer") with a manufacturer (as "Seller") for the direct purchase of goods and special services, insert at this location in these Instructions to Bidders for the Construction Contract language regarding the assignment.

End of Section

Bid Form

(Insert Project Identification/Airport Name)

(Insert Contract Identification and Number)

Table of Contents

| | Page |
|--|-------------|
| Article 1 - Bid Recipient..... | 2 |
| Article 2 - Bidder's Acknowledgements..... | 2 |
| Article 3 - Bidder's Representations..... | 2 |
| Article 4 - Bidder's Certification..... | 4 |
| Article 5 - Basis of Bid | 4 |
| Article 6 - Time of Completion | 6 |
| Article 7 - Attachments to This Bid | 7 |
| Article 8 - Defined Terms | 8 |
| Article 9 - Bid Submittal | 8 |

Article 1 - Bid Recipient

1.01 This Bid is submitted to:

Insert Name and Address of Airport/Owner.

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices, within the times indicated in this Bid, and in accordance with the other terms and conditions of the Bidding Documents.

Notes: The party to whom the Bid is submitted should be the specific entity that will enter into the Agreement with the Successful Bidder.

Article 2 - Bidder's Acknowledgements

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that the Bidder may agree to in writing upon request of the Owner.

Notes: Bid acceptance periods may vary, particularly if funding agency reviews and approvals are required. Bid acceptance periods should be coordinated with General Conditions-2.03. Bid acceptance periods may also be set by statute.

Article 3 - Bidder's Representations

3.01 In submitting this Bid, the Bidder represents that:

A. The Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.

Addendum Date

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Notes: It is important that all Bidders receive and acknowledge receipt of all Addenda. To be certain that Bidders receive all Addenda, use of methods providing proof of receipt, such as courier services or return receipt requested mail, is suggested. (If fax or e-mail are used, Bidders should be requested to confirm receipt by the same means.) Ensure any specific requirement of the Owner concerning issuing and receipt of Addenda are reviewed and addressed. Note also the definition of Addenda in Article 1 of General Conditions that indicates Addenda are only issued prior to the opening of Bids.

B. The Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

Notes: It is important for the Bidder to visit the Site before submitting its Bid and to conduct an alert, heads-up, eyes-open examination of the area and conditions under which the Work is to be performed. The Bidder should acknowledge that they have made the required visit [see particularly General Conditions (GC) 4.02 and 4.03] and also specifically accepts the Bidder's responsibility to obtain additional data.

- C. The Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Supplemental Conditions (SC) 4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."

Notes: Modify the above paragraph if such reports and/or drawings do not exist.

- E. The Bidder has considered the information known to the Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) the Bidder's safety precautions and programs.

Notes: If the Bidding Documents do not identify any Site-related reports or drawings, modify this paragraph accordingly.

- F. Based on the information and observations referred to in Paragraph 3.01.E above, the Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and is in accordance with the other terms and conditions of the Bidding Documents.
- G. The Bidder is aware of the general nature of work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. The Bidder has given the Owner written notice of all conflicts, errors, ambiguities, or discrepancies that the Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Owner and/or Engineer is acceptable to the Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

Notes: If any changes to these representations are made in the Bid Form, corresponding changes may need to be made in both the Instructions to Bidders and the Agreement.

Article 4 - Bidder's Certification

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. The Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. The Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. The Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of the Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive the Owner of the benefits of free and open competition;
 - 3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

Note: For public work, relevant requirements of Laws and Regulations in the jurisdiction where Work is to be performed should be coordinated with the language of this paragraph.

Article 5 - Basis of Bid

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

Note that language is provided for lump sum (three suggested formats), cost-plus (two suggested fee formats), and unit price Bids. The contract pricing may include various combinations of these methods. Inapplicable language should be deleted.

Provide sufficient space and arrange format so that Bidders will have uniform understanding of how to submit prices.

[SUGGESTED FORMATS FOR LUMP SUM BID]

| | |
|--------------------|----|
| Lump Sum Bid Price | \$ |
|--------------------|----|

[or]

| | |
|--|----|
| Lump Sum Bid Price for Section I only | \$ |
| Lump Sum Bid Price for Section II only | \$ |
| Lump Sum Bid Price for Sections 1 and II | \$ |

[or]

| | |
|---------------------------------|----|
| Lump Sum Bid Price for Base Bid | \$ |
| Alternate A [Add] [Deduct] | \$ |
| Alternate B [Add] [Deduct] | \$ |

All specified cash allowances are included in the price(s) set forth above and have been computed in accordance with Paragraph 11.02 of the General Conditions.

Notes: If alternate Bids are requested, it is preferable that they be all "deductive" or all "additive." Alternates should be clearly specified in Division 1, General Provisions. The itemization in the Bid Form should be clearly identifiable and carefully follow the Division 1 presentation. The Instructions should contain appropriate guidance for preparing the Bid. Alternates should be accepted in a particular order which should be explained in the Instructions. The alternates should be listed on the Bid Form in order of priority.

To minimize the risk of error and to ensure objectivity in comparison of Bids, a single lump sum Bid price for a complete project or section is preferable to a total price determined by the sum of a list of individual lump sum items.

Cash allowances, if to be used, should be clearly specified in Division 1. Language, such as the following, is typically used: "Allow the lump sum of [\$___] for the supply and installation of: [.1 Amount and description of Cash Allowance 1] [.2 Amount and description of Cash Allowance 2]."

[SUGGESTED FORMATS FOR COST-PLUS BID]

The cost of the Work (other than Unit Price and other excluded Work), determined as provided in Paragraph 11.01 of the General Conditions, together with the following fee, and subject to the Guaranteed Maximum Price:

Notes: Select one of the following methods to determine the Bidder's fee.

Contractor's fee will be a fixed sum of \$_____

[or]

| | |
|---|----------------|
| Contractor's fee will be determined by applying the following percentages to the various portions of the Cost of the Work as defined in Article 11 of the General Conditions: | |
| | <u>Percent</u> |
| Payroll costs (see GC-11.01.A.1) | _____ |
| Material and Equipment costs (see GC-11.01.A.2) | _____ |
| Amounts paid to Subcontractors (see GC-11.01.A.3) | _____ |
| Amounts paid to special consultants (see GC-11.01.A.4) | _____ |
| Supplemental costs (see GC-11.01.A.5) | _____ |
| None of the costs described in Paragraph 11.01.B of the General Conditions will be included in determining Contractor's fee. | |
| [The maximum amount payable to Contractor on account of this percentage fee will not exceed: | \$_____.] |

Notes: In cost-plus contracts, provide space for the Bid figures to be included in the Agreement, such as varying percentages on which the Contractor's fee may be based and the amount of Work to be subcontracted. Provide space for the guaranteed maximum price(s), where applicable. See Section 00520, Suggested Form of Agreement between Owner and Contractor for Construction Contract (Cost-Plus).

The Bid Form must be identical with that of the proposed Agreement, and the format for submission of percentages and maximum amount organized so as to permit the easy transfer of information in the Bid of the Successful Bidder to Agreement.

The Guaranteed Maximum Price to Owner of the Cost of the Work including Contractor's Fee will not exceed \$_____.

[SUGGESTED FORMAT FOR UNIT PRICE BID]

| Item No. | Description | Unit | Estimated Quantity | Bid Unit Price | Bid Price |
|-------------------------|-------------|------|--------------------|----------------|-----------|
| | | | | \$ | \$ |
| | | | | \$ | \$ |
| | | | | \$ | \$ |
| Total of All Bid Prices | | | | | \$ |

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

The Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

Notes: If unit prices are requested, whether it be a unit price Bid or in connection with a lump sum or cost-plus contract, appropriate guidance for completing the Bid Form should appear in the Instructions and details with respect to what is included in each unit price item should be included in the General Requirements. Provide an estimated quantity in the Bid Form for each item as defined or indicated in the Specifications. Read specifically GC-11.03 and SC-11.03.

Article 6 - Time of Completion

6.01 The Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

[or]

6.01 The Bidder agrees that the Work will be substantially complete on or before _____, and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before _____.

[or]

6.01 The Bidder agrees that the Work will be substantially complete within _____ calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General

Conditions and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within ____ calendar days after the date when the Contract Times commence to run.

Notes: Select one of the above paragraphs to establish the Contract Times for the Work. If the Contract Times are designated by the Owner prior to the receipt of Bids, the first option should be selected in order to avoid a potential conflict with the Agreement. If Bidders are permitted to designate the Contract Times by calendar date, the second option should be selected. If Bidders are permitted to designate the Contract Times by calendar days, the third option should be selected. Bid Form language should follow the exact language of the Agreement. For some projects, it may be desirable to include space for Bidders to indicate variations in completion times, but note that in some jurisdictions it is required that an award be made to the lowest Bidder regardless of time for completion.

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

Notes: Provisions for liquidated damages should appear in the Agreement and may be cross-referenced in other places in the Bidding Requirements and the Contract Documents. It is unwise to repeat liquidated damages provisions in the Bid or to summarize or paraphrase them here or elsewhere.

Article 7 - Attachments to This Bid

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security in the form of ____;
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;
- D. List of Project References;
- E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
- F. *[If applicable]* Contractor's License No.: _____ *[or]* Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by the Bidder to obtain said license within the time for acceptance of Bids;
- G. Required Bidder Qualification Statement with Supporting Data; and
- H. *[List other documents as pertinent]*

Notes: The above paragraph should be coordinated with I-15 of the Instructions. If no documents are required to be submitted with the Bid, the paragraph may be eliminated.

Requirements for identifying Subcontractors, Suppliers, and other individuals and entities furnishing materials and equipment, and for indicating the amount of Work to be subcontracted in the case of cost-plus contracts, are to be set forth in the Instructions and Supplementary Conditions.

Additional documents may have to be submitted with the Bid because of Laws and Regulations applicable to the Project. List all of these documents so Bidders can understand what is required.

Article 8 - Defined Terms

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

Notes: Careful attention to proper use of terms defined in the Instructions to Bidders, the General Conditions, and Supplementary Conditions is most important.

Article 9 - Bid Submittal

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____

By: _____
(Signature of general partner - attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____

Date of Qualification to do business Florida is ____/____/____.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address _____

Phone No. _____ Fax No. _____

E-mail _____

SUBMITTED on _____, 20____.

State Contractor License No. _____. [If applicable]

End of Section

Bid Bond (Penal Sum Form)

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

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum _____ \$ _____
(Words) (Figures)

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

BIDDER

SURETY

(Seal) _____ (Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

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

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

End of Section

Bid Bond (Damages Form)

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

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum

(Words)

\$

(Figures)

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

BIDDER

SURETY

Bidder's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

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

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

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

End of Section

Public Entity Crimes Statement

NOTICE TO BIDDERS: This form must be properly completed, executed and returned with the bid documents in order for your bid to be considered. Failure to do so will result in automatic disqualification.

SWORN STATEMENT UNDER SECTION 287133(3)(a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

STATE OF _____

COUNTY: _____

Before me, the undersigned authority, personally appeared _____

who, being by me first duty sworn, made the following statement:

1. The business address of _____ (name of bidder or contractor)
is _____.

2. My relationship _____ (name of bidder or contractor)
is _____ (relationship such as sole proprietor, partner, president, vice president).

3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

4. I understand that "convicted" or "conviction" is defined by the statute to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilt or nolo contendere.

5. I understand that "affiliate" is defined by the statute to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officer, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.

6. Neither the bidder or contractor nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the bidder or contractor nor any affiliate of the bidder or contractor has been convicted of a public entity crime subsequent to July 1, 1989.

(Draw a line through paragraph 6 if paragraph 7 below applies.)

7. There has been a conviction of a public entity crime by the bidder or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the bidder or contractor who is active in the management of the bidder or contractor or an affiliate of the bidder or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is _____. A copy of the order of the Division of Administrative Hearings is attached to this statement.

(Draw a line through paragraph 7 if paragraph 6 above applies.)

Sworn to and subscribed before me in the state and county first mentioned above on the _____ day of _____, 20____.

Signed: _____
Notary Public

(Affix seal)

My commission expires: _____

End of Section

The undersigned vendor in accordance with the Florida Statute 287.087 hereby certifies that _____ does:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees from drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employees will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm fully complies with the above requirements.

Bidder's Signature

Date

End of Section

Agreement

THIS AGREEMENT is by and between _____ (“Owner”) and
_____ (“Contractor”).

Owner and Contractor hereby agree as follows:

Article 1 - Work

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

Article 2 - The Project

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: _____

Article 3 - Engineer

3.01 The Project has been designed by _____.

3.02 The Owner has retained _____ (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

Notes: If an entity or individual other than the design engineer will serve as Owner’s representative during construction, then make appropriate revisions and additions to this Agreement, the General Conditions, the Supplementary Conditions, and other Contract Documents regarding the construction-phase roles and duties of the design engineer and such other entity or individual.

Article 4 - Contract Times

4.01 Time of the Essence

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

Notes: Select one of the two alternative Paragraphs 4.02 below and delete the other. The first uses dates for the time of completion; the second uses number of days.

If the Owner elects to predetermine fixed dates or fixed number of days for completion of the Work, such dates or number of days should be inserted in the appropriate Paragraph 4.02 below prior to the bidding or other contractor selection process. If the time for completion will be determined through negotiation or a bidding process that allows bidders to specify the time for completion, then leave the blanks below open until the Contract is finalized (e.g., until after the Successful Bidder has been determined and its proposed completion time accepted).

4.02 Contract Times: Dates

- A. The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before _____.

[or]

4.02 Contract Times: Days

- A. The Work will be substantially completed within _____ days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within _____ days after the date when the Contract Times commence to run.

Notes: If the Contract includes Milestones, add the following Paragraph 4.02.B to the selected version of Paragraph 4.02.A:

- B. Parts of the Work shall be substantially completed on or before the following Milestone(s):
1. Milestone 1 [event & date/days]
 2. Milestone 2 [event & date/days]
 3. Milestone 3 [event & date/days]

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$_____ for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
 4. Milestones: Contractor shall pay Owner \$_____ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.

Notes: At Substantial Completion, the Owner is able to use the Work for its intended purpose, by definition. See General Conditions, Paragraph 1.01.A. Achieving Substantial Completion is typically a critical deadline, and the associated damages for missing this deadline are typically significant. The subsequent failure to complete the punch list tasks and bring the Work to a complete close by the final completion date may also result in some degree of damages to the Owner – though typically these damages are significantly less than the daily damages for not achieving Substantial Completion on time. Some users may choose to establish liquidated damages only for the failure to achieve Substantial Completion. If that is the case, delete paragraphs 4.03.A.2 and .3 above.

If failure to achieve a Milestone on time is of such consequence that the assessment of liquidated damages is warranted for the failure to reach the Milestone on time, then retain and complete Paragraph 4.03.A.4; if not, delete it. Add additional similar paragraphs for any additional Milestones subject to a liquidated damages assessment. Liquidated damages for Milestones might, in some cases, be additive to liquidated damages for failing to timely attain Substantial Completion; if so, this should be specifically noted.

- B. *Bonus:* Contractor and Owner further recognize the Owner will realize financial and other benefits, if the Work is completed prior to the time specified for Substantial Completion. Accordingly, the Owner and the Contractor agree that as a bonus for early completion, the Owner shall pay the Contractor \$_____ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$_____.

Notes: If early completion would be a benefit to the Owner, then consider retaining and completing the bonus clause above as 4.03.B. The daily bonus for early completion need not be exactly the same as the daily post-Substantial Completion liquidated damages amounts, but presumably the two amounts will be reasonably compatible. If no bonus will be offered, then delete 4.03.B.

4.04 Special Damages

- A. In addition to the amount provided for liquidated damages, the Contractor shall reimburse the Owner (1) for any fines or penalties imposed on the Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by the Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After the Contractor achieves Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, said Contractor shall reimburse the Owner for the actual costs reasonably incurred by the Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

Notes: It is recommended that developing daily liquidated damages amounts that comprehensively account for the full range of the Owner's damages, including costs of additional engineering, construction observation, inspection, and administrative services, and potential fines or penalties. However, some Owners prefer to charge a Contractor

that has not completed the Work on schedule for the Owner’s additional hard-dollar costs for fines and penalties, and for extended engineering, construction observation, inspection, and administrative services; these charges are levied on top of the daily liquidated damages amount. It is very important, if this practice is followed, to be certain that the liquidated damages amount does not already include or rely in part on the potential for incurring these very same hard-dollar costs; if it does, then the separate charge for actual costs may be regarded as “double dipping” and the entire framework of liquidated damages for late completion may be called into question.

Those users that choose the “liquidated damages plus actual hard dollar costs” approach may use the preceding “Special Damages” provisions, together with the liquidated damages provisions in Paragraph 4.03, Liquidated Damages, above. **Those users that follow the more conventional path of relying on comprehensive daily liquidated damages to cover the full scope of damage done by late Contractor completion should delete the “Special Damages” provisions—Paragraph 4.04—and rely solely on Paragraph 4.03, Liquidated Damages, above.**

Finally, note that Paragraph 4.04.B above does not refer to fines or penalties. In the typical case, fines and penalties are linked to Substantial Completion and are not applicable to delays in final completion of the Work.

Article 5 - Contract Price

5.01 The Owner shall pay the Contractor for completion of the Work in accordance with the Contract Documents in the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: \$.
 All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

| Unit Price Work | | | | | |
|--|-------------|------|--------------------|------------|----------------|
| Item No. | Description | Unit | Estimated Quantity | Unit Price | Extended Price |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| <i>Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)</i> | | | | | \$ |

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$ _____.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

Notes: If adjustment prices for variations from stipulated Base Bid or other baseline quantities have been agreed to, insert appropriate provisions.

Depending upon the particular project's pricing structure, use 5.01.A alone; 5.01.A, 5.01.B, and 5.01.C together; 5.01.B alone; or 5.01.D alone, deleting those not used and renumbering accordingly. If 5.01.D is used, Contractor's Bid is attached as an exhibit and listed as a Contract Document in Article 9 below.

Article 6 – Payment Procedures

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

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 _____ day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. _____ percent of Work completed (with the balance being retainage). If the Work is 50 percent complete as determined by the Engineer, and if the character and progress of the Work have been satisfactory to the Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to the Owner and Engineer, there will be no additional retainage; and
 - b. _____ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - B. Upon Substantial Completion, the Owner shall pay an amount sufficient to increase total payments to the Contractor to _____ percent of the Work completed, less such amounts set off by the Owner pursuant to Paragraph 15.01.E of the General Conditions, and less _____ percent of the Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

Notes: Typical values used in Paragraph 6.02.B are 100 percent and 200 percent respectively, subject to Laws and Regulations specific to the Project.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, the Owner shall pay the remainder of the Contract Price as recommended by the Engineer as provided in said Paragraph 15.06.

Article 7 - Interest

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

Article 8 - Contractor's Representations

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

- A. The Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. The Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

Notes: Modify the above paragraph if there are no such reports or drawings.

- E. The Contractor has considered the information known to the Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor; and (3) the Contractor's safety precautions and programs.

Notes: If the Contract Documents do not identify any Site-related reports and drawings, modify this paragraph accordingly.

- F. Based on the information and observations referred to in the preceding paragraph, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or

data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- G. The Contractor is aware of the general nature of work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. The Contractor's entry into this Contract constitutes an incontrovertible representation by the Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

Article 9 - Contract Documents

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to ___, inclusive).
 - 2. Performance bond (pages ___ to ___, inclusive).
 - 3. Payment bond (pages ___ to ___, inclusive).
 - 4. Other bonds.
 - a. ___ (pages ___ to ___, inclusive).

Notes: Such other bonds might include maintenance or warranty bonds intended to manage risk after completion of the Work.

- 5. General Conditions (pages ___ to ___, inclusive).
- 6. Supplementary Conditions (pages ___ to ___, inclusive).
- 7. Specifications as listed in the table of contents of the Project Manual.
- 8. Drawings (not attached but incorporated by reference) consisting of ___ sheets with each sheet bearing the following general title: ___ [or] the Drawings listed on the attached sheet index.
- 9. Addenda (numbers ___ to ___, inclusive).
- 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages ___ to ___, inclusive).

Notes: In the typical case bidding-related documents, such as the Instructions to Bidders and Bid, are not included as Contract Documents. Include the Contractor's Bid as a Contract Document here only as a matter of necessity, for example if the Bid contains numerous line items and their prices, and rekeying such information would be burdensome and susceptible to error.

List other required attachments (if any), such as documentation submitted by Contractor prior to Notice of Award and documents required by funding or lending agencies.

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

- a. Notice to Proceed.
- b. Work Change Directives.
- c. Change Orders.
- d. Field Orders.

Notes: If any of the items listed are not to be included as Contract Documents, remove such item from the list and renumber the remaining items.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

Article 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. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

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.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of the Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive the Owner of the benefits of free and open competition;
 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

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

Notes: Delete Paragraph 10.06.A, if inapplicable. Insert other provisions here, if applicable. When the Contractor is required in this Contract to accept assignment of a procurement contract, previously entered into by the Owner (as “Buyer”) with a manufacturer or distributor (as “Seller”) for the direct purchase of goods (most commonly equipment) and related special services, insert at this location in the Agreement language regarding the assignment.

Performance Requirements and Damages. In some cases, the construction contract will contain performance requirements that must be met by the equipment, systems, or facilities constructed or furnished by Contractor. The Owner’s remedies for the Contractor’s failure to meet the performance requirements may include rejection of the items in question; correction remedies; exercise of warranty rights; and acceptance of the underperforming items coupled with a reduction in Contract Price or imposition of damages to compensate the Owner for not receiving its full contractual entitlement. Typical damages might be for reduced production or treatment, or for the costs of increased electricity or chemical consumption over the life of the equipment. On some projects, the Owner and Contractor may contractually stipulate specific damages that will be owed in the event of specific levels of underperformance. It is important when drafting such provisions to clarify whether the availability of underperformance damages is meant to close off other potential remedies. Most commonly, performance provisions (and any stipulated damages amounts) will be located in the Specifications. It may be useful to provide a cross-reference to such provisions here in the Agreement, or in some cases to state the stipulated damages amounts here because of their importance to the pricing of the Contract, which is one of the primary subjects of the Agreement.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

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

Notes: See Article 21 of the Instructions to Bidders and correlate procedures for format and signing of the documents.

The Effective Date of the Contract stated above and the dates of any construction performance bond and construction payment bond should be the same, if possible. In no case should the date of any bonds be earlier than the Effective Date of the Contract.

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: *Use in those states or other jurisdictions where applicable or required.*

End of Section

Notice of Award

NOTICE OF AWARD

Date of Issuance:

Owner:

Owner's Contract No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated [_____] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ _____ *[note if subject to unit prices, or cost-plus]*

unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. *[revise if multiple copies accompany the Notice of Award]*

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [____] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *[e.g., performance and payment bonds]* and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

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

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

Authorized Signature

By:

Title:

Copy: Engineer

End of Section

Notice to Proceed

Date: _____

| | |
|--|-------------------------|
| Project: | |
| Owner: | Owner's Contract No.: |
| Contract: | Engineer's Project No.: |
| Contractor: | |
| Contractor's Address: <i>[send Certified Mail, Return Receipt Requested]</i> | |
| | |
| | |

You are notified that the Contract Times under the above Contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____, and the date of readiness for final payment is _____ [(or) the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

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

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

_____ *[add other requirements]*.

| | |
|-------|----------------------|
| _____ | Owner |
| _____ | Given by: |
| _____ | Authorized Signature |
| _____ | Title |
| _____ | Date |

Copy to Engineer

End of Section

Performance Bond

CONTRACTOR (name and address):

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

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location):

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: None See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (seal)

Surety's Name and Corporate Seal (seal)

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

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

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

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

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

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

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

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

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

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

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be

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

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

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

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

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

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

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

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

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

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

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this

Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

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

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

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

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

14. Definitions

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

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

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

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

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

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

16. Modifications to this Bond are as follows:

End of Section

Payment Bond

CONTRACTOR (name and address):

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

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location):

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: None See Paragraph 18

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

CONTRACTOR AS PRINCIPAL

SURETY

_____ (seal)

Contractor's Name and Corporate Seal

_____ (seal)

Surety's Name and Corporate Seal

By: _____

Signature

By: _____

Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____

Signature

Attest: _____

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to

Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

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

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

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The

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

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

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

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

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

18. Modifications to this Bond are as follows:

End of Section

Application for Payment

Contractor's Application for Payment No.

| | | |
|-----------------------|---------------------------|-------------------------|
| | Application Period: | Application Date: |
| To (Owner): | From (Contractor): | Via (Engineer): |
| Project: | Contract: | |
| Owner's Contract No.: | Contractor's Project No.: | Engineer's Project No.: |

**Application For Payment
Change Order Summary**

| Approved Change Orders | Number | Additions | Deductions | | | |
|--------------------------------|--------|-----------|------------|---|----|-------|
| | | | | 1. ORIGINAL CONTRACT PRICE | \$ | _____ |
| | | | | 2. Net change by Change Orders | \$ | _____ |
| | | | | 3. Current Contract Price (Line 1 ± 2) | \$ | _____ |
| | | | | 4. TOTAL COMPLETED AND STORED TO DATE (Column F total on Progress Estimates)..... | \$ | _____ |
| | | | | 5. RETAINAGE: | | |
| | | | | a. X _____ Work Completed..... | \$ | _____ |
| | | | | b. X _____ Stored Material..... | \$ | _____ |
| | | | | c. Total Retainage (Line 5.a + Line 5.b)..... | \$ | _____ |
| | | | | 6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c) | \$ | _____ |
| | | | | 7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application) | \$ | _____ |
| | | | | 8. AMOUNT DUE THIS APPLICATION | \$ | _____ |
| | | | | 9. BALANCE TO FINISH, PLUS RETAINAGE (Column G total on Progress Estimates + Line 5.c above)..... | \$ | _____ |
| TOTALS | | | | | | |
| NET CHANGE BY CHANGE ORDERS | | | | | | |

| | |
|--|-------|
| Contractor's Certification | |
| The undersigned Contractor certifies, to the best of its knowledge, the following: (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment; (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective. | |
| Contractor Signature | |
| By: | Date: |

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____ (Engineer) _____ (Date)

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____ (Owner) _____ (Date)

Approved by: _____
Funding or Financing Entity (if applicable) _____ (Date)

Certificate of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion

Owner: _____ Owner's Contract No.: _____
Contractor: _____ Contractor's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Project: _____ Contract Name: _____

This [preliminary] [final] Certificate of Substantial Completion applies to:

- All Work The following specified portions of the Work:

Date of Substantial Completion

thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's responsibilities: None
 As follows

Amendments to Contractor's responsibilities: None
 As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

| | | |
|-------------------------------------|---|--|
| EXECUTED BY ENGINEER: | RECEIVED: | RECEIVED: |
| By: _____ (Authorized signature) | By: _____ Owner (Authorized Signature) | By: _____ Contractor (Authorized Signature) |
| Title: _____ | Title: _____ | Title: _____ |
| Date: _____ | Date: _____ | Date: _____ |

End of Section

Minimum Insurance Requirements

The _____(Owner) requires the following:

A Certificate of Insurance will be furnished by the Contractor upon Notice of Award. The certificate(s) shall be completed by the Contractor's authorized agent and submitted to the Owner. The successful Contractor shall not commence any work in connection with the Agreement until it has obtained all of the following types of insurance and shall maintain such insurance as will protect him/her from claims which may arise out of or result from the Contractor's operations. The Owner shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or subcontractor providing such insurance.

- ◆ Without restricting the generality of INDEMNIFICATION, the Contractor shall provide, maintain and pay for the insurance coverage's listed below unless otherwise stipulated:

I. General Liability Insurance:

General liability insurance in the joint names of the Contractor, the Owner, the Consultant and all Sub-Contractors who have been identified by notice in writing from the Contractor to the Owner, with limits of not less than (\$5,000,000) dollars per occurrence with a deductible not to exceed (\$250,000). Liability is limited to that arising out of the Project and all operations necessary or incidental thereto. The policy shall be endorsed to provide the named insured with not less than 30 days notice in writing in advance of any cancellation and of change or amendment restricting coverage.

II. Property Insurance:

"All risks" property insurance covering direct property and equipment damage to the Project in the name of the Contractor, the Owner, the Consultant and all identified Sub-Contractors as named Additional Insured, insuring not less than the sum of the amount of the Contract Price with a deductible per occurrence not to exceed (\$2,500). The coverage shall be maintained continuously until ten days after the date of the final certificate for payment.

- i. This policy shall provide that, in the event of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear, with payments for damage or destruction of the Project or any part thereof being made solely to the Owner or as it may direct. The Contractor shall act on behalf of the Owner and/or the Consultant and himself for the purpose of adjusting the amount of such loss or damage payment with the Insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of any party under the Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the Consultant may decide in consultation with the Contractor.

- ii. Payment for loss or damage: The Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount at which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds and in accordance with the requirements of APPLICATIONS FOR PAYMENT and CERTIFICATES AND PAYMENTS. In addition, the Contractor shall be entitled to receive from the payments made by the Insurer the amount of the Contractor's interest in the restoration of the Work.
- iii. In the event of loss or damage to the Work arising from the work of any Other Contractor, the Owner, in accordance with his obligations under OTHER CONTRACTORS, paragraph 9.2, shall pay the Contractor the cost of restoring the Work as the restoration for the Work proceeds and in accordance with subparagraph (ii) above.

III. Automobile Liability Insurance:

The Contractor shall obtain automobile liability insurance in respect of licensed vehicles which shall have limits of not less than two million dollars inclusive per occurrence for bodily injury, death, and damage to property, in the following forms endorsed to provide the Owner with not less than fifteen (15) days written notice in advance of any cancellation, change or amendment restricting coverage:

- i. Standard non-owned automobile policy including standard contractual liability endorsement.
- ii. Standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Contractor.

IV. Contractors' Equipment Insurance:

The Contractor shall obtain "all risks" contractor's equipment insurance covering construction machinery, equipment and tools used by the Contractor, for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels, as well as employees' personal effects on the Site while they are on the job, in a form acceptable to the Owner and shall not allow subrogation claims by the Insurer against the Owner.

The policies shall be endorsed to provide the Owner with not less than fifteen (15) days written notice in advance of cancellation, change or amendment restricting coverage. Subject to satisfactory proof of financial capability by the Contractor for self-insurance of his equipment, the Owner agrees to waive the equipment insurance requirement.

V. Contractors' Consultant Errors and Omissions Insurance:

The Contractor's Design Consultant(s) shall have in place, maintain and pay all premiums for Errors and Omissions insurance with a limit of liability of not less than \$1,000,000 per occurrence and in annual aggregate. The policy must be maintained until 6 years after Substantial Completion of the Work and shall be endorsed to provide the Owner with not less than 15 days written notice in advance of cancellation, change or amendment restricting coverage.

- ◆ Unless specified otherwise the duration of each insurance policy shall be from the date of commencement of the Work until the date of Total Performance of the Work, as set out in the certificate of Total Performance of the Work.
- ◆ The Contractor shall provide the Owner with proof of insurance to be obtained by it prior to commencement of the Work and shall promptly provide the Owner with a certified true copy of each insurance policy exclusive of information pertaining to premium or premium bases used by the Insurer to determine the cost of the insurance.
- ◆ If the Contractor fails to provide or maintain insurance as required in the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence thereof to the Contractor. The cost thereof shall be payable by the responsible party on demand and the Owner may deduct the costs thereof from monies which are due or may become hereunder.

End of Section

Reference Form

Insert Airport/Project Name

Reference & Similar Projects Form

| | | |
|------------------------------------|--|-----------|
| Owner / Business Name: | | |
| Project Name / Location / Address: | | |
| City: | State: | Zip Code: |
| Point of Contact: | Dates of Work: | |
| Phone Number: | Fax Number: | |
| E-mail Address: | | |
| Original Contract Amount: | Final Contract Amount Including all Change Orders: | |
| Brief Description of Project: | | |

This document must be completed and returned with your Submittal.

Notes: If references are required, it is suggested that a minimum of three are requested.

End of Section

Standard General Conditions of the Construction Contract

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

The preferred method of modification, which is strongly suggested, is to use the Supplemental Conditions (Section 00800) instead of direct edits to these General Conditions.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

Copyright © 2013:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

| | Page |
|--|------|
| Article 1 – Definitions and Terminology | 1 |
| 1.01 Defined Terms | 1 |
| 1.02 Terminology | 5 |
| Article 2 – Preliminary Matters..... | 6 |
| 2.01 Delivery of Bonds and Evidence of Insurance | 6 |
| 2.02 Copies of Documents | 6 |
| 2.03 Before Starting Construction | 6 |
| 2.04 Preconstruction Conference; Designation of Authorized Representatives | 7 |
| 2.05 Initial Acceptance of Schedules | 7 |
| 2.06 Electronic Transmittals..... | 7 |
| Article 3 – Documents: Intent, Requirements, Reuse | 8 |
| 3.01 Intent..... | 8 |
| 3.02 Reference Standards | 8 |
| 3.03 Reporting and Resolving Discrepancies | 8 |
| 3.04 Requirements of the Contract Documents | 9 |
| 3.05 Reuse of Documents | 10 |
| Article 4 – Commencement and Progress of the Work..... | 10 |
| 4.01 Commencement of Contract Times; Notice to Proceed | 10 |
| 4.02 Starting the Work..... | 10 |
| 4.03 Reference Points | 10 |
| 4.04 Progress Schedule | 10 |
| 4.05 Delays in Contractor’s Progress | 11 |
| Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions | 12 |
| 5.01 Availability of Lands | 12 |
| 5.02 Use of Site and Other Areas | 12 |
| 5.03 Subsurface and Physical Conditions..... | 13 |
| 5.04 Differing Subsurface or Physical Conditions | 14 |
| 5.05 Underground Facilities | 15 |
| 5.06 Hazardous Environmental Conditions at Site..... | 17 |
| Article 6 – Bonds and Insurance | 19 |

| | | |
|---|--|----|
| 6.01 | Performance, Payment, and Other Bonds | 19 |
| 6.02 | Insurance—General Provisions | 19 |
| 6.03 | Contractor’s Insurance | 20 |
| 6.04 | Owner’s Liability Insurance | 23 |
| 6.05 | Property Insurance..... | 23 |
| 6.06 | Waiver of Rights | 25 |
| 6.07 | Receipt and Application of Property Insurance Proceeds | 25 |
| Article 7 – Contractor’s Responsibilities | | 26 |
| 7.01 | Supervision and Superintendence | 26 |
| 7.02 | Labor; Working Hours | 26 |
| 7.03 | Services, Materials, and Equipment..... | 26 |
| 7.04 | “Or Equals” | 27 |
| 7.05 | Substitutes | 28 |
| 7.06 | Concerning Subcontractors, Suppliers, and Others | 29 |
| 7.07 | Patent Fees and Royalties | 31 |
| 7.08 | Permits | 31 |
| 7.09 | Taxes | 32 |
| 7.10 | Laws and Regulations..... | 32 |
| 7.11 | Record Documents..... | 32 |
| 7.12 | Safety and Protection..... | 32 |
| 7.13 | Safety Representative | 33 |
| 7.14 | Hazard Communication Programs | 33 |
| 7.15 | Emergencies | 34 |
| 7.16 | Shop Drawings, Samples, and Other Submittals..... | 34 |
| 7.17 | Contractor’s General Warranty and Guarantee..... | 36 |
| 7.18 | Indemnification | 37 |
| 7.19 | Delegation of Professional Design Services | 37 |
| Article 8 – Other Work at the Site | | 38 |
| 8.01 | Other Work | 38 |
| 8.02 | Coordination | 39 |
| 8.03 | Legal Relationships..... | 39 |
| Article 9 – Owner’s Responsibilities..... | | 40 |
| 9.01 | Communications to Contractor..... | 40 |
| 9.02 | Replacement of Engineer | 40 |
| 9.03 | Furnish Data | 40 |

| | | |
|--|--|----|
| 9.04 | Pay When Due..... | 40 |
| 9.05 | Lands and Easements; Reports, Tests, and Drawings..... | 40 |
| 9.06 | Insurance..... | 40 |
| 9.07 | Change Orders..... | 40 |
| 9.08 | Inspections, Tests, and Approvals..... | 41 |
| 9.09 | Limitations on Owner’s Responsibilities..... | 41 |
| 9.10 | Undisclosed Hazardous Environmental Condition..... | 41 |
| 9.11 | Evidence of Financial Arrangements..... | 41 |
| 9.12 | Safety Programs..... | 41 |
| Article 10 – Engineer’s Status During Construction..... | | 41 |
| 10.01 | Owner’s Representative..... | 41 |
| 10.02 | Visits to Site..... | 41 |
| 10.03 | Project Representative..... | 42 |
| 10.04 | Rejecting Defective Work..... | 42 |
| 10.05 | Shop Drawings, Change Orders and Payments..... | 42 |
| 10.06 | Determinations for Unit Price Work..... | 42 |
| 10.07 | Decisions on Requirements of Contract Documents and Acceptability of Work..... | 42 |
| 10.08 | Limitations on Engineer’s Authority and Responsibilities..... | 42 |
| 10.09 | Compliance with Safety Program..... | 43 |
| Article 11 – Amending the Contract Documents; Changes in the Work..... | | 43 |
| 11.01 | Amending and Supplementing Contract Documents..... | 43 |
| 11.02 | Owner-Authorized Changes in the Work..... | 44 |
| 11.03 | Unauthorized Changes in the Work..... | 44 |
| 11.04 | Change of Contract Price..... | 44 |
| 11.05 | Change of Contract Times..... | 45 |
| 11.06 | Change Proposals..... | 45 |
| 11.07 | Execution of Change Orders..... | 46 |
| 11.08 | Notification to Surety..... | 47 |
| Article 12 – Claims..... | | 47 |
| 12.01 | Claims..... | 47 |
| Article 13 – Cost of the Work; Allowances; Unit Price Work..... | | 48 |
| 13.01 | Cost of the Work..... | 48 |
| 13.02 | Allowances..... | 50 |
| 13.03 | Unit Price Work..... | 51 |

| | |
|--|----|
| Article 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work..... | 52 |
| 14.01 Access to Work..... | 52 |
| 14.02 Tests, Inspections, and Approvals..... | 52 |
| 14.03 Defective Work..... | 53 |
| 14.04 Acceptance of Defective Work..... | 53 |
| 14.05 Uncovering Work | 53 |
| 14.06 Owner May Stop the Work | 54 |
| 14.07 Owner May Correct Defective Work..... | 54 |
| Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period..... | 55 |
| 15.01 Progress Payments..... | 55 |
| 15.02 Contractor’s Warranty of Title | 58 |
| 15.03 Substantial Completion..... | 58 |
| 15.04 Partial Use or Occupancy | 59 |
| 15.05 Final Inspection | 59 |
| 15.06 Final Payment..... | 59 |
| 15.07 Waiver of Claims | 61 |
| 15.08 Correction Period | 61 |
| Article 16 – Suspension of Work and Termination..... | 62 |
| 16.01 Owner May Suspend Work | 62 |
| 16.02 Owner May Terminate for Cause..... | 62 |
| 16.03 Owner May Terminate For Convenience | 63 |
| 16.04 Contractor May Stop Work or Terminate | 63 |
| Article 17 – Final Resolution of Disputes | 64 |
| 17.01 Methods and Procedures..... | 64 |
| Article 18 – Miscellaneous | 64 |
| 18.01 Giving Notice | 64 |
| 18.02 Computation of Times..... | 64 |
| 18.03 Cumulative Remedies | 64 |
| 18.04 Limitation of Damages | 65 |
| 18.05 No Waiver | 65 |
| 18.06 Survival of Obligations | 65 |
| 18.07 Controlling Law | 65 |
| 18.08 Headings..... | 65 |

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
 1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

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

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

2.04 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

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

4.02 Starting the Work

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

4.03 Reference Points

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

4.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.
- 4.05 Delays in Contractor's Progress
- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

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

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 Differing Subsurface or Physical Conditions

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 Underground Facilities

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 Hazardous Environmental Conditions at Site

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 Insurance—General Provisions

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor’s commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor’s pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 Owner's Liability Insurance

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 Property Insurance

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 Waiver of Rights

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 Patent Fees and Royalties

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

7.08 Permits

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

7.09 Taxes

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

7.10 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 Record Documents

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

7.12 Safety and Protection

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

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 Safety Representative

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

7.14 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 Emergencies

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

7.16 Shop Drawings, Samples, and Other Submittals

A. *Shop Drawing and Sample Submittal Requirements:*

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

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

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

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

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

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

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 Coordination

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 Legal Relationships

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

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

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 Communications to Contractor

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

9.02 Replacement of Engineer

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 Furnish Data

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

9.04 Pay When Due

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 Lands and Easements; Reports, Tests, and Drawings

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

9.06 Insurance

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 Change Orders

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 Inspections, Tests, and Approvals

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 Limitations on Owner's Responsibilities

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

9.10 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 Evidence of Financial Arrangements

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

9.12 Safety Programs

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

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

10.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Project Representative

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

10.04 Rejecting Defective Work

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

10.05 Shop Drawings, Change Orders and Payments

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 Determinations for Unit Price Work

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

10.07 Decisions on Requirements of Contract Documents and Acceptability of Work

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

10.08 Limitations on Engineer's Authority and Responsibilities

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

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

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

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

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 Owner-Authorized Changes in the Work

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

11.03 Unauthorized Changes in the Work

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

11.04 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 Change Proposals

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 Claims

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

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

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, 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 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

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

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

13.02 Allowances

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

- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

14.01 Access to Work

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

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

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

14.05 Uncovering Work

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

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

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

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

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

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

15.02 Contractor's Warranty of Title

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

15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 Partial Use or Occupancy

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 Final Inspection

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

15.06 Final Payment

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

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

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

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

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

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

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

18.02 Computation of Times

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

18.03 Cumulative Remedies

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

18.04 Limitation of Damages

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

18.05 No Waiver

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

18.06 Survival of Obligations

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

18.07 Controlling Law

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

18.08 Headings

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

Suggested Supplementary Conditions

Caption and Introductory Statements

The following is a suggestion for use at the beginning of the Supplementary Conditions for a specific project:

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix “SC” added thereto.

Article 1 – Definitions and Terminology

SC-1.01 Defined Terms

A. If the Contract will include a Geotechnical Baseline Report (see Article 5 below), include the following definitions:

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

Geotechnical Baseline Report (GBR) – The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR’s own terms. The GBR is a Contract Document.

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

Article 2 - Preliminary Matters

SC-2.01 Delivery of Bonds and Evidence of Insurance

- A. Paragraph 2.01.B of the General Conditions requires that the Contractor furnish certificates of insurance. Paragraph 6.02.C states that upon request by the Owner or other named or additional insureds, the Contractor must provide evidence of insurance such as copies of required policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Parallel provisions apply to the Owner and the insurance that the Owner is required to provide. Rather than relying on this two-step process (delivery of certificates of insurance at the outset; subsequent requests for additional evidence of insurance), some contract drafters may elect to require from the outset that copies of the insurance policies, rather than certificates of insurance, be delivered to the other party. If exchange of copies of insurance policies is required, the following should be used:

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

- B. Evidence of Contractor's Insurance: When the Contractor delivers the executed counterparts of the Agreement to the Owner, the Contractor shall also deliver to the Owner copies of the policies of insurance (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by the Contractor in Article 6. The Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.**
- C. Evidence of Owner's Insurance: After receipt from the Contractor of the executed counterparts of the Agreement and all required bonds and insurance documentation, the Owner shall promptly deliver to the Contractor copies of the policies of insurance to be provided by the Owner under Article 6 (if any). The Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.**

SC-2.02 Copies of Documents

- A. If the number of printed or hard copies of the Drawings and Project Manual to be provided is different than four copies, the following may be used:

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

The Owner shall furnish to the Contractor [] copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

- B. On some projects, it may be useful to produce conformed Contract Documents, in which the content of Addenda and negotiated changes are merged into the appropriate Specifications, Drawings, General Conditions, or other Contract Documents. This may be especially true on private construction projects where the terms and scope are negotiated and modified significantly after the initial release of proposed Contract Documents. Conformed documents may be considerably more convenient to use during the performance of the Work and the administration of the Contract.

EJCDC advises that if conformed documents are to be prepared and made available to Contractor, sufficient time and budget must be allocated to ensure the quality and full coordination of the conformed documents, and **the** Owner and Engineer must recognize that Contractor, Subcontractors, and Suppliers will likely rely on the conformed version of the Contract Documents rather than the source components. If conformed documents are prepared without the level of commitment necessary to allow them to be accorded the full status of "Contract Documents," and are merely for reference or convenience, they should be accompanied by clear disclaimers of their content and a warning to consult the actual source Contract Documents.

A Supplementary Condition regarding conformed documents is necessary only if the Owner intends to provide the Contractor with conformed documents that will serve as binding Contract Documents. The following may be used for that purpose:

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

The Owner shall furnish to the Contractor [] copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

- C. Note: If the Owner is not furnishing PDF or other electronic files of the Contract Documents, then draft (1) a Supplementary Condition that deletes the reference in 2.02.A of the General Conditions to providing the PDF files, and (2) a Supplementary Condition that deletes Paragraph 3.01.C in its entirety.

Article 5 - Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions

SC-5.03 Subsurface and Physical Conditions

- A. **This is a mandatory Supplementary Condition.** Paragraph 5.03, Subsurface and Physical Conditions, of the General Conditions requires the identification of all known documents regarding subsurface and physical conditions at or adjacent to the Site (this requirement is broader than merely requiring that the Contractor be given access to subsurface reports prepared for the current Project). It also requires the identification of Technical Data (upon whose accuracy Contractor may rely) contained in such documents. Use the first version of SC-5.03, presented immediately below, for the purpose of identifying the known Site condition documents. If no such documents are known, then use the second version of SC-5.03, below. Also note that if the known documents include either a geotechnical report or environmental report prepared for the Project, or both, and the Supplementary Conditions neglect to expressly identify the Technical Data, upon whose accuracy Contractor may rely, that is contained in such reports, then the default definition of Technical Data in Paragraph 1.01 of the General Conditions will apply.

Note that if the Owner elects to furnish a Geotechnical Baseline Report (GBR), use the alternate SC/GBR-5.03 and SC/GBR 5.04 located in the next section of this document, rather than one of the SC-5.03 versions immediately following. If a GBR is used, it remains important to disclose known reports and tests regarding subsurface conditions; a place for doing so is provided in SC/GBR-5.03. If some Site conditions are outside the scope of the Geotechnical Baseline Report, it

will continue to be necessary to identify reliable Technical Data contained in such reports and drawings; however, if the Geotechnical Baseline Report or a related Geotechnical Data Report already establish the data that is worthy of reliance, it will not be necessary to make a redundant identification in SC/GBR 5.03.

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

C. The following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to the Owner:

1. **Report dated** *[May 21, 2013, prepared by Aye and Bea, Consulting Engineers, Philadelphia, Pa., entitled: "Results of Investigation of Subsoil Conditions and Professional Recommendations for Foundations of Iron Foundry at South and Front Streets, Pembrig, NJ", consisting of 42 pages.]* **The Technical Data contained in such report upon whose accuracy the Contractor may rely are** *[here indicate any such Technical Data, or state "none."]* **[or] [those indicated in the definition of Technical Data in the General Conditions.]**
2. **Report dated** *[May 2, 2000, prepared by Ecks, Wye and Tsze, Inc., Baltimore, Md., entitled: "Tests of Water Quality in Mixer River at Pembrig, NJ", consisting of 26 pages.]* **The Technical Data contained in such report upon whose accuracy the Contractor may rely are** *[here indicate any such Technical Data, or state "none."]* **[or] [as indicated in the definition of Technical Data in the General Conditions.]**

D. The following drawings of physical conditions relating to existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities) are known to the Owner:

1. **Drawings dated** *[March 2, 2000, of Route 24A Overpass Abutment, prepared by Dea & Associates, Inc., Wilmington, Del., entitled: "Record Drawings: Route No. 24A Overpass Abutment", consisting of 12 sheets numbered 001 to 012, inclusive.]*

[Use one of the following two subparagraphs:]

- a. **All of the information in such drawings constitutes Technical Data on whose accuracy Contractor may rely, except for** _____ **appearing on Drawing No. _____ and** _____ **appearing on Drawing No. _____.**

[or]

- a. **None of the contents of such drawings is Technical Data on whose accuracy the Contractor may rely.**

E. The Contractor may examine copies of reports and drawings identified in SC 5.03.C and SC 5.03.D that were not included with the Bidding Documents at _____ *[insert location]* **during regular business hours, or may request copies from the Engineer.**

If there are no known Site-related reports or drawings, use the following version of SC-5.03:

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

- A. **No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to the Owner.**
- B. **Geotechnical Baseline Reports:** Some project owners use a Geotechnical Baseline Report (GBR) for projects (or portions of a project) in which the subsurface conditions will play a significant role.

Providing a GBR may result in bids with lower contingencies for subsurface conditions, and simplify the application of the differing site conditions provisions in Article 5 of the General Conditions. Commentary on Geotechnical Baseline Reports is presented in EJCDC® C-001. See also Geotechnical Baseline Reports for Construction—Suggested Guidelines, by Randall J. Essex, P.E., ASCE 2007. In many cases, it may be advantageous for the Owner, Engineer, or the geotechnical engineer to engage a consultant with GBR experience to assist in the preparation of GBR and related documents.

On projects in which a Geotechnical Baseline Report is used, it is also typical to assemble and provide a Geotechnical Data Report (GDR), as a separate, single source of factual geotechnical information regarding the Site. The content of the GDR is in essence what the EJCDC documents define as “Technical Data” –reliable factual information, such as boring logs and laboratory test results. (See the definition of Technical Data in Article 1 of the General Conditions, and the definition of a GDR in Article 1 of these Supplementary Conditions). Some Owners may elect to issue a GBR without compiling a GDR, but regardless of the format, it is essential to identify and make all geotechnical data available. Note that a typical general purpose geotechnical report, usually prepared primarily to assist in the design of the project, often contains not only factual data but also opinions, interpretations, and even speculation regarding the Site’s subsurface conditions. **Such a geotechnical report is not suitable to be adopted or identified as a GDR.**

Although it is preferable that a GBR be comprehensive with respect to subsurface conditions, in some cases, a GBR will establish baselines for a portion of a project but will not address all subsurface issues. For example, the GBR may establish baseline subsurface conditions along the route of a pipeline, but be silent with respect to conditions underlying an associated pump building. Also, in some cases, a project will involve both subsurface construction, as well as building modifications or other tasks unrelated to geotechnical investigations, analysis, or interpretations. The SC/GBR provisions that follow retain certain differing site condition provisions of the General Conditions, in part because these may be needed for situations that are outside the scope of the GBR. As noted previously, these SC/GBR provisions contain locations for (1) identifying known reports and drawings regarding the subsurface conditions (a mandatory obligation), and (2) identifying Technical Data upon whose accuracy Contractor may rely (necessary in some but not all GBR projects, depending on the scope of the GBR and GDR documents).

If a GBR is used, then include the following GBR Supplementary Conditions, and do not use either of the Paragraphs SC-5.03 above:

SC/GBR-5.03 and 5.04. Delete Paragraphs 5.03 and 5.04 of the General Conditions in their entireties and replace with the following provisions:

SC/GBR-5.03 Subsurface and Physical Conditions

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

- 1. Those reports known to the Owner of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report), and Technical Data contained in such reports. Such reports are as follows:**
 - a. Report dated [May 21, 2013, prepared by Aye and Bea, Consulting Engineers, Philadelphia, Pa., entitled: “Results of Investigation of Subsoil Conditions and Professional Recommendations for Foundations of Iron Foundry at South and Front Streets, Pembrig, NJ”, consisting of 42 pages.] The Technical Data contained in such report upon whose accuracy the Contractor may rely are [here indicate any such Technical Data or state “none.”] [or] [those**

indicated in the definition of Technical Data in the General Conditions.]

- b. **Report dated** [May 2, 2000, prepared by Ecks, Wye and Tsze, Inc., Baltimore, Md., entitled: "Tests of Water Quality in Mixer River at Pembrig, NJ", consisting of 26 pages.] **The Technical Data contained in such report upon whose accuracy the Contractor may rely are** [here indicate any such Technical Data or state "none."] [or] [as indicated in the definition of Technical Data in the General Conditions.]
2. Those drawings known to the Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), and Technical Data contained in such drawings. Such drawings are as follows:
 - a. **Drawings dated** [March 2, 2000, of Route 24A Overpass Abutment, prepared by Dea & Associates, Inc., Wilmington, Del., entitled: "Record Drawings: Route No. 24A Overpass Abutment", consisting of 12 sheets numbered 001 to 012, inclusive.]

[Use one of the following two subparagraphs:]

- (1) All of the information in such drawings constitutes Technical Data on whose accuracy the Contractor may rely, except for [redacted] appearing on Drawing No. [redacted] and [redacted] appearing on Drawing No. [redacted].
 - [or]
 - (2) None of the contents of such drawings is Technical Data on whose accuracy the Contractor may rely.
3. The Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at [redacted] [insert location] during regular business hours, or may request copies from Engineer, at the cost of reproduction.

B. Reliance by Contractor on Technical Data Authorized:

The Contractor may rely upon the accuracy of the Technical Data contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on Technical Data, the Contractor may not rely upon or make any claim against the Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the 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. Geotechnical Baseline Report:

1. This Contract contains a Geotechnical Baseline Report ("GBR"), identified as follows: [Geotechnical Baseline Report for Northwest Interceptor, dated February

12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]. **This Contract also contains a Geotechnical Data Report (GDR), identified as follows:** [Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR's terms shall prevail.
3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as "Baseline Conditions"). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.
4. The Baseline Conditions shall be used to assist in the administration of the Contract's differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions shall be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, shall be used for the differing site condition determination.
5. The Baseline Conditions shall not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions shall be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC-5.04 below, the GDR shall be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.
6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither the Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.
7. The behavior of the ground during construction depends substantially upon the Contractor's selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.
8. The GBR shall not reduce or relieve the Contractor of its responsibility for the planning, selection, and implementation of safety precautions and

programs incident to the Contractor's means, methods, techniques, sequences, and procedures of construction, or to the Work.

SC/GBR-5.04 Differing Subsurface or Physical Conditions

A. Notice: If the Contractor believes that any subsurface condition that is uncovered or revealed at the Site:

1. differs materially from conditions shown or indicated in the GBR; or
2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or
3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or
4. to the extent the GBR and GDR are inapplicable, is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or
6. to the extent the GBR and GDR are inapplicable, 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 the Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify the Owner and Engineer in writing about such condition. The Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting the Contractor to do so.

B. Engineer's Review: After receipt of written notice as required by the preceding paragraph, the Engineer will promptly review the subsurface or physical condition in question; determine the necessity of the Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC/GBR 5.04.A above; obtain any pertinent cost or schedule information from the Contractor; prepare recommendations to the Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise the Owner in writing of the Engineer's findings, conclusions, and recommendations.

C. Owner's Statement to Contractor Regarding Site Condition:

After receipt of the Engineer's written findings, conclusions, and recommendations, the Owner shall issue a written statement to the Contractor (with a copy to the Engineer) regarding the subsurface or physical condition in question, addressing the resumption or continuation of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting the Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. Possible Price and Times Adjustments:

1. The Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in the Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph SC/GBR 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and,
 - c. the Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to the Contractor's ability to complete the Work within the Contract Times.
2. The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. the Contractor knew of the existence of such condition at the time the Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for the Contractor prior to the Contractor's making such commitment; or
 - c. the Contractor failed to give the written notice as required by Paragraph SC/GBR 5.04.A.
3. If the Owner and the Contractor agree regarding the Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. The Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after the Owner's issuance of the the Owner's written statement to the Contractor regarding the subsurface or physical condition in question.

SC-5.06 Hazardous Environmental Conditions

- A. **This is a mandatory Supplementary Condition.** Paragraph 5.06 of the General Conditions contemplates that the Owner identify all known documents regarding Hazardous Environmental Conditions (HEC) that have been identified at or adjacent to the Site. It also requires the identification of Technical Data (upon whose accuracy Contractor may rely) contained in such documents. Use the first version of SC-5.06, presented immediately below, to identify the known HEC documents. If no HEC documents are known, then use the second version of SC-5.06, below. Also note that if the known documents include either a geotechnical report or

environmental report prepared for the Project, or both, and the Supplementary Conditions neglect to expressly identify the Technical Data, upon whose accuracy the Contractor may rely, that is contained in such reports, then the default definition of Technical Data in Paragraph 1.01 of the General Conditions will apply.

SC-5.06 Add the following subparagraphs 5.06.A.1 and 5.06.A.2:

1. **The following reports regarding Hazardous Environmental Conditions at the Site are known to the Owner:**
 - a. Report dated December 10, 2012, prepared by Eph Environmental Consultants, Princeton, N.J., entitled: "Results of Investigation of Conditions at Iron Foundry at South and Front Streets, Pembrig, NJ", consisting of 27 pages. The Technical Data contained in such report upon whose accuracy the Contractor may rely are *[here indicate any such Technical Data or state "none."]*
2. **The following drawings regarding Hazardous Environmental Conditions at the Site are known to the Owner:**
 - a. Drawings dated November 27, 2002, prepared by Eph Environmental Consultants, Princeton, N.J., entitled: "Iron Foundry Site Conditions", consisting of 5 sheets numbered [] to [], inclusive.

[Use one of the following two subparagraphs:]

- 1) All of the information in such drawings constitutes Technical Data on whose accuracy the Contractor may rely, except for [] appearing on Drawing No. [] and [] appearing on Drawing No. [].
- [or]*
- 1) None of the contents of such drawings is Technical Data on whose accuracy the Contractor may rely.

B. Use the following SC-5.06 if there are no known HEC reports or drawings:

SC 5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

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

Article 6 – Bonds and Insurance

SC-6.02 Insurance—General Provisions

- A. Paragraph 6.02.B of the General Conditions requires that all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better, unless a different standard is indicated in the Supplementary Conditions. The A.M. Best ratings are based on the financial strength and size of the insurance company, with A-VII representing a commonly used standard. SC-6.02 is the location for noting any different standard, whether narrower or broader.

Note that in some states not all workers' compensation insurers obtain A.M. Best ratings. The Owner may wish to include the following optional exception (modified to meet applicable provisions in the state) to the requirement in 6.02.B:

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. Contractor may obtain workers' compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a workers' compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.03 Contractor's Liability Insurance

A. **This is a mandatory Supplementary Condition**, because it is the location for specifying the limits of coverage for the insurance required in Paragraph 6.03 of the General Conditions. The information set forth in this Supplementary Condition (and in all other contractual provisions regarding bonds and insurance) should be provided by Owner, either directly or through written instructions given to the Engineer (see EJCDC® C-051, Engineer's Letter to Owner Requesting Instructions Concerning Bonds and Insurance, and EJCDC® C-052, Owner's Instructions to Engineer Concerning Bonds and Insurance).

SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

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

1. **Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:**

| | |
|--|------------------|
| State: | <u>Statutory</u> |
| Federal, if applicable (e.g., Longshoreman's): | <u>Statutory</u> |
| Jones Act coverage, if applicable: | |
| Bodily injury by accident, each accident | \$ _____ |
| Bodily injury by disease, aggregate | \$ _____ |
| Employer's Liability: | |
| Bodily injury, each accident | \$ _____ |
| Bodily injury by disease, each employee | \$ _____ |
| Bodily injury/disease aggregate | \$ _____ |
| For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the workers' compensation or commercial general liability policy with a minimum limit of: | \$ _____ |
| Foreign voluntary worker compensation | <u>Statutory</u> |

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate \$ _____

Products - Completed Operations Aggregate \$ _____

Personal and Advertising Injury \$ _____

Each Occurrence (Bodily Injury and Property Damage) \$ _____

3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:

Bodily Injury:

Each person \$ _____

Each accident \$ _____

Property Damage:

Each accident \$ _____

[or]

Combined Single Limit of \$ _____

4. Excess or Umbrella Liability:

Per Occurrence \$ _____

General Aggregate \$ _____

[See Paragraph 6.03.E of the General Conditions.]

[If Owner revises the standard terms by deleting the requirement that Contractor provide Excess or Umbrella liability insurance, then Owner should consider requiring (in SC-6.03.K.2) that "The aggregate limits under SC-6.03.K.2 (Commercial General Liability) be maintained fully available for this Contract by obtaining and maintaining a Designated Construction Project General Aggregate Limit endorsement, or equivalent."]

5. Contractor's Pollution Liability:

Each Occurrence \$ _____

General Aggregate \$ _____

If box is checked, Contractor is not required to provide Contractor's Pollution Liability insurance under this Contract

[See Paragraph 6.03.F of the General Conditions.]

[On some projects, the Owner may conclude that it is not cost-effective to require the Contractor to carry Contractor's Pollution Liability insurance, based on the type of work to be performed or knowledge of conditions at the Site. In such cases, check the box above and either delete the "Each Occurrence" and "General Aggregate" line items, or indicate "N.A." or "Not applicable" in the blanks.]

6. **Additional Insureds: In addition to Owner and Engineer, include as additional insureds the following:** [Here list by name (not category, role, or classification) other persons or entities to be included on the commercial general liability, automobile liability, umbrella or excess, and pollution liability policies as additional insureds.]
7. **Contractor's Professional Liability:**

| | |
|-------------------------|----------|
| Each Claim | \$ _____ |
| Annual Aggregate | \$ _____ |

[See Paragraph 6.03.H of the General Conditions.]

[Contractor's pollution liability and contractor's professional liability policies are sometimes sold as a hybrid or combined policy. If after receiving the advice of its risk managers the Owner concludes that it is an acceptable alternative for the Contractor to provide such a combination policy, this should be stated here, together with the required policy limits for a combination policy.]

8. [Here list additional types and amounts of insurance that may be required by the Owner.]

SC-6.05 Property Insurance

- A. **Builder's Risk Deductible:** Paragraph 6.05.A of the General Conditions requires builder's risk insurance on a completed value basis, subject to such deductible amounts as are provided by the Supplementary Conditions. In many cases, the drafter of the Supplementary Conditions will choose not to specify any deductibles, leaving establishment of the deductible amounts to the discretion of the purchasing party, which is responsible for payment of the deductibles. Even when a deductible is stipulated, it is typically a maximum amount; the purchaser may choose to purchase a policy with a lower deductible. Note that it is common for builder's risk policies to feature several different deductibles, typically including a primary deductible and specific deductibles applicable to specific types of loss. The following Supplementary Condition provides a means of identifying a primary deductible; other specific deductibles may also be added.

If a primary deductible is to be stipulated, use the following to establish the maximum amount of the deductible:

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

13. **be subject to a deductible amount of no more than [\$] for direct physical loss in any one occurrence.**

- B. **Builder’s Risk—Supplemental Insured’s:** Paragraph 6.05.A.1 of the General Conditions refers to other individuals or entities (in addition to the Owner, Contractor, and all Subcontractors) that are to be identified in the Supplementary Conditions as being entitled to protection as insured’s under the builder’s risk insurance on the Work. In such cases use the following:

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

- a. **In addition to the Owner, Contractor, and all Subcontractors, include as insured’s the following:**

[Here list by name (not category, role, or classification) other persons or entities to be included on the builder’s risk policy as insureds.]

- C. **Builder’s Risk—Supplemental Requirements:** Paragraph 6.05.A of the General Conditions lists several items that are to be included in the builder’s risk insurance. Consider adding one or more of the following items to the list as appropriate to the specific project:

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

14. **include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorney’s fees and engineering or other consultants’ fees, if not otherwise covered;**
16. **include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:**
 - a. *[here list specific items of equipment and purchase value]*
 - b. *[here list items of material and purchase value]*
17. **include by express endorsement coverage of damage to Contractor’s equipment.**

- D. **Installation Floater:** An installation floater is insurance carried by the Contractor, covering the materials and equipment to be incorporated in the Work. It typically does not insure against losses that occur after installation. In most cases, builder’s risk insurance offers broader coverage and is the preferred risk management instrument. On some projects, an installation floater may be an acceptable alternative to a builder’s risk policy. See EJCDC® C-001, Commentary on the 2013 EJCDC Construction Documents. (In other instances, the Contractor may choose to purchase an installation floater to supplement property insurance provided by the Owner.) If, after consultation with its risk managers, the Owner elects to require purchase of an installation floater rather than a builder’s risk policy, the following requirements may be included as a Supplementary Condition:

SC-6.05.A. Delete Paragraph 6.05.A of the General Conditions and substitute the following in its place:

The Contractor shall provide and maintain installation floater insurance for property under the care, custody, or control of the Contractor. The installation floater insurance shall be a broad form or “all risk” policy providing coverage for all materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work. Coverage under the Contractor’s installation floater will include:

1. **any loss to property while in transit,**
2. **any loss at the Site, and**

3. any loss while in storage, both on-site and off-site.

Coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable. The Contractor will be solely responsible for any deductible carried under this coverage and claims on materials, supplies, machinery, fixture, and equipment that will be incorporated into the Work while in transit or in storage. This policy will include a waiver of subrogation applicable to the Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

- E. Builder's Risk – Owner Purchase: In the event that the Owner, rather than the Contractor, will purchase the Builder's Risk insurance, use the following SC-6.05.A:

SC 6.05.A. Delete the first sentence of Paragraph 6.05.A and insert the following sentence in its place:

The Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

Article 7 – Contractor's Responsibilities

SC-7.02 Labor; Working Hours

Paragraph 7.02.B of the General Conditions restricts the Contractor to working during "regular hours" Monday through Friday, and no work is permitted on "legal holidays."

- A. To provide details regarding the meaning of the terms "regular hours" and "legal holidays," consider specifically defining them by adding the following:

SC-7.02.B. Add the following new subparagraphs immediately after Paragraph 7.02.B:

- 1. Regular working hours will be** *[here insert schedule of regular working hours]*
- 2. Owner's legal holidays are** *[here insert list of legal holidays]*

- B. To modify the days of the week that the Contractor may work, use the following:

SC-7.02.B. Amend the first and second sentences of Paragraph 7.02.B to state "...all Work at the Site shall be performed during regular working hours, [] through []. The Contractor will not perform Work on a [], [], or any legal holiday."

- C. If the the Owner has no objections to the Contractor working multiple shifts, weekends, and legal holidays, use the following:

SC-7.02.B. Delete Paragraph 7.02 B. in its entirety, and insert the following:

- B. In the absence of any Laws or Regulations to the contrary, the Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at the Contractor's sole discretion.**

- D. If the Contractor is permitted to Work outside regular hours and on weekends and holidays, whether by a contractual provision or by the Owner's consent during the course of the Project, then it is good practice to address the issue of whether the Owner may charge the Contractor for engineering expenses associated with the non-regular schedule. Some Owners may prefer to

absorb these costs to incentivize (or at least facilitate) an aggressive schedule and timely completion; and in many cases, the net additional expense may be modest. Other Owners may prefer to establish and collect a charge for the engineering services. Add the following as SC-7.02.C, making a policy choice regarding responsibility in the beginning of the sentence:

SC-7.02.C. Add the following new paragraph immediately after Paragraph 7.02.B:

[Contractor] [Owner] *[choose one and delete the other]* shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If the Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then the Owner may impose a reasonable set-off against payments due under Article 15.

E. If responsibility for costs in SC-7.02.C will be allocated to the Contractor, the Owner may wish to provide some specificity regarding the potential costs, through the addition of the following:

SC-7.02.C. Add the following new subparagraph immediately after Paragraph 7.02.C:

1. For purposes of administering the foregoing requirement, additional overtime costs are defined as *[here insert parameters for compensated overtime hours]*

SC-7.09 Taxes

A. If the Owner qualifies for a state or local sales or use tax exemption in the purchase of certain materials and equipment, add the following Supplementary Condition, with any revisions necessary to meet the specific applicable exemption rules. (Note: If instructions to bidders or proposers are used, confirm that the provisions here are consistent with the corresponding provisions in such instructions. See Suggested Instructions to Bidders for Construction Contracts, EJCDC® C-200, Article 23.)

SC 7.09 Add a new paragraph immediately after Paragraph 7.09.A:

B. The Owner is exempt from payment of sales and compensating use taxes of the State of *[insert name of state where Project is located]* and of cities and counties thereof on all materials to be incorporated into the Work.

- 1. The Owner will furnish the required certificates of tax exemption to the Contractor for use in the purchase of supplies and materials to be incorporated into the Work.**
- 2. The Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by the Contractor, or to supplies or materials not incorporated into the Work.**

SC-7.12 Safety and Protection

B. Some Owners have written safety programs with which construction contractors must comply. If such is the case, Paragraph 7.12.C of the General Conditions mandates that the safety program be identified in the Supplementary Conditions (and Paragraph 9.12 requires the Owner to provide a copy of such programs to the Contractor). The identification of the safety programs may be accomplished as follows:

SC-7.12 Insert the following after the second sentence of Paragraph 7.12.C:

The following Owner safety programs are applicable to the Work: *[here expressly identify by title and/or date, any such Owner safety programs].*

Article 8 – Other Work at the Site

SC-8.02 Coordination

- A. Paragraph 8.02 of the General Conditions requires that if in addition to retaining the Contractor, the Owner will arrange to have others perform work at the Site, the Owner must provide the Contractor specified information regarding coordination of construction activities. (Note that the Owner should provide specific information about the other work—nature of the work, scope, schedule, exact location—elsewhere in the Contract Documents or in other documentation.) Use the following in that case:

SC-8.02 Delete Paragraph 8.02.A in its entirety and replace with the following:

- A. The Owner intends to contract with others for the performance of other work at or adjacent to the Site.**
1. *[Here identify individual or entirety]* **shall have authority and responsibility for coordination of the various contractors and work forces at the Site;**
 2. **The following specific matters are to be covered by such authority and responsibility:** *[here itemize such matters];*
 3. **The extent of such authority and responsibilities is:** *[here provide the extent]*

Article 9 – Owner’s Responsibilities

SC-9.13 Owner’s Site Representative

- A. Paragraph 10.03 of the General Conditions indicates that the Owner may designate a representative or agent who is not the Engineer’s consultant, agent, or employee, to represent the Owner at the Site (“Owner’s Site Representative”). In such case, the Owner typically would not have the Engineer furnish a Resident Project Representative, hence the second version of SC-10.03.B below would be used to indicate there is no Engineer’s Resident Project Representative.

The following should be used for the identification of the Owner’s Site Representative. Note that the following must be supplemented by customized text that explains the responsibilities of the Owner’s Site Representative, so far as such are relevant to the Contractor. The content of Paragraphs SC-10.03.B and C below may be a helpful starting point in drafting such supplemental text. In addition, if the Owner’s retention of an Owner’s Site Representative will affect other aspects of the Engineer’s status during construction, other portions of Article 10 and many other parts of the General Conditions will need to be revised. In such cases, it is typical for (and Laws and Regulations may require) the design engineer (as engineer of record) to at least retain a role with respect to design-intent reviews of submittals and similar aspects of the Work.

SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

SC-9.13 The Owner will furnish an “Owner’s Site Representative” to represent the Owner at the Site and assist the Owner in observing the progress and quality of the Work. The Owner’s Site Representative is not the Engineer’s consultant, agent, or

employee. The Owner's Site Representative will be *[Here identify individual or entirety]*.
The authority and responsibilities of the Owner's Site Representative follow: *[Here describe the duties and activities of the Owner's Site Representative]*

Article 10 – Engineer's Status During Construction

SC-10.03 Project Representative

- A. **This is a mandatory Supplementary Condition.** As indicated in Paragraph 10.03 of the General Conditions, in those cases in which the Engineer will provide a Resident Project Representative (RPR) during construction, the authority and responsibilities of the RPR must be specified in the Supplementary Conditions. SC-10.03.B and C, immediately below, provide a mechanism for doing so. In the alternative, in some cases the Engineer will not provide RPR services, either because there will not be an RPR, or because a party other than the Engineer will provide the site services. When such is the case, the second SC-10.03.B below should be used.

As indicated in Paragraph 10.03 of the General Conditions, the Owner may designate a representative or agent who is not the Engineer's consultant, agent, or employee, to represent the Owner at the Site. In such case, in addition to using the second version of SC-10.03.B, below, also use SC-9.13 above.

The following suggested language, which parallels the wording of Exhibit D to EJCDC® E-500, the Agreement Between Owner and Engineer for Professional Services, is for use when the Engineer will provide RPR services. It should be edited to indicate the RPR authority and responsibilities that apply to this Contract.

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

- B. **The Resident Project Representative (RPR) will be the Engineer's representative at the Site, will act as directed by and under the supervision of the Engineer, and will confer with the Engineer regarding RPR's actions.**
1. **General:** RPR's dealings in matters pertaining to the Work in general shall be with the Engineer and the Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of the Contractor. RPR shall generally communicate with the Owner only with the knowledge of and under the direction of the Engineer.
 2. **Schedules:** Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by the Contractor and consult with the Engineer concerning acceptability.
 3. **Conferences and Meetings:** Attend meetings with the Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
 4. **Liaison:**
 - a. **Serve as the Engineer's liaison with the Contractor. Working principally through the Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.**
 - b. **Assist the Engineer in serving as the Owner's liaison with the Contractor when the Contractor's operations affect the Owner's on-Site operations.**

- c. Assist in obtaining additional details or information from the Owner, when required, for proper execution of the Work.
5. Interpretation of Contract Documents: Report to the Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to the Contractor clarifications and interpretations as issued by the Engineer.
6. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by the Contractor, and notify the Engineer of availability of Samples for examination.
 - c. Advise the Engineer and the Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by the Engineer.
7. Modifications: Consider and evaluate the Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to the Engineer. Transmit to the Contractor in writing decisions as issued by the Engineer.
8. Review of Work and Rejection of Defective Work:
 - a. Conduct on-Site observations of the Contractor's work in progress to assist the Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to the Engineer whenever RPR believes that any part of the Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that the Contractor maintains adequate records thereof.
 - b. Observe, record, and report to the Engineer appropriate details relative to the test procedures and systems start-ups.
10. Records:
 - a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions,

observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to the Engineer.

- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. Reports:

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

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

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

14. Completion:

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

C. The RPR shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

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

[or]

B. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent the Engineer at the Site or assist the Engineer in observing the progress and quality of the Work. [See explanatory text at beginning of SC-9.13, and at beginning of SC-10.03, for discussion of this second alternative SC-10.03.B]

Article 13 – Cost of The Work; Allowances; Unit Price Work

SC-13.01 Cost of the Work

- A. Equipment rental charges, particularly with respect to the Contractor-owned equipment, can sometimes lead to disagreements. To reduce the possibility of such disagreements, the following Supplementary Condition may be used. Note that it requires a published reference or method for determining the costs.

SC 13.01.B.5.c Delete Paragraph 13.01.B.5.c in its entirety and insert the following in its place:

- c. Construction Equipment and Machinery:**
- 1) **Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by the Owner with the advice of the 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.**
 - 2) **Costs for equipment and machinery owned by the Contractor will be paid at a rate shown for such equipment in the [cite the rate book appropriate for the Project]. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling,**

and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.

SC-13.03 Unit Price Work

- A. The following Supplementary Condition is typically called a “variation in estimated quantities (VEQ) clause” and facilitates administrative resolution of situations where actual quantities of unit price items differ materially from estimated quantities. Typically, the clause applies where the extended price (unit price times estimated quantity) of an item of the Unit Price Work is more than 5 percent of the Contract Price (based on estimated quantities), and the actual quantity of the units of work performed or furnished varies by more than a specified percent (typically 15 to 25 percent).

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

- E. **The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:**
1. **if the extended price of a particular item of Unit Price Work amounts to [] percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by the Contractor differs by more than [] percent from the estimated quantity of such item indicated in the Agreement; and**
 2. **if there is no corresponding adjustment with respect to any other item of Work; and**
 3. **if the Contractor believes that the Contractor has incurred additional expense as a result thereof, the Contractor may submit a Change Proposal, or if the Owner believes that the quantity variation entitles the Owner to an adjustment in the unit price, the Owner may make a Claim, seeking an adjustment in the Contract Price.**

Article 15 - Payments to Contractor; Set-Offs; Completion; Correction Period

SC-15.03 Substantial Completion

- A. Paragraph 15.03.A of the General Conditions requires **the** Contractor to give notice that the Work is substantially complete; Paragraph 15.03.B requires an inspection of the Work to determine whether **the** Engineer agrees that the Work is substantially complete. If the Work is not substantially complete and must be inspected again at a later point, then the following Supplementary Condition, if included in the Contract, would allow **the** Owner to recover the cost of the re-inspection.

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

1. **If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by the Engineer, the cost of such re-inspection or re-testing, including the cost of time,**

travel and living expenses, shall be paid by the Contractor to the Owner. If the Contractor does not pay, or the parties are unable to agree as to the amount owed, then the Owner may impose a reasonable set-off against payments due under Article 15.

Article 17 - Final Resolution of Disputes

- B. Paragraph 17.01.B of the General Conditions provides that for any dispute subject to final resolution under Article 17, the Owner or the Contractor may invoke the dispute resolution procedure called for in the Supplementary Conditions. Paragraph SC-17.02 is the location to identify any such primary dispute resolution procedure. If no procedure is identified herein the Supplementary Conditions and the parties do not agree to a specific procedure, then the default resolution procedure will be litigation—the pursuit of rights in a court of competent jurisdiction. Note that before reaching the point of final resolution of disputes, in most cases, the Owner and the Contractor will already have engaged in the Claim process described in Article 12 of the General Conditions. That process allows for mediation of the dispute.

As an alternative to litigation, there are many other possible dispute resolution procedures, or combinations of procedures. One of the most common is arbitration; wording for an arbitration clause follows. A discussion of the pros and cons of the arbitration process (and there are many advocates on both sides) is beyond the scope of this Guide. The Owner should consult with its legal counsel when considering the inclusion of an arbitration clause, or of any other dispute resolution procedure or combination of procedures.

The arbitration option is as follows:

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

SC-17.02 Arbitration

- A. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the rules of *[insert name of selected arbitration agency]*, subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to the Engineer for information. The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC-17.02.D below.
- C. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including the Engineer and the Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. The inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 2. Such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.
- D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.
- E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by the Owner and the Contractor.

SC-17.03 Attorney's Fees

- A. In most jurisdictions in the United States, as a general matter each party to a dispute is responsible for its own attorney's fees, unless an express agreement provides to the contrary. Some legal authorities believe that this general rule encourages claims and disputes, because claimants have little concern that they will be forced to pay for the opposing party's fees if the claim fails. Other authorities take the opposite view—that the enticing prospect of not only prevailing but also of having one's own fees paid by the opponent would encourage overly aggressive pursuit of claims (or overzealous defense against valid claims).

If an exception to the general American rule is preferred for disputes subject to final resolution under Article 17, then add the following express agreement:

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

SC-17.03 Attorney's Fees: For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorney's fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

End of Section

Special Provisions

The Special Provisions are intended as modifications or supplements to Information for Bidders; General Conditions; or governing specifications, with the intent that any provisions of this section shall govern. If at any time the Drawings or specifications for this Work are unclear, the Contractor shall contact the Engineer immediately.

Performance Specifications and Minimum Project Requirements

Location of the Work

The work is located at (Airport Name and Address).

Description of the Work

1. Intent

The Project's intent is to provide and establish the minimum dimensions, material, design, and erection criteria of T-Hangar buildings for approval by Florida Department of Transportation (FDOT) and for eligibility for funds under FDOT's General Aviation Airport Improvement Program (AIP).

The exact door dimensions shall be as called for herein, unless specified otherwise in the Instruction to Bidders, the Proposal Form or on the associated plans (signed and sealed by a Professional Engineer (P.E.) licensed in the state of Florida). The exact number, size, and location of the hangar or hangars shall be as noted in the Proposal Form and shall be in accordance with the approved Airport Layout Plan (ALP) for the airport.

These specifications may be used as guides for the construction of T-Hangars on any airport in the state of Florida, provided they are compliant with all local codes and laws. If local requirements are more stringent, then they must be followed. The various types of hangars covered by these specifications and guidelines shall be designated as Standard T-Hangars, Nested T-Hangars or Shop-Storage Hangars.

The owner of the airport shall designate the area where the hangar is to be built in accordance with the approved ALP, and establish or designate the finished floor elevations. The building supplier shall include the size and shape of the necessary foundation and footings to support the building, according to the minimum standards included herein, in his design computations and plans. However, the local codes or the requirements of the specific building, depending upon local soil conditions, whichever is the most critical, shall not be exceeded.

Hangars shall be designed and fabricated as a permanent structure, but shall be capable of being dismantled, moved, and re-erected with no loss of material except possibly a few bolts, screws, clips, or minor hardware parts that may be embedded in concrete. Hangars shall be designed to allow a future extension of additional units of similar design at either end without modification or change of the basic structural design and bracing of the units of the original building. All necessary base plates, anchor bolts, door tracks and guides, and connecting hardware to be installed in or attached to any concrete foundation or footings shall be furnished by the bidder, as soon as possible, to permit incorporation of

same into the foundations and footings for receiving the remaining building units or parts. (*Airport Name*) may, if noted in the *Instruction to Bidders* or indicated as an option in the *Proposal Form*, have the foundation and footing work done by others.

- a. This contract covers the supply and construction of the T-Hangar building(s), generally described but not limited to the following:
 - Design, construction, testing, commissioning, and post-construction
 - Mobilizing labor and equipment on site and establishing construction offices, storage, and other temporary facilities, utilities, and controls as required
 - Construction of the building, including all excavation, foundation, structural, architectural, mechanical, and electrical work
 - Extension and hook-up of all services and utilities
 - Construction and/or reconstruction of affected aircraft aprons
 - Removal of all temporary facilities and debris at the end of the work
 - Landscaping

Note: Office furniture, fitments, and lockers are not part of the project scope.

2. Codes and Jurisdiction

- a. As a minimum, all work shall conform to the Florida Building Code (FBC) and other codes as referenced within the FBC, the National Fire code, the National Electrical Safety Code, NFPA 409, and to all local regulations mandated by authorities having jurisdiction. Some airports may wish to allow kit plane construction. In these instances, local fire code may be more stringent and should be followed.
- b. Legal requirements, Statutory Code, and National Standards must include, but are not limited to, the following:
 - Florida Building Code
 - County Ordinances and Resolutions that are applicable, but not part of the FBC
 - Florida Statutes (FS) and the Florida Administrative Code (FAC)
 - NFPA 409 (applicable sections shall be verified with local authorities having jurisdiction)
 - Florida Fire Prevention Code
 - Federal Laws, Rules, and Regulations, particularly including, but not limited to, those of the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA)
 - Requirements of the Department of Environmental Resources Management (DERM)
 - Florida Energy Efficiency Code for Building Construction
 - Federal Occupational Safety & Health Administration (OSHA)
 - Federal Americans with Disabilities Acts (ADA) and the Florida Accessibility Code for Building Construction (FACBC)
 - National Electrical Safety Code

3. Introduction

The following summarizes the performance criteria specification of the T-Hangar Building for (*Airport Name*). Please refer to attached drawings for dimensions and location data. ***Note: Drawings are for bid purposes and are not to be used for construction.***

The location of the hangar complex is assumed to conform to height and electronic zoning of (*Airport Name*).

4. Site

a. Access Roads/Parking

New car parking area to be provided (*location of parking area*) for (*Number of Cars*) cars. Pavement requirements include:

- Light duty car traffic
- Entrances, truck access routes, and airside roads
- Line painting, as appropriate

b. Security Fencing

The T-Hangar complex must provide a security fence to create a landside/airside barrier in accordance with FDOT/FAA standards. The fence shall be located so that there are vehicle parking spots dedicated to airside use so as to minimize use of apron areas dedicated for aircraft use.

Landside property perimeter fencing shall also be provided.

Throughout the duration of the project, the contractor shall ensure and maintain adequate temporary fencing to allow all work to be conducted landside while maintaining airport security at all times. The contractor shall consult with airport security as to the fencing material and installation requirements.

c. Watermains

The contractor must connect to the airport's watermain in accordance with local code guidelines and specifications. The airport must provide a watermain that meets the minimum requirements of applicable codes.

Required fire hydrants and watermains on the airside and landside, as specified by local building code, National Fire Code, and National Fire Protection Agency (NFPA), must be provided. Additionally, a separate watermain to the building for domestic use and to service the fire suppression system must be provided. This watermain must also provide the required flows.

d. Sanitary

The contractor must connect to the airport's sanitary sewer within the property line. The sanitary sewer must be built in accordance with local code guidelines and in accordance with airport specifications.

e. Storm

All roof and surface drainage is to be routed to the airport's surface drainage system. Catch basins and manholes must be in accordance with local specifications.

f. Demolitions

Portions of existing concrete aprons, runways, or taxiways may be demolished to facilitate new apron construction. This includes all underground services and curbs to facilitate new construction.

g. Apron

There shall be an asphalt aircraft parking and circulation apron in front of the hangar complex over an area compatible with the forward (opening) face of the hangar. The apron shall be constructed in accordance with FAA regulations and standards, applicable design aircraft, and relevant pavement design codes. The apron shall be connected to the existing taxiway.

The apron should be built with a 0.5 to 1.0 percent grade sloping away from the hangar doors and connecting to the existing taxiway. Parking pads for aircraft shall be treated with coal tar pitch emulsion to protect the surface from jet fuel spills.

Directional pavement markings are to be provided for both the parking and circulation areas, as required by FAA and FDOT.

h. Site Electrical

The main electrical feed must come from the existing high voltage supply in accordance with the authority having jurisdiction. The main feed to the facility from the property must be underground and be constructed and suitably protected at a point conducive with the proposed construction and agreed by the authority.

The total available dedicated supply shall be a minimum of two times the calculated load for the current proposed complex. Additional empty conduits for future connections should also be provided in the existing electrical room.

i. Site Lighting

External lighting mounted from the hangar structure shall be provided along all faces of the hangar, excluding apron, to provide illumination of 0.93 footcandles. Exterior lighting must be shielded and directed away from the tower and aircraft operations.

Parking areas and access roads shall be provided with exterior lighting of 0.46 to 0.93 footcandles mounted on poles. All exterior lighting shall be operated by photocell.

5. T-Hangar Building

These guidelines shall also apply to the shop and office areas, unless specifically modified under the specific sub-sections for the workshop and office areas.

a. Clear Space Requirements

The base size of each unit for a standard T-Hangar shall be as shown on the plans included with this document. These provide an opening with a minimum clear horizontal width of (*clear width*

in feet) through the door and for wing span, and a minimum clear vertical height of (*clear height in feet*) above the finished floor elevation with the door in the open position. The depth of each unit bay shall be sufficient to provide a minimum of (*clear dimension in feet*) inside clear dimension from the rear wall of each bay unit to the inside of the closed hangar door. Each unit stall shall be partitioned so as to form individual units with a minimum clear dimension of (*clear dimension in feet*) between walls or columns (center bay clearance through which the aircraft tail section must pass). In each unit, the minimum clear width shall extend from the hangar doors back to the center of each bay unit and the minimum clear width of (*clear width in feet*) shall extend from the center of each bay unit to the rear wall of the unit. Each unit shall have the clear vertical height above the finished floor for the door height being furnished for the full depth of the unit. The door openings shall center on the center of the tail section bay on each unit.

The hangar is to be capable of accommodating (*critical aircraft*) with dimensions as follows:

| Aircraft Type | Length (ft.) | Width (ft.) | Height (ft.) |
|---------------------|--------------|-------------|--------------|
| (Critical Aircraft) | | | |
| (Critical Aircraft) | | | |

Aircraft shall be positioned as indicated on the attached drawings. Applicable minimum clearances for aircraft maintenance operations are to be provided as follows:

b. Foundations

The building foundations shall be adequately designed to carry the proposed structure, using conventional concrete footings. The support foundation for the exterior and firewall blockwork shall be either grade beam or spread footing construction.

The concrete to be used in the construction of foundations, footings, floors, or hangar ramps for the proposed building must meet the minimum requirements of the *Description of Work Section*. If the building supplier indicates on the approved plans that a concrete mixture will produce a specified compressive strength or a greater cement-aggregate ratio, the more stringent requirements shall be met.

c. Foundations and Footings.

The necessary foundation, footings, column supports, bearing walls or other substructure building items shall be of the size, shape, and at the location shown on the building suppliers' plans for the building. In no case will foundation walls be less than eight inches thick nor less than 30 inches below finished ground line. An additional width of foundation wall on the exterior side thereof through the full width of the guides, buffer plates, rub rails or other necessary door hardware. The individual piers or column supports shall be a minimum depth of 36 inches below the finish floor grade. All individual piers or column supports must have the same top elevation as the outer foundation walls, unless noted otherwise on the plans.

The size and location of any required reinforcement in the foundations, footings, or slabs shall be as stated on the plans furnished by the hangar building supplier. All necessary base plates anchor

bolts and foundation ties shall be provided by the hangar building supplier along with a foundation and footing plan to assure proper installation of same.

The foundation walls, footings, and piers must be properly covered and cured for a minimum of three days prior to the construction of any steel hangar members thereon.

Additionally, a geotechnical investigation and the associated report must be completed.

d. Hangar Floor

The hangar floor, either full or partial, shall be constructed of the same concrete design proportions used for the footings and foundation walls, as a minimum. The floors shall consist of a four inch concrete slab reinforced with 6 x 6 - W1.4 x W1.4 welded wire mesh or a five inch unreinforced concrete slab, as a minimum. Either option must be on a four inch sand sub-base placed on a well tamped subgrade, subject to a corresponding Geotech Report.

At all places where the concrete floor adjoins the foundation walls or an individual pier or column support, a piece of pre-molded expansion joint material at least one-half inch thick shall be placed for the full depth of the concrete slab.

The placing of a partial floor shall, as a minimum, extend from the large hangar door to the center of the unit and for a width to match the full tail section width of the design aircraft.

The floor, either partial or full, must be cured for a period of seven days prior to being used to support any power operated equipment or vehicles.

The hangar floors are to be screeded using a high frequency mechanical vibratory screed and the surface floated to provide a non-slip finish. Joints between floor slabs are to be filled with a sealant resistive to oil, grease, fuel, and aircraft hydraulic fluids. The contractor must provide an option for the floors and the surface must be finished with a nonoxidizing metallic hardener and cured utilizing a clear sealing compound.

A 0.5 percent minimum slope is to be incorporated in floor design to provide drainage to individual catch basins on the floor. Slopes must be equal on either side of the centerline so that aircraft are symmetrical when jacked.

e. Concrete

Concrete used for the foundations footing, floors, and hangar ramps shall be constructed of Portland Cement concrete consisting as a minimum of the following proportions:

- Sand - Gravel 480-510 pounds per sack of cement (94#)
- Cement - Six sacks per cubic yard of concrete
- Water - 55 pound maximum per sack of cement

The cement-aggregate ratio may not be decreased from that shown above and the water/cement ratio may not be exceeded. If a sand-gravel-limestone aggregates mix is used, the limestone shall not exceed 30 percent of the total aggregate used.

f. Hangar Apron Area

A hangar apron may be constructed to serve individual T-Hangar units. If hangar ramps are constructed, they shall comply with the concrete specifications and shall be a minimum of five inch reinforced Portland Cement concrete slab with 6x6 - W1.4xW1.4 welded wire mesh, a six inch unreinforced concrete slab, or six inch asphaltic concrete treated with a coal tar emulsion.

Both pavements shall be placed on a subgrade compacted for a depth of six inches to a density of at least 90 percent of the maximum density at a moisture content between 75 and 110 percent of the optimum moisture as determined by AASHTO Method T-99. Hangar aprons may also be constructed of asphaltic concrete of lesser thickness, if the proposed hangar is located on an existing paved apron or slab, so that a smooth transition to the apron and adequate drainage is provided.

g. Steel Structure

The hangar building steel structure shall consist of a structural steel system, designed in accordance with the latest National Building Code and appropriate Federal standards.

All materials supplied for any building to be erected under these specifications shall be as a minimum; however, in no case shall the limits of any material be exceeded, nor shall the local codes, ordinances, or statutes which may be more restrictive, be exceeded.

All design calculations for any structural member or members of the T-Hangar shall be submitted with the bidder's proposal.

Structural steel shall conform to the *Standard Specifications for Structural Steel for Bridges and Buildings, Serial Designation A 7* of the American Society of Testing Materials, as amended to date.

The complete building shall be designed for a minimum roof live load of 20 pounds per square foot on the horizontal projection in addition to the dead load. The design wind load shall be a minimum of 15 pounds per square foot on the vertical projection of the hangar. The wind load, live load, and dead load shall be computed in such a manner that all members will withstand the probable maximum stresses in all elements of the structure with the hangar doors in either the open or closed positions. The roof system shall be designed to meet each of the following conditions, when separately applied:

- Live load plus dead load
- Half of the live load on one-half of the roof with the wind load acting upward and normal to the roof sheets on the cantilevered half, thus producing a reversal of stresses in the truss members
- Wind load on end walls
- Wind load on side walls and roof

Adequate wind bracing shall be provided in the walls and roof of the structure to safely withstand the design loads and to provide rigidity. Such bracing may be utilized for attachment of the wall and roof, provided that members are designed to carry the combination of stresses incurred. In the event any member is built up to a composite section, adequate lacing shall be

designed so that the combination of stresses will not exceed the maximum allowable stresses nor result in excessive deflection, and will be included with the design calculation, including open hangar door condition.

Main spans of the steel structure are to be rigid frame, single story, single span type, and must be fabricated from hot-rolled structural steel sections. Frames must have attachment plates, bearing plates, splice members, and all other needed components. Secondary framing (girts, purlins, etc.) shall be comprised of roll formed sections.

The structure may be designed using inclined chord umbrella type shop fabricated trusses cantilevering over and supporting the large hangar doors through the “T” unit section of the hangar. The structure shall be supported to provide the necessary clear opening space and provide sufficient support minimize deflection. Structures utilizing trusses spanning the full hangar door width must have absolute minimum deflection.

Exterior covering sheets for walls and gable ends shall be a minimum of 26 gauge steel with ribbed channels or corrugated metal. The sheets shall be sufficient length to eliminate end lapping or field cutting on the end wall section to eave height and shall be placed on the building with the ribbed channels or corrugations running vertically. At some airports, it may be necessary to treat the steel to delay corrosion. Airports should determine on an individual basis whether or not they need to treat the T-Hangars.

Gable ends shall be furnished with sheets requiring no end lapping except at the eave height lap. End laps for gable end sheets over the wall sheets shall provide a minimum lap of four inches. Wall sections and gable end sheets shall be furnished and installed with approved fasteners to provide a rigid connection. Each fastener must be equipped with a neoprene washer to provide a weather tight seal. As a minimum, wall sheets shall be fastened to the building framework at each end of the sheet and at intermediate girts with fasteners at a minimum of eight inches on centers. One sheet-metal screw (or equal) with lead or neoprene washer shall be installed on all sides laps between girts at a maximum spacing of 24 inches on centers. Gable ends shall be installed with sufficient fasteners to firmly secure the sheets to all end roof truss members on eight centers. Nylon color coded caps shall be provided on exposed fasteners. Girt installation shall be either notched or outset.

The bottom framing member to which all wall sheets (or partition sheets) are fastened shall be of sufficient strength and rigidity to support its portion of the sheet. Additionally, they must provide adequate wind and load bracing between the wall column supports (10 to 20 foot span) without requiring a continuous foundation and footing, so that the building column supports may be erected on concrete piers only.

The roof pitch for a gable roof shall be a minimum of four inches per foot. A lesser pitch, from four inches per foot to one inch per foot, is allowable if each transverse sheet is a continuous sheet, extending from the gable to the outside eave of the roof. A flat roof, (pitch of less than one inch per foot) will be allowed if each transverse roof sheet is one continuous sheet for the entire width of the roof. A flat roof is also allowed if the end lapping of the sheets is at least six inches and occurs over purlins (or supports) and is secured and sealed with a continuous bead of caulking compound at least one-half inch wide.

The roof covering shall be a minimum of 26 gauge steel ribbed channels or corrugated metal. Where a roof pitch of four inches per foot or more is used, sheets shall be of sufficient length so that an end lap occurs only over the purlins or supports and with a minimum end lap of six inches. Roof sheets shall be placed on the building with ribbed channels or corrugation running parallel to the slope of the roof. Approved washer fasteners shall be installed to adequately secure the sheets to the roof purlins on eight inch centers.

The roof ridge shall be installed with an approved galvanized metal roof ridge roll, designed to lap and match the ribbed channel or corrugations of the roof sheets by sufficient width, to provide a weather tight lap. Approved filler strips shall be furnished to seal the ridge or approved formed ribbed channel, or corrugated sheets may be furnished to seal the ridge. Approved weather tight fasteners shall be provided on eight inch centers on both sides.

Roof deck exterior shall be dull matte color or baked enamel grey to minimize reflection. Gutters, downspouts (outside of the building), trim flashings, copings, soffit closures, etc. to suit adjacent construction must also be provided. Gutters and downspouts shall be sized and spaced to suit the rainfall intensity as specified in the National Building Code. Provide splash pads beneath all downspouts to direct storm flow away from the building.

Adequate flashing shall be installed to make all joints and intersections weather tight and provide a neat and uniform covering. All flashing shall be a minimum of 24 gauge galvanized sheeting and shall be fabricated and installed to assure a weather tight building.

Provide system thermal resistances of not less than 90 percent of the following:

- R12 for walls
- R30 for roof

Building walls and roof shall be designed to allow for thermal movement of component materials without causing buckling, failure of joint seals, undue stress on fasteners, or other detrimental effects. Condensation should be avoided on interior surfaces. A vapor barrier made with white metalized polypropylene film and fiberglass scrim reinforcement with foil backing laminated together should be used.

All exposed steel within the hangar shall be primed and painted using a suitable oil-resistive epoxy based gloss paint.

h. Hangar Doors and Others

In accordance with the manufacturing standard, T-Hangar doors shall be constructed of metal and shall be bottom supported or overhead suspension type, either overhead canopy (solid or bi-fold) or overhead suspended sliding configuration. Doors shall be equipped with fastening devices, as required, to secure them against wind either in the closed or open position. Required door guides, buffer plates, rubrail, approved hardware and/or tracks to provide maximum smooth uncomplicated operation shall be installed. The doors must be capable of being easily operated by the clear space requirements, or called for in the Proposal Form. Doors shall be equipped with padlock plates and hasps.

The type of hangar doors to be installed shall be clearly shown on the drawings submitted with the bidder's proposal. These drawings shall indicate the door's weight and method of suspension, operation, and all fastenings. Any guide proposed to be used for bottom guides on sliding or bottom supported doors shall be designed to minimize the collection of water and debris, and shall provide a definite means of permitting drainage.

The hangar door system shall include mechanical drive systems, upper guide rollers, ground rail assembly, bumper stops, exterior and interior cladding, weather seals, and electrical systems. When possible, hangar doors should be designed so that the user does not have to push his aircraft over more than a one-half inch lip to allow for pilots to be able to move their aircraft into the hangar without assistance.

Doors shall be designed for minimum weight and maximum strength and shall be capable of withstanding the design wind load of the building in open or closed position.

Bi-fold doors should be used for the hangar design. Door framing members should be made of a square tube jig welded in full size panels. Door frames shall have prelocated top hinges factory aligned with the door truss hinges. Structural steel shall be ASTM A500 Grade B square structural welded steel tubing.

The electric bi-fold door operator shall be mounted on the center of the door truss and shall be provided with adjustable turnbuckles and fastened securely. Motor shall be $\frac{3}{4}$ HP, 230 VAC, single phase thermally protected and supplied with a reset button. Motor shall have a totally enclosed capacitor start. Cable drum shall be a direct drive drum by shaft mounted gearbox. Gearbox shall be oil bath two-stage gearbox, bronze worm gear, hardened steel spur gears, tapered roller, and ball bearings. Door operator shall be prewired at factory with 24 VAC momentary-up, constant pressure-down push button control, magnetic controllers, spring-set electric brake, up-stop safety switch, mercury tilt type to disconnect power in case of over travel, and geared rotary limit switch attached to cable drum designed to coordinate reversing operations. Power connection shall be by heavy duty 230 volt plug for easy connection.

Bi-fold hardware shall include three inch diameter bottom guide roller with sealed bearing and column followers, side door cam locks shall be self-unlatching type with white vinyl pull handles attached to vertical end members, center cane bolt pin one inch diameter minimum and embedded floor sockets, 16 inch minimum center plated door poppers and skid plates, all required hinge pins, $\frac{3}{16}$ inch diameter seven by nine inch galvanized aircraft cables with wire rope clips and thimbles, bottom and top two ply rubber astragals, and five inch diameter steel sheave wheels with ball bearings.

Ground support rails shall be flush with the concrete and the door track shall be provided with a transverse slope away from the hangar.

The walk-in or access door to an end corner unit or shop hangar unit shall be a nominal clear width of 32 inches and a nominal clear height of six feet eight inches and of the hollow-metal, panel type, $1\frac{3}{4}$ inches thick flush, fabricated from 20 gauge galvanized steel sheets, with full honeycomb core and edges mechanically locked and welded. The door frame shall be 16 gauge galvanized steel channels, into which the wall girts will be framed, and the frame shall be

attached to the concrete slab or foundation with at least two anchor bolts at each jamb. Door hinges shall be galvanized template built type with removable pins, interlocking, and each door shall be hung on three hinges. The threshold shall be interlocking aluminum type anchored to the concrete floor or foundation with counter sunk screws, and shall be designed to counter flash the door.

All exterior doors shall be insulated and all doors within the hangar shall be designed for heavy duty use. All doors leading to the hangar areas through the firewall shall be suitably fire rated. Doors shall be fitted with panic devices, closers (exterior doors shall be equipped with restraining device to prevent racking under wind conditions and be fastened to the interior face of the door), floor stops, and kick plates, as necessary.

Concrete filled bollards shall be installed on both interior and exterior sides of all vehicle doors. Overhead doors to be finished to match building colors. Firewall overhead doors shall be connected to the fire alarm system and designed to close at a safe rate. All interior man doors shall be painted with semi-gloss enamel and exterior doors painted with high gloss enamel.

When installing automated doors in T-Hangars, instructions and provisions for the responsibility of proper use in the lease with the tenant should be provided, if deemed necessary by the airport.

i. Mechanical Systems

The mechanical design conditions for the hangar area are as follows:

Outdoor Conditions

Proponent to use one percent occurrence maximum and minimum temperatures as described in the International Building Code.

Indoor Conditions

Summer - The design temperature shall apply at three feet above finished floor level.

General Ventilation Rates

One-half air change per hour

Interior Noise Levels

NC45

The noise criteria applies to noise generated from sources external to the building or internally from mechanical and electrical equipment.

Mechanical systems shall maintain a positive pressure in the building.

1. Heating and Ventilation

Provide a complete general ventilation system for the hangar area to provide 0.5 air changes per hour with normal intake and exhaust. All electric motors one horsepower and larger shall have a minimum efficiency of 85 percent.

2. Plumbing

The plumbing system shall comply with the National Plumbing Code. All piping in the hangar area shall be run on a service rack around the interior face of the hangar perimeter walls. Hot and cold water piping shall be insulated with sectional glass fiber insulation with integral vapor barrier and finished with canvas.

Hangar floor drainage is to be provided. The catch basins shall be provided with removable galvanized steel grates capable of sustaining aircraft wheel loads. All drainage piping beneath the hangar floor area shall be of non-combustible and fuel resistant construction.

Each hangar must have one aircraft washing station comprising of a motorized hose reel, ¾ inch I.D. hose, and adjustable nozzle. A booster pump, rated for a maximum pressure of 120 psi complete with a pressure relief valve, should also be included. There must be one exterior hose bib on the hangar wall with hot and cold water c/w hose bibs. Fire extinguishers, standpipe and hose system c/w fire hose stations, and covers must also be provided, as required by local codes.

3. Electrical Systems

The Contractor shall obtain the necessary local inspection authority approvals and/or inspections for the design and installation of the electrical systems.

- All conduits beneath the hangar floor shall be galvanized and classified as Class I, Div I
- All electric motors one HP and larger shall have a minimum efficiency of 85 percent
- All controls shall be line voltage
- Security system is not included as part of the electrical system

In some instances, it may be beneficial not to have individual meters; therefore, airports should determine if providing individual electric meters for each T-Hangar is appropriate for their airport.

4. Power

Power distribution shall include all transformation and distribution equipment required to supply the hangar and related work. All hangar supplies shall be supplied from a single point within the hangar complete with step down transformers, panels, etc. All step down transformers shall have neutral points connected to the building ground system. All panel boards shall be designed with a ten percent allowance of spare circuits.

5. Lighting

Exit and emergency lighting should be provided as per International Building Code. Maintained emergency lighting luminaries shall be provided over all personnel doorways to provide lighting during power failure for one hour at an average lighting level of 4.65 footcandles. Approach lighting in front of the hangar illuminated to an average of 5.6 footcandles should also be provided. Fixtures shall include 45 degree cutoff type glare control louvers and mounting shall be provided with a mounting assembly to allow relamping and servicing fixtures from the roof. Skylights are also an option for lighting in a hangar. If a T-Hangar is designed with skylights, it may be beneficial to install them on the on the door of the T-Hangar, as this will cause fewer penetrations and less roof maintenance in the future.

6. Grounding System

An equipotential building and aircraft grounding system is to be installed to ground the building during electrical storms and to ground the aircraft when positioned within the hangar. The system shall consist of bare copper cables, ground rods, ground bars, accessible ground pits at connections to ground rods, building column connections, and equipment connections to connect all conductive metal together to establish a low impedance equal potential structure at or near earth potential.

The incoming high voltage power feeder conductors' shields shall be grounded to the equipment ground bus in the main incoming high voltage switchgear along with the feeder grounding conductor. All conduits shall be continuous and shall be connected at panel enclosures and equipment for low impedance grounding. All branch circuits and feeders shall be installed with equipment grounding conductors in addition to the raceway system. Each feeder and branch circuit shall consist of phase and neutral conductors, as necessary, plus an equipment grounding conductor sized in accordance with National Electrical Code.

Aircraft static grounding receptacles shall be provided in the hangar floor. The grounding receptacles shall be uniformly spaced within the hangar floor, and the grounding point should be strategically located on hangar floor.

j. Specialized Equipment

(As required)

k. Data and Telecommunication Systems

The contractor will provide the conduit and cabling for a complete voice and data system for the whole of the facility.

l. Finishes

1. Painting

All exterior and interior ferrous metals (except bolts), rough hardware, and metals with non-ferrous coatings shall be covered with a shop coat of rust inhibitive paint, including any field cuts or welds.

2. Partitions

Partition coverings shall be a minimum of 28 gauge ribbed channels or corrugated steel to be installed in the same manner as the wall and end sections. Material furnished and installed to cover trusses may be galvanized flat steel sheets to cover the truss completely from the roof sheets to the wall height sheets with sufficient side and bottom end lap. Adequate bracing members and fasteners shall be installed to secure the metal sheets at both ends and at all intermediate girts through the wall height sections. Fasteners used in partitioning need not be weather tight. Partitions shall be installed to completely separate each of the regular and nested units from floor level to roof covering and shall be bird proof. Cutting around the top of the sheets to fit the roof purlins or flush type roof bracing will be permitted.

Preliminary Contract Schedule Sample

Project: (Name of Project)

Location: (Airport Address)

Submitted by: (Name of Submitting Firm)

1. The Bidder submits that it has carefully examined the drawings, specifications, the site of the proposed work, and is satisfied with its ability and the ability of its subcontractors and suppliers to meet the requirements to complete the work in full accordance with the contract documents and schedule.
2. It is understood and agreed that the bid price stated herein includes all costs on account of premium time or overtime work required to meet the completion date and airport owner's occupancy requirements (if any), whether or not such work is done by the trade contractor's own forces or by its trade subcontractors.
3. The Bidder represents that it has:
 - Had a sufficient opportunity to examine and has carefully examined the site of the work
 - Made all investigations essential to a full understanding of the difficulties which may be encountered in the performance of the work
 - Sufficient equipment, experience, and forces to perform the work in accordance with the drawings and specifications and the terms of the contract (if any) within the time specified
4. No allowances or extra consideration will be allowed by the Owner by reason of additional costs, damages, or other difficulties incurred due to failure to have fully investigated and determined conditions affecting the work.
5. In the event of contract award, bidder will perform the work to completion in accordance with the major contract events provided below.

| Major Contract Events | Dates Specified by Owner | Dates Specified by Bidder |
|----------------------------------|--------------------------|---------------------------|
| Tender Closes | | |
| Contract Award | | |
| Commence Project Implementation | | |
| Substantial Completion | | |
| Complete all Work and Demobilize | | |
| Total Weeks From Date of Award | | |

(F): Forecast date, actual date may vary

6. The Bidder will incorporate into its schedule, early completion of the design documents necessary to obtain staged permits (i.e. foundation) to facilitate early construction start.
7. Date and Signature

(Signature)

(Date)

(Name typed)

Airports In Use

In addition to the applicable government legislation and regulation, the (*Airport Name*) has specific requirements and procedures for contractors working on the airport lands. Some of the procedures involve:

- Airside security
- Safety
- Area and height restrictions
- Health and environmental requirements
- Construction work in the vicinity of aircraft and live airfield operations

All contractors who work at (*Airport Name*) must be familiarized with the aforementioned conditions and shall agree to comply with all airport practices and procedures applicable to the contract.

It is the responsibility of the contractor to become fully knowledgeable and comply with all special site conditions. For further information, contact the (*Airport Name*) at (*Airport Telephone Number*).

Safety -Contractor Requirements

The Contractor must submit the following:

- Written policy statement on the contractor's health and safety program
- W.C.B. Clearance Certificate
- Safety officer's name
- Compliance with all applicable legislative and customer specific rules

Health and Safety Program

The health and safety program will consist of the following:

- Training safety induction material given to workers by the Contractor
- Weekly safety meetings with all employees
- Weekly workplace inspections by the Contractor's supervisor and worker safety representative
- Accident investigations held by the Contractor
- Personal protective equipment with side shields, head protection class "B," foot protection - construction grade
- All employees must have applicable Occupational Safety and Health Administration (OSHA) training
- The Contractor's supervisors will be held accountable for their workers' safety
- First aid to be provided by the Contractor
- Weekly man-hour report provided by the Contractor

Parking

The Contractor will organize and take responsibility for designating parking areas on the site. The Contractor must also maintain security and communications with ground control as required. At no time will vehicles be allowed onto active runway or taxiway. The Contractor will be allowed to have only those vehicles on site that are required to carry out the contract. Vehicles without seating are not to be used for the purposes of transporting workers.

Security Requirements

General Requirements

1. Comply with the requirements of Division 1 – General Provisions.

Restricted or Secure Area

1. The “Restricted Area” is the area of an airport identified by a sign to which access is restricted to authorized persons only.
2. A “Restricted Area Pass” is a document or other piece of identification approved or issued by the airport owner authorizing the holder to have access to restricted areas.
3. Restricted Area Passes must be in a clearly visible location at all times within a restricted area.

Trade Contractor’s Responsibility

1. The Contractor shall be responsible for compliance with all aspects of security requirements for its personnel. This includes obtaining security clearances and providing personnel for escort duties.
2. The Contractor shall be fully responsible for all construction personnel and vehicles within restricted areas.
3. The Contractor shall designate a person(s) to be responsible for all aspects of security and operational safety. This person(s) will also have the authority to take immediate action to rectify lapses in security and operational safety. Such person(s) shall be available at all times during construction and shall be on call at all times when construction activities are not in progress.
4. The Contractor must adhere to all or any of the procedures and requirements of this section as may be applicable to the area in which the construction shall be performed. The Contractor must also provide notice in advance of the construction to arrange for the necessary certification and passes to be obtained by the Contractor.

Airport Restricted Area Access Clearance Program

1. Under the provisions of this program, all persons applying for a permanent restricted area pass shall first undergo a security access clearance check involving criminal and subversive indices checks as a condition of issuance. An individual awaiting security clearance may be issued a pass until the security clearance is granted.
2. A holder of a temporary pass must be under the escort of a permanent restricted area pass holder at all times within the restricted area.

Vehicle Passes

1. A “Restricted Area Vehicle Pass-Identity Marker” is a marker issued by the airport which authorizes designated vehicle access to restricted areas on a “need and right” of entry basis. There are two types of vehicle markers that can be used:
 - a. A “Permanent Vehicle” marker is permanently affixed to a vehicle which has a continuous or frequent need to access restricted areas of the airport.
 - b. A “Temporary Vehicle” marker is temporarily placed on a vehicle for use by occasional or infrequent users and cannot be used for longer than two weeks. It must be used in conjunction with an Airport Vehicle Plate Certificate.
 - c. A “Temporary Vehicle Plate” must state whether or not an escort is needed.
 - d. A “No Escort Required” marker shall only be used on a vehicle which is driven by an employee with a D/DA certification or who is accompanied by an employee with D/DA certification.
 - e. An “Escort Required” marker shall be used on a vehicle that is under escort of a vehicle with a permanent marker. The driver of the vehicle under escort does not need D/DA certification.
2. For vehicle marker approval, written application shall be made to the (*Airport Office*) Pass/Permit Office by the Contractor on company letterhead stating the following:
 - a. Contracting authority, contract title, and contract duration
 - b. Details as to why vehicle access is required to enter restricted areas
 - c. Proof of D/DA certification for employee(s)

Note: If requesting temporary plates, name of escorting agency/drivers shall be provided.

3. Upon approval of a vehicle marker:
 - a. Signing authority in charge of authorizing vehicle markers shall be set up with Pass/Permit Control Office.
 - b. Vehicle marker certificates shall be issued upon approval.

Airside Vehicle Operators Permit

1. Issuing Requirements:
 - a. Upon approval by the Owner, the specified applicant(s) may obtain an Airside Vehicle Operators Permit (AVOP) application and study material through the Pass/Permit Control Office.
 - b. All persons applying for an AVOP shall complete either the written D/DA AVOP test or Minos (simulator), as well as a practical examination. The DA AVOP certification allows a driver to operate on the aprons and other uncontrolled airside surfaces. DA holders are not permitted to enter the runways and taxiways of an airport at any time. The D AVOP allows a driver to drive anywhere on the airport in the performance of their duties. Permission must be received directly from the air traffic control tower prior to entering the maneuvering area or adjacent areas within 214 feet of a taxiway. All D applicants must have a Restricted Radio Telephone (Aeronautical) Operator’s License.
 - c. An AVOP is issued under the authority of the airport manager or his/her designated representative; they may rescind authorization to drive on airside for failure to comply with traffic directives.
 - d. All vehicles operating or maneuvering at the airport are to be registered and licensed by the owner prior to operating airside. The contractor shall establish credentials and requirements to operate airside by request in writing to the Airside Safety Officer. Application forms are available at the Pass/Permit Office.

- e. All vehicles must be specifically insured to operate on airside areas.
- f. The Contractor may hire pre-approved AVOP licensed and authorized escorts through the Owner Risk Management Office in lieu of applying for an AVOP. The Contractor may be required to hire pre-approved escorts immediately upon start of work.
- g. The Contractor may subcontract only from the airport's approved AVOP licensed and authorized escorts.

Vehicle Operation Regulations

- 1. All vehicles with two-way radios approved to operate on the airside maneuvering area shall have an owner assigned identification (call sign). Application forms are available at the (*Airport Name*) office.
- 2. All drivers operating vehicles on the airside shall be in possession of a valid AVOP and a valid State Driver's License (SDL) or be under the escort of a vehicle operated by a person in possession of a valid SDL and AVOP. A Restricted Area Pass is also required. The D/DA designation on a Restricted Area Pass is not an AVOP. It is only the indicator that the bearer of the pass holds an AVOP, which is a separate document.
- 3. All vehicles operating in the airside maneuvering area shall have safety equipment and an amber rotating warning light. Strobe lights are not permitted.
- 4. All "D" drivers responsible for escorting vehicles in the airside maneuvering area are required to familiarize themselves with the rules and regulations involving escorting.
- 5. All signals from the air traffic control tower must be obeyed instantly.
- 6. The maximum speed limit on airside maneuvering areas is 25 miles per hour, or as posted.
- 7. No riders are permitted on the back of or on cargo of any vehicle in motion.
- 8. Vehicle engines shall be shut off when vehicles are stationary for long durations or when not in use.

Daily Security by Trade Contractor

- 1. The Contractor must ensure that access to restricted areas is secured at the end of each shift.
- 2. During work hours, the Contractor must ensure access to sites, within restricted areas, is controlled to prevent access by unauthorized persons.
- 3. When construction is to be carried out within restricted areas outside of normal working hours, the Contractor shall notify security for approval.

Security Escort

- 1. The contractor is responsible for providing personnel in possession of permanent valid Restricted Area Passes to perform escort duties within restricted areas, unless they are in possession of a valid clearance and/or pass from having performed previous work at the airport. Contact the Pass/Permit Office for the processing of new applicants.
- 2. Security escorts may be contracted utilizing a (*Airport Name*) approved security guard agency currently operating at the Airport.
- 3. A holder of a permanent valid Restricted Area Picture Pass can escort a maximum of ten people holding "Temporary - Escort Required" picture passes or "security control" passes, provided they are confined to a well-defined area and will, at all times, be visible to the escort exercising surveillance.
- 4. The Contractor shall provide personnel for site surveillance or hire such personnel from a Restricted Area Picture Pass approved security guard agency.

Owner Supplied Reference Drawings

Owner supplied reference drawings are copies of the original design drawings for the _____ and were prepared by _____ for Generic Airport Authority in XXXX. These drawings are provided for information only. The Owner and the Consultant do not guarantee the accuracy of these drawings. The Contractor is responsible to research and obtain all necessary information for the completion of his bid, including informing himself fully of the character and scope of the work, and relying on his own site investigation and judgment. The Owner will not entertain any claims for extra costs on the basis of these drawings not being accurate.

| Airport/Project Name | |
|----------------------|-------------|
| Sheet | Description |
| | |
| | |
| | |
| | |

Reference Data

The following data sheets are excerpts from Document xxxxx, Revision "M", xx -xx xxxx.

End of Section

Change Order

Change Order No.:

| | |
|-------------------|---------------------------|
| Date of Issuance: | Effective Date: |
| Owner: | Owner's Contract No.: |
| Contractor: | Contractor's Project No.: |
| Engineer: | Engineer's Project No.: |
| Project: | Contract Name: |

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

Description:

Attachments: *[List documents supporting change]*

| CHANGE IN CONTRACT PRICE | CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i> |
|--|---|
| Original Contract Price: \$ _____ | Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates |
| [Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____ | [Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days |
| Contract Price prior to this Change Order: \$ _____ | Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates |
| [Increase] [Decrease] of this Change Order: \$ _____ | [Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates |
| Contract Price incorporating this Change Order: \$ _____ | Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates |

| | | |
|-------------------------------------|---|--|
| RECOMMENDED: | ACCEPTED: | ACCEPTED: |
| By: _____ Engineer (if required) | By: _____ Owner (Authorized Signature) | By: _____ Contractor (Authorized Signature) |
| Title: _____ | Title: _____ | Title: _____ |
| Date: _____ | Date: _____ | Date: _____ |

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

End of Section

Field Order

Field Order No. _____

Date of Issuance: _____ Effective Date: _____
Owner: _____ Owner's Contract No.: _____
Contractor: _____ Contractor's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Project: _____ Contract Name: _____

Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Conditions Paragraph 11.01, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference: _____
Specification(s) _____ Drawing(s) / Detail(s) _____

Description: _____

Attachments: _____

ISSUED:

RECEIVED:

By: _____ By: _____
Engineer (Authorized Signature) Contractor (Authorized Signature)

Title: _____ Title: _____

Date: _____ Date: _____

Copy to: Owner

End of Section

Material and Equipment

1.01 REQUIREMENTS INCLUDED

- A. Products.
- B. Transportation and Handling.
- C. Storage and Protection.
- D. Substitutions.
- E. Systems Demonstration

1.02 PRODUCTS

- A. Only new materials and equipment shall be incorporated in the work. All material and equipment furnished by the Contractor shall be subject to inspection and approved by the Engineer.
- B. Comply with Specifications and referenced standards as minimum requirements.
- C. Components required to be supplied in quantity within a Specification section shall be the same, and shall be interchangeable.

1.03 TRANSPORTATION AND HANDLING

- A. Transport products by methods to avoid product damage; deliver in undamaged condition in manufacturer's unopened containers or dry packaging.
- B. Provide equipment and personnel to handle products by methods to prevent soiling or damage.
- C. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged.

1.04 STORAGE AND PROTECTION

- A. Store products in accordance with the manufacturer's instructions, with seals and labels intact and legible. Store sensitive products in weather-tight enclosures; maintain within temperature and humidity ranges required by manufacturer's instructions.
- B. For exterior storage of fabricated products, place on sloped supports above ground. Cover products subject to deterioration with weather-tight enclosure as recommended by the manufacturer. Provide ventilation to avoid condensation.
- C. Store loose granular materials on solid surfaces in well-drained area. Prevent mixing with foreign matter.
- D. Arrange storage to provide access for inspection. Periodically inspect to assure products are undamaged and are maintained under required conditions.
- E. Materials, which in the opinion of the Engineer, have become so damaged as to be unfit for the use intended or specified shall be removed from the site of work. The Contractor shall receive no compensation for the damaged material or its removal.

1.05 SUBSTITUTIONS

- A. Document each request with complete data sustaining compliance of proposed substitution with Contract Documents.
- B. Request constitutes a representation that the Contractor:

1. Has investigated proposed product and determined that it meets or exceeds, in all respects, specified product.
 2. Will provide the same warranty for substitution as for specified product.
 3. Will coordinate installation and make other changes which may be required for work to be complete in all aspects.
 4. Waives claim for additional costs which may subsequently become apparent.
- C. Substitutions will not be considered when they are indicated or implied on shop drawing or product data submittals without separate written request, or when acceptance will require substantial revision of Contract Documents.
- D. The Engineer will determine acceptability of proposed substitution and will notify the Contractor of acceptance or rejection in writing within a reasonable time.
- 1.06 SYSTEMS DEMONSTRATION
- A. Prior to final inspection, demonstrate operation of each system to the Engineer and the Owner.
- B. Instruct the Owner's personnel in operation, adjustment, and maintenance of equipment and systems, using the operation and maintenance data as the basis of instruction.

End of Section

Contract Closeout

1.01 REQUIREMENTS INCLUDED

Comply with requirements stated in General Conditions, Supplemental Conditions, and in Specifications for administrative procedures in closing out the Work.

1.02 SUBSTANTIAL COMPLETION:

A. When the Contractor considers the Work is substantially complete, he shall submit to the Engineer:

1. A written notice that the Work, or designated portion thereof, is substantially complete.
2. A list of items to be completed or corrected.

B. Within a reasonable time after receipt of such notice, the Engineer will make an inspection to determine the status of completion.

C. Should the Engineer determine that the Work is not substantially complete:

1. The Engineer will promptly notify the Contractor, in writing, giving the reasons therefore.
2. The Contractor shall remedy the deficiencies in the Work and send a second written notice to substantial completion to the Engineer.
3. The Engineer will re-inspect the Work.

D. When the Engineer finds that the Work is substantially complete, he will:

1. Prepare and deliver to the Owner a tentative Certificate of Substantial Completion with a tentative list of items to be completed or corrected before final payment.
2. After consideration of any objections made by the Owner as provided in Conditions of the Contract, and when the Engineer considers the Work substantially complete, he will execute and deliver to the Owner and the Contractor a definite Certificate of Substantial Completion with a revised tentative list of items to be completed or corrected.

1.03 FINAL INSPECTION:

A. When the Contractor considers the Work is complete, he shall submit written certification that:

1. Contract Documents have been reviewed.
2. Work has been completed in accordance with Contract Documents.
3. Work has been completed with the list of items to be corrected.
4. Equipment and systems have been tested in the presence of the Owner's representative and are operational.
5. Work is completed and ready for final inspection.

B. The Engineer will make an inspection to verify the status of completion with reasonable promptness after receipt of such certification.

C. Should the Engineer consider that the Work is incomplete or defective:

1. The Engineer will promptly notify the Contractor in writing, listing the incomplete or defective work.

2. Contractor shall take immediate steps to remedy the stated deficiencies and send a second written certification to the Engineer that the Work is complete.
 3. The Engineer will re-inspect the Work.
- D. When the Engineer finds that the Work is acceptable under the Contract Documents, he shall request the Contractor make closeout submittals.

1.04 RE-INSPECTION FEES:

Should the Engineer perform re-inspections due to failure of the Work to comply with the claims of status of completion made by the Contractor:

- A. The Owner will compensate the Engineer for such additional services.
- B. The Owner will deduct the amount of such compensation from the final payment to the Contractor.

1.05 CONTRACTOR'S CLOSEOUT SUBMITTALS TO ENGINEER

- A. Evidence of compliance with requirements of governing authorities.
- B. Project Record Documents.
- C. Operating and Maintenance Data, Instructions to the Owner's Personnel.
- D. Warranties and Bonds.
- E. All items required for Landscape and Irrigation system turnover as stated in Section 00800.
- F. Spare Parts and Maintenance Materials.
- G. Evidence of Payment and Release of Liens.
- H. Certificate of Insurance for Products and Completed Operations.
- I. Contractor's Final Affidavit.
- J. Lien Waivers from Subcontractors and Suppliers.

1.06 FINAL ADJUSTMENT OF ACCOUNTS

- A. Submit a final statement of accounting to the Engineer.
- B. Statement shall reflect all adjustments to the Contract Sum:
 1. The original Contract Sum.
 2. Additions and deductions resulting from:
 - a. Previous Change Orders
 - b. Unit Prices
 - c. Deductions for uncorrected Work
 - d. Deductions for liquidated damages
 - e. Deductions for re-inspection payments
 - f. Other adjustments
 3. Total Contract Sum, as adjusted.
 4. Previous payments.
 5. Adjustment in Contract Time.
 6. Sum remaining due.

- C. Engineer will prepare a final Change Order, reflecting approved adjustment to the Contract Sum, which was not previously made by Change Orders.

1.07 FINAL APPLICATION FOR PAYMENT

- A. The Contractor shall submit the final Application for Payment in accordance with procedures and requirement stated in the General Conditions and Supplemental Conditions.

End of Section

Design-Build Documents

Please note, the following documents that are made a part of this Contract are based on EJCDC® Design-Build Agreements & General Conditions, published by the Engineers Joint Contract Documents Committee®, and if the Owner is the party that has furnished said General Conditions, then the Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process, such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

The preferred method of modification, which is strongly suggested, is to use the Supplemental Conditions (Section 00800) instead of direct edits to these General Conditions.

- D-500 Standard Form of Agreement Between Owner and Owner's Consultant for Design Professional Services on Design/Build Projects
- D-505 Standard Form of Subagreement Between Design/Builder and Engineer for Design Professional Services
- D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services
- D-520 Standard Form of Agreement Between Owner and Design/Builder; Stipulated Price
- D-521 Suggested Form of Subagreement Between Design/Builder and Subcontractor; Stipulated Price
- D-525 Standard Form of Agreement Between Owner and Design/Builder; Cost-Plus
- D-526 Suggested Form of Subagreement Between Design/Builder and Subcontractor; Cost-Plus
- D-610 Design/Build Contract Performance Bond
- D-615 Design/Build Contract Payment Bond
- D-700 Standard General Conditions of the Contract Between Owner and Design/Builder
- D-750 Standard General Conditions of the Subcontract Between Design/Builder and Subcontractor

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND OWNER'S CONSULTANT
FOR PROFESSIONAL SERVICES –
DESIGN/BUILD PROJECT**

Prepared by



ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

**PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS**

This Agreement has been prepared for use in the expectation that the Standard General Conditions of the Contract between Owner and Design/Builder (EJCDC D-700, 2009 Edition) and other EJCDC Design/Build Documents will be used on the Project. Their provisions are interrelated and a change in one may necessitate a change in the other. Comments and instructions concerning their usage are contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition).

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

TABLE OF CONTENTS

ARTICLE 1 –SERVICES OF OWNER'S CONSULTANT 2
1.01 *Scope* 2
ARTICLE 2 –OWNER'S RESPONSIBILITIES 2
2.01 *General* 2
ARTICLE 3 –TIMES FOR RENDERING SERVICES 2
3.01 *General* 2
ARTICLE 4 –PAYMENTS TO OWNER'S CONSULTANT 3
4.01 *Payment for Services and Reimbursable Expenses of Owner's Consultant* 3
4.02 *Other Provisions Concerning Payments* 3
ARTICLE 5 –OPINIONS OF COST 4
5.01 *Opinions of Probable Design/Build Cost* 4
5.02 *Opinions of Total Project Cost* 5
ARTICLE 6 –GENERAL CONSIDERATIONS 5
6.01 *Standards of Performance* 5
6.02 *Authorized Project Representatives* 6
6.03 *Use of Documents* 7
6.04 *Insurance* 8
6.05 *Termination* 8
6.06 *Controlling Law* 9
6.07 *Successors, Assigns, and Beneficiaries* 9
6.08 *Dispute Resolution* 10
6.09 *Hazardous Environmental Condition* 10
6.10 *Allocation of Risks – Indemnification* 11
6.11 *Notices* 12
6.12 *Survival* 12
6.13 *Severability* 12
6.14 *Waiver* 12
6.15 *Headings* 12
ARTICLE 7 –DEFINITIONS 12
7.01 *Defined Terms* 12
ARTICLE 8 –EXHIBITS 17
8.01 *Exhibits Included* 17
8.02 *Total Agreement* 18

AGREEMENT
BETWEEN
OWNER AND OWNER'S CONSULTANT
FOR
PROFESSIONAL SERVICES – DESIGN/BUILD PROJECT

THIS IS AN AGREEMENT between _____
_____ (“Owner”)

and _____
_____ (“Owner’s Consultant”).

Owner intends to contract with a Design/Builder for the design and construction of _____
which is (all)(part of) _____
_____ (“Work”).

Owner and Owner’s Consultant hereby agree as follows:

ARTICLE 1 – SERVICES OF OWNER'S CONSULTANT

1.01 *Scope*

- A. Owner’s Consultant shall provide the Basic and Additional Services enumerated in Exhibit A.
- B. Owner’s Consultant is authorized to begin rendering services as of the effective Date.
- C. If authorized by Owner, Owner’s Consultant shall furnish Resident Project Representative(s) with duties, responsibilities, and limitations of authority as set forth in Exhibit D.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

3.01 *General*

- A. Owner’s Consultant's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless

[MW002218;1]

specific periods of time or specific dates for providing services are specified in this Agreement, Owner's Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

- B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of Owner's Consultant, then the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If Owner authorizes or requests changes in the scope, extent or character of the Project, the time of performance of Owner's Consultant's services shall be adjusted equitably.
- C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.
- D. If Owner fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if Owner's Consultant's services are delayed or suspended through no fault of Owner's Consultant, then Owner's Consultant shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by Owner's Consultant in connection with such delay or suspension and reactivation and the fact that the times of performance under this Agreement have been revised.

ARTICLE 4 – PAYMENTS TO OWNER'S CONSULTANT

4.01 Payment for Services and Reimbursable Expenses of Owner's Consultant

- A. *For Basic and Additional Service:* Owner shall pay Owner's Consultant for Basic and Additional Services performed or furnished under Exhibit A on the basis set forth in Exhibit C.
- B. *For Reimbursable Expense:* In addition to payments provided for in Paragraph 4.01.A, Owner shall pay Owner's Consultant for Reimbursable Expenses incurred by Owner's Consultant and Owner's Consultant's Subconsultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

- A. *Preparation of Invoices:* Invoices will be prepared in accordance with Owner's Consultant's standard invoicing practices and calculated on the basis set forth in Exhibit C and be submitted to Owner not more than once per month.
- B. *Payment of Invoices:* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Owner's Consultant for services and expenses within 30 days after receipt of Owner's Consultant's invoice therefor, the amounts due Owner's Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Owner's Consultant may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner's Consultant has

been paid in full all amounts due. Payments will be credited first to interest and then to principal.

- C. *Disputed Invoice:* If Owner contests an invoice, Owner shall promptly advise Owner's Consultant of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Payments Upon Termination:*
 - 1. In the event of any termination under Paragraph 6.05, Owner's Consultant will be entitled to invoice Owner and will be paid for all services performed or furnished and Reimbursable Expenses incurred through the effective date of termination.
 - 2. In the event of termination by Owner for convenience or by Owner's Consultant for cause, Owner's Consultant, in addition to invoicing for those items identified in Paragraph 4.02.D.1, shall be entitled to invoice Owner and shall be paid a reasonable sum for services and expenses directly attributable to termination, including those provided and incurred both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Owner's Consultant's Subconsultants and other related close-out costs, using methods and rates for Additional Services set forth in Exhibit C.
- E. *Records of Owner's Consultant's Costs:* Records of Owner's Consultant's costs pertinent to Owner's Consultant's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Owner's Consultant's charges and upon Owner's timely request, copies of such records will be made available to Owner at cost.
- F. *Legislative Actions:* If after the Effective Date of this Agreement any governmental entity takes a legislative action that imposes taxes, fees, or costs on Owner's Consultant's services or impose other costs in connection with the Project or compensation therefor, then Owner's Consultant may invoice such new taxes, fees, or costs as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Owner shall reimburse Owner's Consultant for the cost of such new taxes, fees, and costs; such reimbursement shall be in addition to total compensation to which Owner's Consultant is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Design/Build Cost*

- A. Owner's Consultant's opinions of probable Design/Build Cost provided for herein are to be made on the basis of Owner's Consultant's experience and qualifications and represent Owner's Consultant's best judgment as an experienced and qualified professional generally familiar with the industry. However, since Owner's Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Design/Builder's Work or methods of determining prices, or over competitive bidding or market conditions, Owner's Consultant cannot and does not guarantee that proposals, bids or actual Design/Build Cost will

[MW002218;1]

not vary from opinions of probable Design/Build Cost prepared by Owner's Consultant. If Owner wishes greater assurance as to probable Design/Build Cost, Owner shall employ an independent cost estimator.

5.02 *Opinions of Total Project Cost*

- A. Owner's Consultant assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Owner's Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Owner's Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Owner's Consultant's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Owner's Consultant's services. Owner's Consultant shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Owner's Consultant shall not be responsible for deficiencies in professional services performed by or for Design/Builder. Owner's Consultant shall not be responsible for the acts or omissions of any Design/Builder, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Owner's Consultant shall not be responsible for Design/Builder's failure to perform or furnish the Work in accordance with the Contract Documents.
- D. Owner's Consultant may employ such Owner's Consultant's Subconsultants as Owner's Consultant deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- E. Owner's Consultant and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner provides to owner's Consultants in writing. This Agreement is based these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to the scope, schedule, and compensation for Owner's Consultant's services.
- F. Owner shall be responsible for, and Owner's Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished pursuant to this Agreement. Owner's Consultant may use such requirements, reports, data and information in performing or furnishing services under this Agreement.

- G. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of Owner's Consultant and shall bear all costs incident thereto.
- H. Owner and Owner's Consultant agree that the General Conditions for any Design/Build contract documents prepared hereunder are to be the "Standard General Conditions of the Contract Between Owner and Design/Builder" as prepared by the Engineers Joint Contract Documents Committee (EJCDC D-700, 2009 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit H, "Special Provisions."
- I. Owner's Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Owner's Consultant having to certify, guarantee or warrant the existence of conditions whose existence the Owner's Consultant cannot ascertain. Owner agrees not to make resolution of any dispute with Owner's Consultant or payment of any amount due to Owner in any way contingent upon the Engineer's signing any such documents.
- J. If Owner's Consultant's services under this Agreement do not include project observation or review of Design/Builder's performance or any other Design/Build Phase Services, such services will be provided by Owner. In such case, Owner assumes all responsibility for interpretation of the Contract Documents and for design review, construction observation and waives any claims against Owner's Consultant that may be in any way connected thereto.
- K. Owner's Consultant shall not at any time supervise, direct, control, or have authority over Design/Builder's, any Subcontractor's, or any other contractor's work, nor shall Owner's Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction used or selected by Design/Builder, any Subcontractor, or any other contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of Design/Builder, any Subcontractor, or any other contractor to comply with Laws or Regulations applicable to the furnishing and performing of their work.
- L. Owner's Consultant neither guarantees the performance of Design/Builder, Subcontractors, or Suppliers, nor assumes responsibility for their failure to furnish and perform the Work in accordance with the Contract Documents.
- M. Owner's Consultant shall not be responsible for the acts or omissions of Design/Builder, or any Sub-contractor or Supplier, or of any of the Design/Builder's agents or employees or any other persons (except Engineer's own employees) at the Site or otherwise furnishing or performing any of the Design/Builder's work; or for any decision made regarding the Contract Documents, or any application, interpretations or clarifications of the Contract Documents, other than those made by Owner's Consultant or its Subconsultants.

6.02 *Authorized Project Representatives*

- A. Contemporaneous with the execution of this Agreement, Owner's Consultant and Owner shall designate specific individuals to act as their respective representatives with respect to the services to be performed or furnished by Owner's Consultant and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of each respective party.

{MW002218;1}

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project and Owner's Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Owner's Consultant) whether or not the Project is completed.
- B. Copies of data that may be relied upon are limited to the printed copies (also known as hard copies) that are delivered to the other party. Files on electronic media of text, data, or graphics or of other types that are furnished to the other party are only for convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator:

The party receiving data in an electronic format 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. Owner's Consultant shall not be responsible to maintain data stored on electronic media after acceptance by Owner.

Owner's Consultant may remove all indicia of ownership or involvement, including title blocks and seals, from each electronic drawing.

- D. Parties who create files on electronic media make no representations as to long term compatibility, usability, or readability of data resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Owner's Consultant at the start of the Project.
- E. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- F. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Such Documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by Owner's Consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Owner's Consultant, or to Owner's Consultant's officers, directors, partners, employees, or to Owner's Consultant's Subconsultants. Owner shall indemnify and hold harmless Owner's Consultant and Owner's Consultant's Subconsultants from all claims, costs, damages, losses, and expenses (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 resulting therefrom.

- G. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Owner's Consultant to further compensation at rates to be agreed upon by Owner and Owner's Consultant.

6.04 *Insurance*

- A. Owner's Consultant shall procure and maintain insurance as set forth in Exhibit E, "Insurance."
- B. Owner shall procure and maintain insurance as set forth in Exhibit E, "Insurance." Owner shall cause Owner's Consultant and Owner's Consultant's Subconsultants to be listed as additional insureds on any general liability and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Design/Builder to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list Owner's Consultant and Owner's Consultant's Subconsultants as additional insureds with respect to such liability and other insurance purchased and maintained by Design/Builder for the Project.
- D. Owner and Owner's Consultant shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit E. Such certificates shall be furnished prior to commencement of Owner's Consultant's services and at renewal thereafter during the life of the Agreement.
- E. All policies of property insurance shall contain provisions to the effect that Owner's Consultant's and Owner's Consultant's Subconsultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds, loss payees, or additional insureds thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Owner's Consultant and to each other additional insured (if any) to which a certificate of insurance has been issued.

6.05 *Termination*

- A. This Agreement may be terminated:

- 1. For cause:

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured

within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

b. *By Owner's Consultant:*

- 1) Upon seven days written notice if Owner's Consultant believes that Owner's Consultant is being requested by Owner to furnish or perform services contrary to Owner's Consultant's responsibilities as a licensed professional; or
- 2) Upon seven days written notice if the Owner's Consultant's services for the Project are delayed or suspended for more than ninety days for reasons beyond Owner's Consultant's control.

2. For convenience:

- a. By Owner effective upon Owner's Consultant receipt of notice from Owner.

- B. In the case of termination under Paragraph 6.05.A.1.b, Owner's Consultant shall have no liability to Owner on account of such termination.
- C. The terminating party under Paragraphs 6.05.A.1 or 6.05.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Owner's Consultant to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Owner's Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Owner's Consultant (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Owner's Consultant) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Owner's Consultant may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that are or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or

transfer is mandated or restricted by law. 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 this Agreement.

C. *Unless expressly provided otherwise in this Agreement:*

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by Owner or Owner's Consultant to any Design/Builder, Design/Builder's subcontractor or supplier, other individual or entity, or to any surety for or employee of any of them.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Owner's Consultant and not for the benefit of any other party. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Owner-Design/Builder Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Owner's Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit F or other provisions of this Agreement, or under law.
- B. If and to the extent that Owner and Owner's Consultant have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, is set forth in Exhibit F, "Dispute Resolution." In the absence of such an agreement, the parties may exercise their rights under law.

6.09 *Hazardous Environmental Condition*

- A. Owner represents that to the best of its knowledge a Hazardous Environmental Condition does not exist at the Site, except as expressly disclosed to Owner's Consultant in writing. Owner has disclosed to Owner's Consultant the existence of all Hazardous Materials located at or near the Site, including type, quantity and location.
- B. If Owner's Consultant encounters or learns of a Hazardous Environmental Condition at the Site, then Owner's Consultant shall notify (1) Owner and (2) appropriate governmental officials if Owner's Consultant reasonably concludes that doing so is required by applicable Laws and Regulations.
- C. It is acknowledged by both parties that Owner's Consultant's scope of services does not include any services related to a Hazardous Environmental Condition. In the event Owner's Consultant or any other party encounters a Hazardous Environmental Condition, Owner's Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the

Hazardous Environmental Condition, and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

- D. Owner acknowledges that Owner's Consultant is performing professional services for Owner and that Owner's Consultant is not and shall not be required to become an "owner," "operator," "generator," or "transporter" of Hazardous Materials which are or may be encountered at or near the Site in connection with Owner's Consultant's activities under this Agreement.
- E. If the Owner's Consultant's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify Owner's Consultant terminating this Agreement for cause on 30 days notice.

6.10 *Allocation of Risks – Indemnification*

- A. To the fullest extent permitted by law, Owner's Consultant shall indemnify and hold harmless Owner, Owner's officers, directors, members, partners, and employees from reasonable claims, costs, losses and damages arising out of or relating to the Project, 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 Construction itself), including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of Owner's Consultant or Owner's Consultant's officers, directors, members, partners, employees, and Owner's Consultant's Subconsultants in the performance and furnishing of Owner's Consultant's services under this Agreement.
- B. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Owner's Consultant, Owner's Consultant's officers, directors, members, partners, and employees and Owner's Consultant's Subconsultants from reasonable claims, costs, losses and damages arising out of or relating to the Project, 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 Construction itself), including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of Owner or Owner's officers, directors, partners, employees, and other consultants retained by Owner with respect to this Agreement or the Project.
- C. To the fullest extent permitted by law, Owner's Consultant's total liability to Owner and anyone claiming by, through, or under Owner for any cost, loss, or damages caused in part by the negligence of Owner's Consultant and in part by the negligence of Owner or any other negligent entity or individual, shall not exceed the percentage share that Owner's Consultant's negligence bears to the total negligence of Owner, Owner's Consultant and all other negligent entities and individuals.
- D. In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Owner's Consultant and its officers, directors, partners, employees, and Owner's Consultant's Subconsultants 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

{MW002218;1}

other dispute resolution costs) caused by, arising out of or relating to or resulting from a Hazardous Environmental Condition at, on, or under the Site, provided that (i) 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 completed Construction), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- E. The indemnification provision of Paragraph 6.10.A.1 is subject to and limited by the provisions agreed to by Owner and Owner's Consultant in Exhibit G, "Allocation of Risks," if any.

6.11 *Notices*

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail (return receipt requested), or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.12 *Survival*

- A. All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.

6.13 *Severability*

- A. Any provision or part of the Agreement 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 Owner's Consultant, which agree that the Agreement 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.

6.14 *Waiver*

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.15 *Headings*

- A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement and printed with initial capital letters the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

[MW002218;1]

1. *Addenda*: Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Proposal Documents.
2. *Agreement*: This "Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project" including those Exhibits listed in Article 8 thereof.
3. *Application for Payment*: The form acceptable to Owner which is to be used by Design/Builder in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Change Order*: A document which is signed by Design/Builder and Owner to authorize 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 Design/Build Agreement.
5. *Conceptual Documents*: The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, which show or describe the character, and scope of, or relate to, the Work to be performed or furnished by Design/Builder. Conceptual Documents are further described and enumerated in Exhibit A.
6. *Construction*: The performing or furnishing of labor, the furnishing and incorporating of materials and equipment into various portions of the Work, and the furnishing of services (other than Design Professional Services) and documents, all as required by the Drawings and Specifications. Construction may be provided by Design/Builder or Subcontractors or Suppliers.
7. *Contract Document*: The Contract Documents establish the requirements and obligations of the parties engaged in the final design and construction of the Project and include the Design/Build Agreement between Owner and Design/Builder, Addenda (which pertain to the Contract Documents), Design/Builder's Proposal (including documentation accompanying the Proposal and any post Proposal documentation submitted prior to the notice of award) when attached as an exhibit to the Design/Build Agreement, the notice to proceed, the bonds, the General Conditions, the Supplementary Conditions, the Conceptual Documents, the Specifications and the Drawings as the same are prepared by or for Design/Builder and approved by Owner, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and Owner's written interpretations and clarifications issued on or after the Effective Date of the Design/Build Agreement. Approved Shop Drawings and reports and drawings of subsurface and physical conditions are not Contract Documents.

8. *Contract Price:* The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents and as stated in the Design/Build Agreement.
9. *Contract Times:* The numbers of days or the dates stated in the Design/Build Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment.
10. *Defective:* An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.
11. *Design Professional Services:* Services by Design/Builder related to the preparation of Drawings, specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as service provided by or for licensed design professionals.
12. *Design/Build Agreement:* The written agreement contained in the Contract Documents between Owner and Design/Builder covering the Work to be performed or furnished with respect to this Project.
13. *Design/Build Cost:* The cost to Owner of those portions of the entire Project described in the Report or Conceptual Documents prepared by Owner's Consultant. Design/Build Cost does not include Owner's Consultant's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or Owner's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Design/Build Cost is one of the items comprising Total Project Costs.
14. *Design/Builder:* The individual or entity with whom Owner enters into a written Design/Build Agreement covering Work to be performed or furnished with respect to the Project.
15. *Documents:* The documents, including data, reports, Conceptual Documents, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Owner's Consultant to Owner pursuant to this Agreement.
16. *Drawings:* That part of the Contract Documents which graphically shows the scope, extent and character of the Work to be furnished and performed by Design/Builder and which

have been prepared by or for Design/Builder and are approved by Owner. Shop Drawings are not Drawings as so defined.

17. *Effective Date of the Design/Build Agreement:* The date indicated in the Design/Build Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Design/Build Agreement is signed and delivered by the last of the two parties to sign and deliver.

18. *Effective Date of the Agreement:* The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Field Order:* A written order issued by Owner which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

20. *General Conditions:* The conditions as agreed to by Owner and Owner's Consultant in accordance with Paragraph 6.01.H which govern the Work to be performed or furnished by Design/Builder with respect to this Project.

21. *Hazardous Environmental Condition:* The presence at the Site of Hazardous Materials in such quantities or circumstances that there is a danger to persons or property.

22. *Hazardous Materials:* Asbestos, PCB's, petroleum, hazardous substances, or radioactive material. It is the intention of the parties that these terms be accorded the definition under applicable Laws and Regulations.

23. *Laws and Regulations; Laws or Regulations:* Any and all applicable laws, rules, regulations, ordinances, codes, standards and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

24. *Owner's Consultant's Subconsultants:* Individuals or entities having a contract with Owner's Consultant to furnish services with respect to this Project as Owner's Consultant's independent professional associates, consultants, subcontractors or vendors.

25. *Proposal:* The offer or proposal submitted on the prescribed form setting forth the prices and times for the Work to be performed.

26. *Proposal Documents:* The advertisement or invitation, Request for Proposal, Proposal form, the Proposal security, if any, and the proposed Contract Documents (including all Addenda issued prior to receipt of Proposals).

27. *Reimbursable Expenses:* The expenses incurred directly by Owner's Consultant or its subconsultants for transportation and subsistence; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams, copying, facsimile and courier charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

28. *Resident Project Representative:* The authorized representative of Owner's Consultant who will be assigned to assist Owner's Consultant at the Site during the Design/Build Phase. The Resident Project Representative will be Owner's Consultant's agent or employee and under Owner's Consultant's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

29. *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.

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

31. *Specifications:* That part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

32. *Submittal:* A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, Samples, cash flow projections, and schedule of values.

33. *Substantial Completion:* The time at which the Work (or a specified part thereof) has progressed to the point where, as evidenced by Owner's certificate of Substantial Completion, the Work (or specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized for the purposes for which it is intended. If no such certificate is issued, the time at which the Work is complete and ready for final payment as evidenced by the Owner's written notice of acceptance and recommendation for final payment.

The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements the General Conditions.

35. *Total Project Costs*: The sum of the Design/Build Cost, allowances for contingencies, the total costs of design professional and related services provided by Owner's Consultant and (on the basis of information furnished by Owner) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to Owner.

36. *Work*: The entire completed project or the various separately identifiable parts thereof to be furnished or provided by Design/Builder. Work includes and is the result of performing or furnishing Design Professional Services and Construction.

37. *Work Change Directive*: A written directive to Design/Builder, issued on or after the Effective Date of the Design/Build Agreement and signed by Owner, 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 directed 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.

ARTICLE 8 – EXHIBITS

8.01 *Exhibits Included*

- A. Exhibit A, "Owner's Consultant's Services"
- B. Exhibit B, "Owner's Responsibilities"
- C. Exhibit C, "Payments to Owner's Consultant for Services and Reimbursable Expenses"
- D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative"
- E. Exhibit E, "Insurance"
- F. Exhibit F, "Dispute Resolution"

G. Exhibit G, "Allocation of Risks"

H. Exhibit H, "Special Provisions"

8.02 *Total Agreement*

A. This Agreement (consisting of pages 1 to _____ inclusive, together with the Exhibits identified above) constitutes the entire agreement between Owner and Owner's Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, Owner and Owner's Consultant have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Owner's Consultant. All portions of the Contract Documents have been signed, initialed or identified by Owner and Owner's Consultant.

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

OWNER:

OWNER'S
CONSULTANT:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

License or Certificate No. and State _____

Address for giving notices:

Address for giving notices:

Designated Representative (Paragraph 6.02.A):

Designated Representative (Paragraph 6.02.A):

Title: _____

Title: _____

Facsimile Number: _____

Facsimile Number: _____

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is EXHIBIT A, consisting of _____ pages, referred to in and part of the Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project dated _____, _____.

[NOTE: Exhibits A and B should be carefully prepared with regard to selecting services which comprise Basic and Additional Services as appropriate to assure that all services Owner requires are provided by either Owner's Consultant or Owner. Exhibits A and B also need to be carefully coordinated with Article 8 (Owner's Responsibilities) of the General Conditions.]

Owner's Consultant's Services

ARTICLE A1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Owner's Consultant shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B which are not part of Owner's Consultant's Basic Services, and assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Owner's Consultant, including but not limited to mitigating measures identified in any environmental assessment.
4. Identify and evaluate _____ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Owner's Consultant's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Owner's Consultant recommends. This Report will be accompanied by Owner's

Consultant's opinion of Total Project Costs for each solution which is so recommended for the Project including the following which will be separately itemized:

- a. Opinion of probable Design/Build Cost;
 - b. Allowances for contingencies;
 - c. Allowances for the estimated total costs of services provided by Owner's Consultant; and
 - d. On the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
6. Perform or furnish the following additional Study and Report Phase tasks or deliverables:
 7. Furnish review copies of the Report to Owner within days of authorization to begin services and review it with Owner.
 8. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish copies of the revised Report to the Owner within ____ days of completion of reviewing it with Owner.
- B. Owner's Consultant's services under the Study and Report Phase will be considered complete on the date when the copies of the revised Report have been delivered to Owner.

A1.02 Conceptual Documents Phase

- A. After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by Owner, and upon written authorization from Owner, Owner's Consultant shall:

Advise Owner if additional reports, data or other information or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data or other information and services.

On the basis of the above acceptance, selection, and authorization, prepare the following Conceptual Documents:

- a. Drawings;
- b. Specifications;
- c. Other graphic or written materials;

- d. Criteria and information concerning Owner's requirements for the Project;
 - e. A basis of design;
 - f. Design objectives, constraints and criteria;
 - g. Space, capacity and performance requirements; and
 - h. Flexibility and expandability requirements.
3. These Conceptual Documents will show or describe the character, scope and intent of, or relate to, the Work to be performed or furnished by or for Design/Builder. Such Conceptual Documents will be taken to a point of an estimated _____ percent of the final design which the parties agree will be sufficient for Owner to receive Design/Build proposals.

NOTE TO USER

[The percent of the final design may vary from 5 to 35 based upon the type and complexity of the Project and the capabilities of both the Owner and Design/Builder to define the scope of the Work.]

- 4. Provide necessary field surveys and topographic and utility mapping for the purpose of preparing Conceptual Documents. Utility mapping will be based upon information obtained from utility owners.
 - 5. Based on the information contained in the Conceptual Documents, submit a revised opinion of probable Design/Build Cost and any adjustments to Total Project Costs known to Owner's Consultant, which will be itemized as provided in Paragraph A.1.01.A.5.
 - 6. Furnish the Conceptual Documents to and review them with Owner.
 - 7. Prepare and furnish Proposal Documents for review and approval by Owner, its legal counsel and other advisors, as appropriate.
 - 8. Furnish or provide the following additional Conceptual Document Phase tasks or deliverables:
 - 9. Submit to Owner _____ final copies of the Conceptual Documents, Proposal Documents, and revised opinion of probable Design/Build Cost within _____ days after authorization to proceed with this phase.
- B. In the event that the Work or equipment for which Owner's Consultant has prepared Conceptual Documents is to be performed or furnished under more than one prime contract, Owner and Owner's Consultant shall, prior to commencement of the Conceptual Document Phase, develop a schedule for performance of Owner's Consultant's services during the Conceptual Document and

{MW002218;1}

Proposal or Negotiating Phases and for the performance of Additional Services, if any, in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

- C. The number of prime contracts for work or equipment for which Owner's Consultant services are to be performed upon which the Owner's Consultant's compensation has been established under this Agreement is _____.
- D. Owner's Consultant's services under the Conceptual Document Phase will be considered complete on the date when final copies of the Conceptual Documents and Proposal Documents have been delivered to Owner.

A1.03 Proposal or Negotiating Phase

- A. After acceptance by Owner of the Proposal Documents and the most recent opinion of probable Design/Build Cost as determined in the Conceptual Document Phase, and upon written authorization by Owner to proceed, Owner's Consultant shall:
 - 1. Assist Owner in soliciting for and obtaining Proposals or negotiating proposals for the Work and, where applicable, maintain a record of prospective proposers to whom Proposal Documents have been issued, attend pre-Proposal conferences, if any, and receive and process Design/Builder deposits or charges for the Proposal Documents.
 - 2. Assist Owner in issuing Addenda as appropriate to clarify, correct or change the Proposal Documents.
 - 3. Consult with Owner as to the acceptability of Design/Builders, engineers, subcontractors, suppliers and other persons and entities proposed by Design/Builder for those portions of the Work as to which such acceptability is required by the Proposal Documents.
 - 4. Furnish or provide the following additional Proposal or Negotiating Phase tasks or deliverables:
 - 5. Attend the Proposal opening, prepare Proposal tabulation sheets and assist Owner in evaluating Proposals and in assembling and awarding contracts for the Work.
- B. The Proposal or Negotiating Phase will be considered complete upon commencement of the Design/Build Phase or upon cessation of negotiations with prospective Design/Builders.

ARTICLE A2 – ADDITIONAL SERVICES

A2.01 Owner's Authorization in Advance Required

- A. If authorized in writing by Owner, Owner's Consultant shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.
- B. Study and Report, Conceptual Documents, and Proposal or Negotiating Phases:
1. Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Make measured drawings of or investigate existing conditions or facilities, or verify the accuracy of drawings or other information furnished by Owner.
 3. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Owner's Consultant or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction or method of financing; and revise previously accepted studies, reports, Conceptual Documents or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Owner's Consultant's control.
 4. Perform services resulting from evaluation by Owner's Consultant during the Study and Report Phase at Owner's request of alternative solutions in addition to those specified in Paragraph A1.01.A.4.
 5. Perform services required as a result of Owner's providing incomplete or incorrect Project information, with respect to Exhibit B.
 6. Provide renderings or models for Owner's use.
 7. Prepare documents for alternate proposals requested by Owner for Design/Builder's work which is not executed or documents for out-of-sequence work.
 8. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in

obtaining financing for the Project; evaluating processes available for licensing and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by Owner.

9. Furnish services of Owner's Consultant's Subconsultants for other than Basic Services.
10. Perform services attributable to more prime contracts than specified in Paragraph A1.02.C.
11. Perform services during out-of-town travel required of Owner's Consultant other than for visits to the Site or Owner's office.
12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, drawings, specifications or other Proposal Documents as a result of such review processes.
13. Determine the acceptability of substitute materials and equipment proposed during the Proposal and Negotiating Phase when substitution prior to the award of contracts is allowed by the Proposal Documents.
14. Assist in connection with Proposal protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
15. Perform services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

C. Design/Build Phase

1. Consult with Owner during the Design/Build Phase.
2. Provide the services of a Resident Project Representative (RPR) at the Site. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D.
3. Assist Owner in the selection of an independent testing laboratory to perform the services identified in Paragraph B.2.01.R.
4. Participate in the initial conference between Owner and Design/Builder prior to commencement of Construction.
5. As appropriate, establish baselines and benchmarks for locating the Work which in Owner's Consultant's judgment are necessary to enable Design/Builder to proceed.

Provide engineering surveys and staking to enable Design/Builder to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.

6. Review submittals prepared by or for Design/Builder including Drawings, Specifications, Samples and other Submittals required by the Conceptual Documents and advise Owner as to their acceptability in accordance with the Contract Documents, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
7. Make revisions to Conceptual Documents occasioned by the acceptance of substitute materials or equipment items; and provide services after the award of the Design/Build contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
8. While the Work is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Owner's Consultant deems necessary, in order to observe as an experienced and qualified design professional the progress of the various aspects of Design/Builder's Construction. Such visits and observations by Owner's Consultant, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the construction in progress, or to involve detailed inspections of the construction beyond the responsibilities specifically assigned to Owner's Consultant in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the construction based on Owner's Consultant's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, Owner's Consultant will determine in general if such Construction is proceeding in accordance with the Contract Documents [Drawings and Specifications] and Owner's Consultant shall keep Owner informed of the progress of the Work. The responsibilities of Owner's Consultant contained in this paragraph are expressly subject to the limitations set forth in this paragraph and other express or general limitations in this Agreement.
 - b. Owner's Consultant shall not, during such visits or as a result of such observations of Design/Builder's Construction in progress, supervise, direct or have control over the Construction or the Site operations of Design/Builder or its Subcontractors or Suppliers, nor shall Owner's Consultant have authority over

them or responsibility for (i) the means, methods, techniques, sequences, or procedures of construction selected or used by Design/Builder, or its Subcontractors and Suppliers, (ii) for safety or security at the Site, (iii) for safety precautions and programs incident to the construction activities of Design/Builder, or its Subcontractors and Suppliers, or for any failure of Design/Builder, its Subcontractors or Suppliers to comply with Laws and Regulations applicable to Design/Builder's furnishing and performing the Work. Owner's Consultant neither guarantees the performance of any Design/Builder nor assumes responsibility for any Design/Builder's failure to furnish and perform the Work in accordance with the Contract Documents.

The purpose of Engineer's visits to the Site will be to enable Owner's Consultant to better carry out such duties and responsibilities as are assigned to and undertaken by Owner's Consultant during the Construction Phase and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Drawings and Specifications and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Drawings and Specifications;

- c. As a result of such visits and on the basis of such observations, Owner's Consultant shall have authority to recommend to Owner that Design/Builder's Work be disapproved and rejected while it is in progress if Owner's Consultant believes that such Work is defective under the standards set forth in the Drawings and Specifications, will not produce a completed Project that conforms generally to the Contract Documents, or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. Assist Owner in issuing necessary clarifications and interpretations of the Contract Documents and Field Orders as appropriate to the orderly completion of the Work. Such clarifications and interpretations and Field Orders will be consistent with the intent of and reasonably inferable from the Contract Documents.
 10. Recommend Change Orders and Work Change Directives to Owner, as appropriate, and assist Owner in preparation of Change Orders and Work Change Directives as required.
 11. Provide services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 12. Advise Owner as to the necessity of ordering special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests

and approvals required by Laws or Regulations or the Contract Documents. Owner's Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. Owner's Consultant shall be entitled to rely on the results of such tests.

13. Advise Owner on all claims between Owner and Design/Builder relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work.
14. Based on Owner's Consultant's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying supporting documentation:
 - a. Determine the amounts that Owner's Consultant recommends Design/Builder be paid. Such recommendations of payment will constitute Owner's Consultant's representation to Owner, based on such observations and review, that, to the best of Owner's Consultant's knowledge, information and belief, the Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of such Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Design/Builder's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Consultant's responsibility to observe the Work.
 - b. By recommending any payment Owner's Consultant shall not thereby be deemed to have represented that observations made by Owner's Consultant to check the quality or quantity of Design/Builder's work as it is performed and furnished 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 Owner's Consultant in this Agreement and the Contract Documents. Neither Owner's Consultant's review of Design/Builder's Work for the purposes of recommending payments nor Owner's Consultant's recommendation of any payment including final payment will impose on Owner's Consultant responsibility to supervise, direct or control such Work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Design/Builder's compliance with Laws or Regulations applicable to Design/Builder's furnishing and performing the Work. Such reviews and recommendations will not impose responsibility on Owner's Consultant to make any examination to ascertain how or for what purposes Design/Builder has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials or equipment has passed to

Owner free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between Owner and Design/Builder that might affect the amount that should be paid.

15. Perform or provide the following Design/Build Phase tasks or deliverables.
16. Review maintenance and operating instructions, schedules and guarantees, receive bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up documents including Submittals and other data approved as provided under Paragraph A.2.01.C.6 and Record Drawings which are to be assembled by Design/Builder in accordance with the Contract Documents to obtain final payment, but the extent of such review and receipt will be limited as provided in Paragraph A.2.01.C.14.
17. Within a reasonable time after notice from Owner that Design/Builder considers the entire Work ready for its intended use, in company with Owner and Design/Builder, conduct an inspection to determine if the Work is substantially complete. If Owner's Consultant considers the Work substantially complete, Owner's Consultant will recommend that the Owner issue certificate of Substantial Completion to Design/Builder.
18. Provide services, other than services during the Operational Phase, in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
19. Conduct a final inspection to evaluate the acceptability of the completed Work and advise Owner if the Work is ready for final payment. Owner's Consultant's advice will be based on its actual knowledge gained through the final inspection and prior observation.
20. Provide additional or extended services during construction made necessary by (1) Work damaged by fire or other cause during construction, (2) a significant amount of defective, neglected or delayed Work by Design/Builder, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Design/Builder.

D. Post-Construction Phase

1. Provide assistance in connection with the refining and adjusting of any Project equipment or systems.
2. Prepare operating, maintenance, and staffing manuals.
3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
4. Together with Owner, visit the Project to observe any apparent defects in the completed Work, assist Owner in consultations and discussions with Design/Builder concerning

correction of such defects, and make recommendations as to replacement or correction of defective Work.

5. Prepare and furnish to Owner Project record Drawings showing appropriate record information based on Project documentation received from others.
6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the correction period to ascertain whether items of Design/Builder's Work are subject to correction.
7. Perform or provide the following Operational Phase tasks or deliverables:

E. Witness Services

1. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

A2.02 Duration of Design/Build Phase

- A. The Design/Build Phase will commence with the execution of the Design/Build Agreement for the Project or any part thereof and will terminate upon advice of Owner's Consultant concerning final payment to Design/Builder. If the Project involves more than one prime contract as indicated in Paragraph A1.02.C, Design/Build Phase services may be rendered at different times in respect to separate prime contracts covering the Work.

A2.03 Duration of Post-Construction Phase

- A. The Post-Construction Phase and other services may commence during the Design/Build Phase and, if not otherwise modified in this Exhibit A, will terminate one year after the date of Substantial Completion.

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is **EXHIBIT B**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____, _____.

Owner's Responsibilities

ARTICLE B1 – FURTHER RESPONSIBILITIES OF OWNER

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:

- A. Provide Owner's Consultant with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- B. Furnish copies of all design and construction standards which Owner will require to be included in the Contract Documents.
- C. Furnish copies of Owner's standard forms, conditions and related documents for Owner's Consultant to include in the Proposal Documents, when applicable.
- D. Furnish to Owner's Consultant any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- E. Following Owner's Consultant's assessment of initially-available Project information and data, upon Owner's Consultant's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Owner's Consultant to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions;
 2. Zoning, deed and other land use restrictions;
 3. Property, boundary, easement, right-of-way, and other special engineering surveys or data, including establishing relevant reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
 4. Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof;

{MW002218;1}

5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site and adjacent areas; and
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- F. Give prompt written notice to Owner's Consultant whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Owner's Consultant's services, or any defect or nonconformance in Owner's Consultant's services or in the work of any Design/Builder.
- G. Furnish, as appropriate, other services or authorize Owner's Consultant to provide required Additional Services as set forth in Article A2.
- H. Arrange for safe access to and make all provisions for Owner's Consultant and Owner's Consultant's Subconsultants to enter upon public and private property as required for Owner's Consultant to perform services under the Agreement.
- I. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals and other documents presented by Owner's Consultant (including obtaining advice of an attorney, insurance counselor and other consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- J. Provide reviews, approvals and permits from all governmental authorities having jurisdiction to approve all Phases of the Project designed or specified by Owner's Consultant and such reviews, approvals and consents from others as may be necessary for completion of each Phase of the Project.
- K. Provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Design/Builder raises, or Owner's Consultant reasonably requests;
 3. Such auditing services as Owner requires to ascertain how or for what purpose Design/Builder has used the moneys paid; and
 4. Placement and payment for advertisement for Request for Qualifications and Request for Proposals in appropriate publications.

- L. Advise Owner's Consultant of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering and constructibility review.
- M. Furnish to Owner's Consultant data as to Owner's anticipated costs for services to be provided by others for Owner so that Owner's Consultant may make the necessary calculations to develop and periodically adjust Owner's Consultant's opinion of Total Project Costs.
- N. If Owner designates a construction manager, an individual or entity other than, or in addition to, Owner's Consultant to represent Owner at the site, define and set forth in this Exhibit B the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of Owner's Consultant.
- O. If more than one prime contract is to be awarded for work designed or specified by Owner's Consultant, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities and authority of Owner's Consultant in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.
- P. Attend the pre-proposal conference, Proposal opening, initial conferences, design and construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- Q. Provide, as required by the Contract Documents, engineering surveys and staking to enable Design/Builder to proceed with the layout of the Work, and other special field surveys.
- R. Provide the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment and facilities of Owner, prior to their incorporation into the Contract Documents, with appropriate professional interpretation thereof;
- S. Provide inspection or monitoring services by an individual or entity other than Owner's Consultant (and disclose the identity of such individual or entity to Owner's Consultant) as Owner determines necessary to verify:
 - 1. That Design/Builder is complying with any Laws or Regulations applicable to Design/Builder's performing and furnishing the Work; or
 - 2. That Design/Builder is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- T. Provide Owner's Consultant with the findings and reports generated by the entities providing services pursuant to subparagraphs B.1.01.R and S.

{MW002218;1}

U. Inform Owner's Consultant in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

V. Additional Owner responsibilities:

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____, _____

Payments to Owner's Consultant for Services and Reimbursable Expenses

Lump Sum Method of Payment

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 – PAYMENTS TO OWNER'S CONSULTANT

C4.01 For Basic Services

A. Owner shall pay Owner's Consultant for Basic Services set forth in Exhibit A as follows:

1. A Lump Sum of \$_____ for Basic Services in Exhibit A allocated as follows:
 - a. Study and Report Phase \$_____
 - b. Conceptual Document Phase \$_____
 - c. Proposal or Negotiating Phase \$_____
2. Owner's Consultant may alter the distribution of compensation between individual phases to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by Owner.
3. The Lump Sum includes compensation for Owner's Consultant's services and services of Owner's Consultant's Subconsultants, if any. Appropriate factors have been incorporated into the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum billed will be based upon Owner's Consultant's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.
5. The Lump Sum was determined on the basis of an orderly progression of services and completion of the Proposal or Negotiating Phase within _____ months. Should the time

{MW002218;1}

to complete the Work extend beyond this period, the Lump Sum for Owner's Consultant's services shall be appropriately adjusted.

C4.02 For Additional Services

A. Owner shall pay Owner's Consultant for Additional Services as follows:

1. For services of Owner's Consultant's principals and employees engaged directly in the Work pursuant to Article A2 of Exhibit A, except services as a consultant or witness under Paragraph A2.01.E, an amount equal to the cumulative hours devoted to the services by each class of Owner's Consultant's employees times hourly rates for each applicable billing class for all Additional Services performed on the Work, plus Reimbursable Expenses and Owner's Consultant's Subconsultants' charges, if any. The Owner's Consultant's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1. The total compensation for services under this paragraph is estimated to be \$_____ based upon Contract Times of _____ months.

For services performed by Owner's Consultant's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.E, at the rate of \$_____ per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration or proceeding will be on the basis provided in Paragraph C4.02.A.1). Compensation for Owner's Consultant's Subconsultants for such services will be on the basis provided in Paragraph C.4.04.

C4.03 For Reimbursable Expenses

A. When not included in compensation for Basic Services under Paragraph C.4.01, Owner shall pay Owner's Consultant for Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C. Such rates are subject to annual adjustment on the same date as Standard Hourly rates are adjusted.

B. Reimbursable Expenses include the following:

1. Transportation and subsistence thereto;
2. Providing and maintaining field office facilities, including furnishings and utilities;
3. Subsistence and transportation of Resident Project Representatives and their assistants, if any;
4. Toll telephone calls and telegrams;
5. Reproduction of reports, Drawings, Specifications, Conceptual Documents, and similar Work-related items in addition to those required by Exhibit A, and,

{MW002218;1}

Page 2

(Exhibit C - Lump Sum Method of Payment for Basic Services)
EJCDC D-500 Standard Form of Agreement Between Owner and Owner's Consultant for
Professional Services – Design/Build Project

Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

6. If authorized in advance by Owner,

a. Overtime work requiring higher than regular rates.

b. Expenses incurred for the use of other specialized equipment.

C. The amounts payable to Owner's Consultant for Reimbursable Expenses will be the work-related internal expenses actually incurred or allocated by Owner's Consultant, plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of _____.

C4.04 Standard Hourly Rates

A. Standard Hourly Rates are set forth in Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. The Standard Hourly rates will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Owner's Consultant.

C4.05 For Owner's Consultant's Subconsultant's Charges

A. Whenever compensation to Owner's Consultant herein is stated to include charges of Owner's Consultant's Subconsultants, those charges to Owner shall be the amounts billed to Owner's Consultant times a factor of _____.

C4.06 Other Payment Provisions

A. *Progress Payments:* The portion of the amounts billed for Owner's Consultant for services identified in Paragraph C.4.02, will be billed based on the cumulative hours charged to the Project for such services during the billing period by each class of Owner's Consultant's employees, times the Standard Hourly Rate for each such employee class, plus Reimbursable Expenses and Owner's Consultant's Subconsultants' charges, if any.

B. Estimated Compensation Amounts

1. Owner's Consultant's estimate of the amounts that will become payable for Additional Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Owner's Consultant under the Agreement. Notwithstanding the fact that the estimated amounts for Additional Services are exceeded, Owner's Consultant shall receive appropriate compensation based on the Standard Hourly Rates method for all Additional Services furnished or performed under this Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Owner's Consultant that a compensation amount thus estimated will be exceeded, Owner's Consultant shall give Owner written notice thereof. Promptly thereafter Owner and Owner's Consultant shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Owner's Consultant shall agree to a reduction in the remaining services to be rendered by Owner's Consultant, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner's Consultant exceeds the estimated amount before Owner and Owner's Consultant have agreed to an increase in the compensation due Owner's Consultant or a reduction in the remaining services, Owner's Consultant shall be paid for all services rendered hereunder.

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____, _____.

Payments to Owner's Consultant for Services and Reimbursable Expenses

Direct Labor Costs Times a Factor Method of Payment

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 – PAYMENTS TO OWNER'S CONSULTANT

C4.01 For Basic Services Having a Determined Scope and Additional Services

A. Owner shall pay Owner's Consultant for Basic Services and Additional Services as follows:

1. An amount equal to Owner's Consultant's Direct Labor Costs times a Factor of _____ for all Basic Services and Additional Services by principals and employees engaged directly in the services, except for services as a consultant or witness under Paragraph A2.01.E, plus a percentage fee of _____% applied to the sum so calculated, plus Reimbursable Expenses, plus Owner's Consultant's Subconsultants' charges, if any, all for an estimated total compensation for services of \$_____, based on the following assumed distribution of compensation, which includes the percentage fee:
 - a. Study and Report Phase \$
 - b. Conceptual Document Phase \$
 - c. Proposal or Negotiating Phase \$
2. Owner's Consultant may alter the distribution of compensation between individual phases to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by Owner.
3. For services performed by Owner's Consultant's principals and employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.E, at the rate of \$_____ per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration or proceeding will be on the basis of Additional Services). Compensation for Owner's

{MW002218;1}

Consultant's Subconsultants for such services will be on the basis provided in Paragraph C.4.04.

4. The compensation estimated is conditioned on Contract Times to complete the Work not exceeding _____ months. Should the Contract Times to complete the Work be extended beyond this period, the payment to Owner's Consultant shall be equitably adjusted.

C4.02 *Direct Labor Costs*

- A. Direct Labor Costs means salaries and wages paid to personnel but does not include payroll related costs or benefits.
- B. The Direct Labor Costs factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance and other operating costs, but excluding operating margin or profit.

C4.03 *For Reimbursable Expenses*

- A. Reimbursable Expenses include the following:
 1. Transportation and subsistence incidental thereto;
 2. Providing and maintaining field office facilities, including furnishings and utilities;
 3. Subsistence and transportation of Resident Project Representatives and their assistants, if any;
 4. Toll telephone calls and telegrams;
 5. Reproduction of reports, Drawings, Specifications, Conceptual Documents, and similar Work-related items in addition to those required under Exhibit A, and,
 6. If authorized in advance by Owner,
 - a. Overtime work requiring higher than regular rates
 - b. Expenses incurred for the use of other specialized equipment.

{MW002218;1}

- B. The amounts payable to Owner's Consultant for Reimbursable Expenses will be the Work-related internal expenses actually incurred or allocated by Owner's Consultant plus all invoiced external Reimbursable Expenses allocable to the Work, the latter multiplied by a factor of _____.

C4.04 For Owner's Consultant's Subconsultant's Charges

- A. Whenever compensation to Owner's Consultant herein is stated to include charges of Owner's Consultant's Subconsultants, those charges to Owner shall be the amounts billed to Owner's Consultant times a factor of _____.

C4.05 Other Provisions Concerning Payment

- A. *Progress Payments:* The portion of the amounts billed for Owner's Consultant's services which are on account of services rendered on the basis of the Direct Labor Costs Times a Factor Method of Payment will be billed based on the Direct Labor Costs of the cumulative hours devoted to the Work by all of Owner's Consultant's employees, times the Direct Labor Costs factor, plus a percentage fee, plus Reimbursable Expenses and Owner's Consultant's Subconsultants' charges incurred during the billing period.
- B. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period in Paragraph C.4.01.A.4, payment for Owner's Consultant's services on the basis of the Direct Labor Costs Times a Factor Method of Payment shall be continued.

C. Estimated Compensation Amounts

1. Owner's Consultant's estimate of the amounts that will become payable for Basic Services and Additional Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Owner's Consultant under the Agreement. Notwithstanding the fact that the estimated amounts for Basic Services or Additional Services are exceeded, Owner's Consultant shall receive appropriate compensation based on the Direct Labor Costs Times a Factor Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Owner's Consultant that a compensation amount thus estimated will be exceeded, Owner's Consultant shall give Owner written notice thereof. Promptly thereafter Owner and Owner's Consultant shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Owner's Consultant shall agree to a reduction in the remaining services to be rendered by Owner's Consultant, so that total compensation for such services will not exceed said estimated amount when

{MW002218:1}

such services are completed. If Owner's Consultant exceeds the estimated amount before Owner and Owner's Consultant have agreed to an increase in the compensation due Owner's Consultant or a reduction in the remaining services, Owner's Consultant shall be paid for all services rendered hereunder.

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is **EXHIBIT D**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____, _____.

Duties, Responsibilities and Limitations of Authority of Resident Project Representative

ARTICLE D1 – RESIDENT PROJECT REPRESENTATIVE

D1.01 *General:*

- A. Owner's Consultant shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist Owner's Consultant in observing the progress and quality of the Construction of Design/Builder. The RPR, assistants and other field staff under this Exhibit D shall provide [full] [part] time representation] set forth in this Exhibit D.

- B. Through observations of Construction in progress and field checks of materials and equipment by the RPR and assistants, Owner's Consultant shall endeavor to provide further protection for Owner against defects and deficiencies in the Construction of Design/Builder. However, Owner's Consultant shall not, during such visits or as a result of such observations of Design/Builder's construction in progress, supervise, direct, or have control over the Construction nor shall Owner's Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Design/Builder, for safety precautions and programs incident to the Construction of Design/Builder, for any failure of Design/Builder to comply with laws, rules, regulations, ordinances, codes or orders applicable to Design/Builder's performing and furnishing the Construction, or responsibility of construction for Design/Builder's failure to furnish and perform the Construction in accordance with the Contract Documents. In addition, the specific limitations set forth in section A2.01.C.8 of Exhibit A of the Agreement are applicable.

D1.02 *Duties, Responsibilities and Role:*

- A. RPR is Owner's Consultant's agent at the Site, and will act as directed by and under the supervision of Owner's Consultant, and will confer with Owner's Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the on-Site construction shall in general be with Owner's Consultant and Design/Builder, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Design/Builder. RPR shall generally communicate with Owner with the knowledge of and under the direction of Owner's Consultant.

{MW002218;1}

B. RPR shall have the following specific duties and responsibilities:

1. *Schedule*:. Review the progress schedule, schedule of Submittals, schedule of values, and cash flow curves prepared by Design/Builder and consult with Owner's Consultant concerning acceptability.
2. *Conferences and Meetings*: Attend meetings with Design/Builder, such as initial conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. *Liaison*:
 - a. Serve as Owner's Consultant's liaison with Design/Builder and Owner at the Site, working principally through Design/Builder's superintendent, assist in understanding the intent of Contract Documents.
 - b. Assist in obtaining from Owner additional details or information, when required for proper execution of the Construction.
4. *Submittals*:
 - a. Record date of receipt of Submittals if they are to be received at the Site by RPR.
 - b. Receive Submittals which are furnished at the Site by Design/Builder, and notify Owner of availability of Submittals for examination by Owner.
 - c. Advise Owner and Design/Builder of the commencement of any Construction requiring a Submittal for which RPR believes that the Submittal has not been approved by Owner.
5. *Review of Construction, Rejection of Defective Construction; Inspections and Tests*:
 - a. Conduct on-Site observations of the Construction in progress to assist Owner's Consultant in determining if the Construction is in general proceeding in accordance with the Contract Documents.
 - b. Report to Owner's Consultant whenever RPR believes that any Construction will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Owner's Consultant of Construction that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

{MW002218;1}

- c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Design/Builder maintains adequate records thereof; and observe, record and report to Owner's Consultant appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Owner's Consultant.
6. *Interpretation of Contract Documents:* Report to Owner's Consultant when clarifications and interpretations of the Contract Documents are needed and transmit to Design/Builder clarifications and interpretations as issued by Owner.
7. *Modifications:* Consider and evaluate Design/Builder's suggestions for modifications in Drawings or Specifications and report RPR's recommendations to Owner's Consultant.
8. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all work Change Directives, Addenda, Change Orders, Field Orders, Drawings and Specifications issued subsequent to the execution of the Contract, Owner's clarifications and interpretations of the Contract Documents, progress reports, Submittals received from and delivered to Design/Builder and other Project related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Design/Builder's hours on the Site, weather conditions, data relative to questions of Work Change Directives, Change Orders, Hazardous Environmental Conditions, or changed conditions, list of Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Owner's Consultant.
 - c. Record names, addresses and telephone numbers of Design/Builder, all subcontractors and major suppliers of materials and equipment.
 - d. Maintain records for use in preparing Project documentation.
 - e. Upon completion of Design/Build Phase, furnish original set of all RPR Project documentation to Owner's Consultant.

9. *Reports:*
- a. Furnish to Owner's Consultant periodic reports as required of progress of the Construction and of Design/Builder's compliance with the progress schedule and schedule of Submittals.
 - b. Furnish to Owner's Consultant copies of all tests, inspections or system start up of important phases of the Construction.
 - c. Assist Owner's Consultant in drafting proposed Change Orders and Work Change Directives and obtain backup material from Design/Builder.
 - d. Report immediately to Owner's Consultant the occurrence of any accidents on or adjacent to the Site, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
10. *Payment Request:* Review Applications for Payment with Design/Builder for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the relationship of the payment requested to the schedule of values, Construction completed, and materials and equipment delivered at the Site but not incorporated in the Construction.
11. *Certificates, Maintenance and Operation Manuals:* During the course of the Construction, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Design/Builder are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Owner's Consultant for review and forwarding to Owner prior to final payment for the Construction.
12. *Completion:*
- a. Before Owner issues a Certificate of Substantial Completion, submit to Design/Builder a list of observed items requiring completion or correction.
 - b. Observe whether Design/Builder has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the Construction, including but not limited to those to be performed by public agencies having jurisdiction over the Construction.
 - c. Participate in a final inspection in the company of Owner's Consultant, Owner and Design/Builder and prepare a final list of items to be completed or corrected.

- d. Observe whether all items on final list have been completed or corrected and make recommendations to Owner's Consultant concerning acceptance and issuance of the Notice of Acceptability of the Construction.

C. *Resident Project Representative shall not:*

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment unless authorized by Owner;
2. Exceed limitations of Owner's Consultant's authority as set forth in the Agreement or the Contract Documents;
3. Undertake any of the responsibilities of Design/Builder, subcontractors, suppliers, or Design/Builder's superintendent;
4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Construction;
5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Construction;
6. Accept Submittals from anyone other than Design/Builder;
7. Authorize Owner to occupy the Project in whole or in part; or
8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Owner's Consultant.

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is **EXHIBIT E**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties:

E6.04 *Insurance:*

The limits of liability for the insurance required by Paragraph 6.04 of the Agreement are as follows:

A. *By Owner's Consultant:*

- | | | |
|----|--|-----------|
| 1. | Workers' Compensation: | Statutory |
| 2. | Employer's Liability – | |
| | 1) Each Accident: | \$ _____ |
| | 2) Disease, Policy Limit: | \$ _____ |
| | 3) Disease, Each Employee: | \$ _____ |
| 3. | General Liability – | |
| | 1) General Aggregate: | \$ _____ |
| | 2) Each Occurrence (Bodily Injury and Property Damage): | \$ _____ |
| 4. | Excess Umbrella Liability – | |
| | 1) Each Occurrence: | \$ _____ |
| | 2) General Aggregate: | \$ _____ |
| 5. | Automobile Liability – | |
| | 1) Bodily Injury: | |
| | a) Each Person | \$ |
| | b) Each Accident | \$ _____ |
| | 2) Property Damage | |
| | a) Each Accident | \$ _____ |

[or]

{MW002218;1}

1) Combined Single Limit
(Bodily Injury and Property Damage):
a) Each Accident \$_____

6. Professional Liability Insurance \$_____

7. Other (specify): \$_____

B. By Owner:

1. General Liability: \$_____

2. Property Damage Liability Insurance: \$_____

3. Property Insurance: \$_____

4. Other (specify): \$_____

5. Additional Insureds. The following individuals or entities are to be listed on Owner's policies of insurance as additional insureds as provided in Paragraph 6.04.B of the Agreement:

SUGGESTED FORMAT
(for use with EJCDC D-500, 2009 Edition)

This is **EXHIBIT F**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

F6.08 Dispute Resolution

- A. Owner and Owner's Consultant agree that they shall submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by _____.

- B. All disputes between Owner and Owner's Consultant not resolved under Paragraph F6.08.A will be decided by arbitration in accordance with the rules of _____ in effect on the Effective Date of the Agreement, subject to the limitations and restrictions stated in Paragraph F6.08.B.2 below. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Paragraph F.6.08 will be specifically enforceable under the prevailing law of any court having jurisdiction.
 - 1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the _____. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

 - 2. No arbitration arising out of or relating to this Agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Agreement.

- C. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy of any such claim, counterclaim, dispute or matter is more than \$_____.

(exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$_____ (exclusive of interest and costs).

- D. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in Paragraph F.6.08.B.2 and F6.08.C may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$_____ (exclusive of interest and costs) or which is with any party not specifically described therein.
- E. The award rendered by the arbitrators will be final and binding, and judgment may be entered upon it in any court having jurisdiction thereof.

SUGGESTED FORMAT
(for use with D-500, 2002 Edition)

This is **EXHIBIT G**, consisting of _____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project** dated _____, _____.

Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

G6.10.D Limitation of Owner's Consultant's Liability

NOTE TO USER

[Select one of the three alternatives listed below for G6.10.D.1]

1. Owner's Consultant's Liability Limited to Amount of Owner's Consultant's Compensation

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Owner and Owner's Consultant agree, as between them, that the total aggregate liability of Owner's Consultant and its officers, directors, partners, employees, agents, Subcontractors, and Suppliers, to Owner and all third parties for any and all injuries, claims, losses, costs, damages or expenses whatsoever, including attorneys' fees, arising out of the Project or the Agreement from any cause or causes will not exceed the total compensation received by Owner's Consultant under this Agreement. Such cause or causes include, but are not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty of Owner's Consultant or its officers, directors, partners, employees, agents, Subcontractors or Suppliers.

OR

1. Owner's Consultant's Liability Limited to Amount of Insurance Proceeds

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Owner and Owner's Consultant agree, as between them, that the total aggregate liability of Owner's Consultant and its officers, directors, partners, employees, agents, Subcontractors, and Suppliers, to Owner and all third parties for any and all injuries, claims, losses, costs, damages or expenses whatsoever, including attorneys' fees, arising out of the Project or the Agreement from any cause or causes (collectively "Claims") shall not exceed the total available insurance proceeds paid on behalf of or to Owner's Consultant by Owner's Consultant's insurers in settlement or satisfaction of any such Claims under the terms and conditions of Owner's Consultant's applicable insurance policies. For purposes of this provision, "total available insurance proceeds" for each Claim means any limits under the applicable Owner's Consultant's insurance policy that remains at the time of settlement or satisfaction of the Claims, which will not exceed in any event the limits set forth in the Contract Documents, less any settlement or satisfaction of all previously resolved Claims and any fees, costs and expenses of investigation,

{MW002218;1}

Page 3

(Exhibit G – Allocation of Risks)

EJCDC D-500 Standard Form of Agreement Between Owner and Owner's Consultant for
Professional Services – Design/Build Project

Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

claims adjustment, defense and appeal incurred up to the time of settlement or satisfaction of all Claims.

OR

1. Owner's Consultant's Liability Limited to the Sum of \$_____

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Owner and Owner's Consultant agree, as between them, that the total aggregate liability, of Owner's Consultant and its officers, directors, partners, employees, agents, Subcontractors, and Suppliers, to Owner and all third parties for any and all injuries, claims, losses, costs, damages or expenses (including attorneys' fees) whatsoever arising out of the Project or the Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or breach of warranty express or implied of Owner's Consultant or Owner's Consultant's officers, directors, partners, employees, agents, or Owner Consultant's, or any of them.

NOTE TO USER

[Select for 610.D.2 if agreed to by both parties]

2. Exclusion of Special, Incidental, Indirect and Consequential Damages

To the fullest extent permitted by law, and not withstanding any other provision in the Agreement, Owner's Consultant and Owner's Consultant's officers, directors, partners, employees, agents and Owner's Consultant's Subconsultants shall not be liable to Owner or anyone claiming by, through or under Owner for any special, incidental, indirect or consequential damages whatsoever, arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or breach of warranty express or implied of Owner's Consultant or Owner's Consultant's officers, directors, partners, employees, agents or Owner's Consultant's Subconsultants, or any of them, and including but not limited to:

NOTES TO USER

[List here particular types of damages that Owner's Consultant may be concerned about by reason of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them".]

[The above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph 6.10.D.1 above, by providing that "Owner's Consultant's total liability for such damages shall not exceed \$_____."]

{MW002218;1}

Page 4

(Exhibit G – Allocation of Risks)

EJCDC D-500 Standard Form of Agreement Between Owner and Owner's Consultant for
Professional Services – Design/Build Project

Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

SUGGESTED FORMAT
(for use with D-500, 2009 Edition)

This is EXHIBIT H, referred to in and part of the Standard Form of Agreement between Owner and Owner's Consultant for Professional Services - Design/Build Project dated____, ____.

Special Provisions

H1.01 Article(s) _____ of the Agreement is/are amended to include the following agreement(s) of the parties:

{MW002218;1}

Page 1 (Exhibit H - Special Provisions)
EJCDC D-500 Standard Form of Agreement Between Owner and Owner's Consultant for
Professional Services - Design/Build Project
Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER
FOR
PRELIMINARY SERVICES



ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use in anticipation that the Standard General Conditions of the Contract between Owner and Design/Builder (EJCDC D-700, 2009 Edition) and one of the two Agreements Between Owner and Design/Builder (EJCDC D-520 and D-525, 2009 Editions) of the Engineers Joint Contract Documents Committee will be used for final design and construction of the work. Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are also contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition).

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

TABLE OF CONTENTS

Page

ARTICLE I – GENERAL..... 1
1.01 *Scope* 1
ARTICLE 2 – OWNER'S RESPONSIBILITIES..... 1
2.01 *General* 1
ARTICLE 3–TIMES FOR RENDERING SERVICES..... 1
3.01 *Commencement* 1
3.02 *Time for Completion*..... 2

ARTICLE 4 – PAYMENTS TO DESIGN/BUILDER..... 2
4.01 *Payments*..... 2
4.02 *Other Provisions Concerning Payments* 2

ARTICLE 5–ESTIMATES OF COST 3
5.01 *Estimate of Probable Design/Build Cost*..... 3

ARTICLE 6–GENERAL CONSIDERATIONS 3
6.01 *Standards of Performance* 3
6.02 *Authorized Project Representatives* 4
6.03 *Use of Documents* 4
6.04 *Electronic Media* 5
6.05 *Insurance* 5
6.06 *Termination* 6
6.07 *Controlling Law* 7
6.08 *Successors, Assigns, and Beneficiaries* 7
6.09 *Dispute Resolution* 7
6.10 *Hazardous Environmental Condition* 7
6.11 *Allocation of Risks – Indemnification*..... 8
6.12 *Notices* 9
6.13 *Survival*..... 9
6.14 *Severability*..... 9
6.15 *Waiver* 9
6.16 *Headings* 9

ARTICLE 7– DEFINITIONS..... 9
7.01 *Defined Terms*..... 9

ARTICLE 8–EXHIBITS 10
8.01 *Exhibits Included* 10
8.02 *Total Agreement*..... 10

**AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER
FOR
PRELIMINARY SERVICES**

THIS IS AN AGREEMENT between _____ “Owner”).

and _____ “Design/Builder”).

Owner intends to _____

_____ which is (all)(part of) _____

_____ (“Project”).

Owner and Design/Builder hereby agree as follows:

ARTICLE I – GENERAL

1.01 *Scope*

- A. Design/Builder shall provide the services set forth in Exhibit A.
- B. No Construction at the Site is included in Design/Builder's services.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3–TIMES FOR RENDERING SERVICES

3.01 *Commencement*

- A. Design/Builder is authorized to begin rendering services as of the Effective Date of the Agreement.

3.02 *Time for Completion*

- A. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A. If such periods of time or dates are changed through no fault of Design/Builder, then the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.
- B. If Owner authorizes changes in the scope, extent, or character of the Project, the time of performance of Design/Builder's services shall be adjusted equitably.
- C. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of Design/Builder. Owner shall pay Design/Builder additional compensation for costs resulting from unreasonable delay caused by Owner.
- D. If Design/Builder fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages for any loss resulting from such failure.

ARTICLE 4 – PAYMENTS TO DESIGN/BUILDER

4.01 *Payments*

- A. Owner shall pay Design/Builder for services performed or furnished under Exhibit A on the basis set forth in Exhibit C.

4.02 *Other Provisions Concerning Payments*

- A. *Preparation of Invoices:* Design/Builder shall prepare its invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Design/Builder may submit no more than one invoice to Owner per month.
- B. *Payment of Invoices:* *Invoices are due and payable* within 30 days of receipt. Payments will be credited first to any interest due to Design/Builder and then to principal.
- C. *Late Payment:* If Owner fails to make any payment due Design/Builder for services and expenses within 30 days after receipt of Design/Builder's invoice, then:
 - 1. the amounts due Design/Builder will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Design/Builder may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid Design/Builder in full all amounts due for services, expenses, and other related charges.
- D. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Design/Builder of the specific basis for doing so, may withhold from payment only that portion so contested, and

must pay the undisputed portion.

E. *Payments Upon Termination*

1. In the event of any termination under Paragraph 6.06, Design/Builder will be entitled to invoice Owner and to receive full payment for all services performed and expenses incurred through the effective date of termination, subject to the provisions of Paragraph 6.06.F.
2. In the event of termination by Owner for convenience or by Design/Builder for cause, Design/Builder, in addition to its entitlement under Paragraph 4.02.E.1, shall be entitled to invoice Owner and to payment of a reasonable sum for services and expenses directly attributable to termination, including those provided and incurred both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Design/Builder's Subcontractors, and other related close-out costs, using methods and rates for Additional Services set forth in Exhibit C.

F. *Records of Design/Builder's Costs:* Design/Builder shall keep records of its costs pertinent to compensation under this Agreement in accordance with generally accepted accounting practices. To the extent necessary to verify Design/Builder's charges and upon Owner's timely request, Design/Builder shall make copies of such records available to Owner.

ARTICLE 5—ESTIMATES OF COST

5.01 Estimate of Probable Design/Build Cost

A. Design/Build Cost is the cost to Owner to design and construct the Work. Design/Build Cost is limited to Design Professional Services and Construction to be furnished by Design/Builder, and does not include costs of items not provided by Design/Builder including but not limited to cost of land and rights of way, compensation for damages to properties, interest and financing charges, and charges for services to be provided to Owner by others.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. The standard of care for all Design Professional Services will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Design/Builder's Design Professional Services. Design/Builder shall correct deficiencies in technical accuracy of Design Professional Services without additional compensation, and compensate Owner for any losses or damages resulting from such deficiencies, except to the extent such action is directly attributable to deficiencies in Owner-furnished information.

- C. Design/Builder may employ such Subcontractors as Design/Builder deems necessary to assist in the performance of services, subject to reasonable, timely, and substantive objections by Owner.
- D. This Agreement is based on requirements of applicable Laws or Regulations. Design/Builder shall also comply with Owner-mandated standards provided to Design/Builder in writing. Changes to these requirements or to Owner-mandated standards after the Effective Date of the Agreement may be the basis for modifications to Owner's responsibilities or to the scope, schedule, and compensation for Design/Builder's services.
- E. Owner shall be responsible for, and Design/Builder may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner pursuant to this Agreement. Design/Builder may use such requirements, reports, data, and information in performing services under this Agreement.
- F. Owner and Design/Builder agree that the General Conditions of any contract between them for the final design and construction of the Work will be based upon "Standard General Conditions of the Contract Between Owner and Design/Builder" as prepared by the Engineers Joint Contract Documents Committee (EJCDC D-700, 2009 Edition) unless both parties mutually agree to use other General Conditions as specifically set forth in Exhibit H, "Special Provisions."
- G. At the request of the Owner, Design/Builder shall safeguard the proprietary nature of Owner-provided data.
- H. While at the Site, Design./Builder's employees and representatives shall comply with the specific applicable requirements of Owner's safety programs of which Design/Builder has been informed in writing.

6.02 *Authorized Project Representatives*

- A. Contemporaneous with the execution of this Agreement, Design/Builder and Owner shall designate specific individuals to act as their respective representatives with respect to this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project and Design/Builder shall retain the ownership and property interest therein (including the right of reuse at the discretion of the Design/Builder) whether or not the Project is completed.
- B. Owner may make and retain copies of Documents for information, reference, and use on this Project by Owner or others under contract to Owner. Such Documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by Design/Builder as appropriate for the specific purpose intended, or use of Documents prepared by Design/Builder to complete the Project using Owner's own forces or others, will be at

Owner's sole risk and without liability or legal exposure to Design/Builder, or to Design/Builder's officers, directors, partners, employees, or Subcontractors. Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees, and Subcontractors from all claims, costs, damages, losses, and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or resulting therefrom.

- C. Design/Builder will be entitled to further compensation at rates to be agreed upon by Owner and Design/Builder for any verification or adaptation of the Documents for extensions of the Project or any other project.

6.04 *Electronic Media*

- A. Copies of data furnished by Owner to Design/Builder or by Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, or graphics or of other types are furnished only for the convenience of the other 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 on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving data in an electronic format 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. Design/Builder reserves the right to remove all indicia of ownership or involvement, including title blocks and seals, from each electronic drawing.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of data resulting from the use of software application packages, operating systems, or computer hardware differing from those used by data's creator.

6.05 *Insurance*

- A. Design/Builder shall procure and maintain insurance as set forth in Exhibit D, "Insurance."
- B. During the term of this Agreement, Owner shall cause Design/Builder and Design/Builder's Subcontractors to be listed as additional insureds on any general liability and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner and Design/Builder shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Design/Builder's services and at renewal thereafter during the term of the Agreement.
- D. All policies of property insurance shall contain provisions to the effect that Design/Builder's and

Design/Builder's Subcontractors' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds, loss payees, or additional insureds thereunder.

- E. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Design/Builder and to each other additional insured (if any) to which a certificate of insurance has been issued.

6.06 *Termination*

- A. The obligation to provide further services under this Agreement may be terminated for cause:
 - 1. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.
 - 2. by Design/Builder upon seven days written notice if the Design/Builder's performance of services has been delayed or suspended for more than 90 days for reasons beyond Design/Builder's control.
- B. Owner may terminate this Agreement for its convenience effective upon Design-Builder's receipt of notice from Owner.
- C. In the case of termination by Design/Builder, Design/Builder shall have no liability to Owner on account of such termination.
- D. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure to perform as set forth in Paragraph 6.06.A.1 and .2 if the party receiving notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- E. The terminating party under Paragraph 6.06.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Design/Builder to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.
- F. In the event of termination of Design/Builder for cause by Owner, Owner may complete the services to be provided by Design/Builder as Owner deems expedient. In such case, Design/Builder will not be entitled to receive any payment until these services are complete. If the unpaid balance due Design/Builder under Paragraph 4.02.E.1 exceeds all costs, losses, and damages sustained by Owner in completing the Design/Builder's services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all

court, arbitration, or other dispute resolution costs), such excess will be paid to Design/Builder. If such costs, losses, and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner.

6.07 *Controlling Law*

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

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Design/Builder are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Design/Builder (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Design/Builder) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Design/Builder may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. 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 this Agreement.

6.09 *Dispute Resolution*

- A. Owner and Design/Builder agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit F or other provisions of this Agreement, or under law.
- B. If and to the extent that Owner and Design/Builder have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit F, "Dispute Resolution." In the absence of such an agreement, the parties may exercise their rights under law.

6.10 *Hazardous Environmental Condition*

- A. Owner acknowledges that Design/Builder is performing professional services for Owner and that Design/Builder is not and shall not be required to become an "owner," "operator," "generator," or "transporter" of Hazardous Materials which are or may be encountered at or near the Site in connection with Design/Builder's activities under this Agreement.
- B. Owner represents to the best of its knowledge that a Hazardous Environmental Condition does not exist at the Site except as expressly disclosed to Design/Builder in writing, and that it has disclosed to Design/Builder the existence of all known Hazardous Materials located at or near the Site, including type, quantity, and location.

- C. If Design/Builder learns of or encounters any Hazardous Environmental Condition at the Site, then Design/Builder shall notify (1) Owner and (2) appropriate governmental officials, if Design/Builder reasonably concludes that doing so is required by applicable Laws and Regulations. .
- D. Except as required by Exhibit A, it is acknowledged by both parties that the Design/Builder's scope of services does not include any services related to a Hazardous Environmental Condition. If Design/Builder or any other party encounters a Hazardous Environmental Condition at the Site, or should it become known in any way that Hazardous Materials may be present at the Site or any adjacent areas in such a manner as to affect the performance of Design/Builder's services, Design/Builder may, at its option and without liability for consequential or any other damages, suspend performance of services on the Project until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition, and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the Design/Builder's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify Design/Builder terminating this Agreement for cause pursuant to Paragraph 6.06.

6.11 *Allocation of Risks – Indemnification*

- A. To the fullest extent permitted by law, Design/Builder shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, 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 Construction itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design/Builder or Design/Builder's officers, directors, members, partners, employees, or Subcontractors. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Design/Builder in Exhibit G, "Allocation of Risks," if any.
- B. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design/Builder, Design/Builder's officers, directors, members, partners, agents, consultants, employees, and Subcontractors from reasonable claims, costs, losses, and damages arising out of or relating to the Project, 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 Construction itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. In addition to the indemnity provided under Paragraph 6.11.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees, and Design/Builder's Subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to or resulting from a Hazardous Environmental Condition at, on, or under the Site, provided that (i) 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 Construction itself), including the loss of use resulting therefrom, and (ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

6.12 *Notices*

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail (return receipt requested), by facsimile, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 *Survival*

- A. All express representations, indemnifications, or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.

6.14 *Severability*

- A. Any provision or part of the Agreement 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 Design/Builder, which agree that the Agreement 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.

6.15 *Waiver*

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 *Headings*

- A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7– DEFINITIONS

7.01 *Defined Terms*

- A. Wherever a term used in this Agreement (including the Exhibits) is printed with an initial capital letter, the term has the meaning indicated in the General Conditions described in Paragraph 6.01.F. The meaning is applicable to both the singular and plural forms of the term.

B. Additional terms printed with initial capital letters have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Agreement* – This " Agreement Between Owner and Design/Builder for Preliminary Services" including those Exhibits listed in Article 8.
2. *Documents* – The documents, including data, reports, Technical Exhibits, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Design/Builder to Owner pursuant to this Agreement.
3. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
4. *Reimbursable Expenses* – The expenses incurred directly by Design/Builder or its Subconsultants for transportation and subsistence; toll telephone calls and telegrams, copying, facsimile, and courier charges; reproduction of reports, drawings, specifications, and similar items; and, if authorized in advance by Owner in writing, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner in writing, Reimbursable Expenses shall also include expenses incurred for computer time and the use of other highly-specialized equipment.
5. *Technical Exhibits* – Documents prepared by Design/Builder which set forth Design/Builder's plan for meeting the Owner's requirements.

ARTICLE 8–EXHIBITS

8.01 *Exhibits Included*

Exhibit A, Design/Builder's Services.

Exhibit B, Owner's Responsibilities.

Exhibit C, Payments to Design/Builder for Services and Reimbursable Expenses.

Exhibit D, Reserved.

Exhibit E, Proposal Form.

Exhibit F, Reserved.

Exhibit G, Insurance.

Exhibit H, Dispute Resolution.

Exhibit I, Allocation of Risks.

Exhibit J, Special Provisions.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to _____ inclusive, together with the Exhibits identified above) constitutes the entire agreement between Owner and Design/Builder and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which has an Effective Date of

_____.

Owner:

Design/Builder:

By: _____

By: _____

Title: _____

Title: _____

License or Certificate No. and State: _____

Address for giving notices:

Address for giving notices:

Authorized Project Representative:

Authorized Project Representative:

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is EXHIBIT A, consisting of _____ pages, referred to in and part of the Standard Form of Agreement between Owner and Design/Builder for Preliminary Services dated _____, _____.

[NOTE: Exhibits A and B should be carefully prepared with regard to selecting services which comprise Basic and Additional Services as appropriate to assure that all services Owner requires are provided by either Design/Builder or Owner.]

Design/Builder's Services

ARTICLE 1 – BASIC SERVICES

A1.01 *Study and Report Phase*

A. *Design/Builder shall:*

1. Consult with Owner to define and clarify Owner's requirements for the Project including Owner's budgetary limitations, if any, and review of Conceptual Documents, if any, and available data.
2. Request that Owner obtain data or services of the types described in Exhibit B which are not part of Design/Builder's Basic Services and are reasonably required to enable Design/Builder to complete its Basic Services and Additional Services, if any.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Design/Builder, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate _____ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Design/Builder's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria, and appropriate exhibits; and indicate the applicable requirements, considerations involved, and recommended alternate solutions. This Report will be accompanied by Design/Builder's estimate of Design/Build Cost for each recommended solution. This Report shall include descriptions of any deviations from Owner's requirements.
6. Perform or furnish the following additional Study and Report Phase tasks or deliverables:

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services

Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

- _____.
7. Furnish _____ review copies of the Report (and any other deliverables) to Owner within _____ days of authorization to begin services and review it with Owner.
 8. Revise the Report (and any other deliverables) in response to Owner's comments, as appropriate, and furnish ____ copies of the revised Report (and any other deliverables) to the Owner within _____ days of receipt of Owner's comments.
- B. Design/Builder's services under the Study and Report Phase will be considered complete on the date when the copies of the revised Report (and any other deliverables) have been delivered to Owner.

A1.02 Technical Exhibit Phase

- A. After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by Owner, and upon written authorization from Owner, Design/Builder shall:
1. Advise Owner if additional reports, data or other information or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data or other information and services.
 2. On the basis of the above acceptance, selection, and authorization, prepare the following Technical Exhibits:
 - a. drawings;
 - b. specifications;
 - c. other graphic or written materials;
 - d. criteria and information concerning Owner's requirements for the Project;
 - e. a basis of design;
 - f. design objectives and constraints;
 - g. space, capacity and performance requirements;
 - h. flexibility and expandability requirements; and
 - i. quality standards
 3. These Technical Exhibits will show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for Design/Builder. Such Technical Exhibits will be taken to a point of _____ percent of the final design.

NOTE TO USER

The percent of the final design can vary from 5 to 35 depending upon the type and complexity of the Project, and the extent to which the design is to be completed in order to define the full scope of the Work and agree on a Contract Price and Contract Times.

4. Provide necessary field surveys and topographic and utility mapping for the purpose of preparing Technical Exhibits. Utility mapping will be based upon information obtained from utility owners.
 5. Provide in writing to Owner descriptions of any deviations in the Technical Exhibits from either the Owner's requirements or the Report.
 6. Furnish or provide the following additional Technical Exhibit Phase tasks or deliverables:
_____.
 7. Furnish to Owner _____ final copies of the Technical Exhibits within _____ days after authorization to proceed with this phase, and review them with Owner.
 8. Revise the Technical Exhibits (and any other deliverables) in response to Owner's comments, as appropriate, and furnish _____ copies of the revised Technical Exhibits to the Owner within _____ days of receipt of Owner's comments.
- B. Design/Builder's services under the Technical Exhibit Phase will be considered complete on the date when final copies of the Technical Exhibits (and any other deliverables) have been delivered to Owner.

A1.03 *Proposal Phase*

- A. After acceptance by Owner of the Technical Exhibits and upon written authorization by Owner to proceed, Design/Builder shall submit a Proposal for the completion of the Work to Owner in the form included as Exhibit E to this agreement.
- B. The Proposal Phase will be considered complete upon signing of the Contract between Owner and Design/Builder to complete the Work, or cessation of contract negotiations between Owner and Design/Builder.

ARTICLE 2 – ADDITIONAL SERVICES

A2.01 *Owner's Authorization in Advance Required*

- A. If authorized in writing by Owner, Design/Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.
 1. Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services

Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

- and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Make measured drawings of or investigate existing conditions or facilities, or verify the accuracy of drawings or other information furnished by Owner.
 3. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Design/Builder or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revise previously accepted studies, reports, Technical Exhibits, or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design/Builder's control.
 4. Perform services resulting from evaluation by Design/Builder during the Study and Report Phase at Owner's request of alternative solutions in addition to those specified in Article A1.01.
 5. Perform services required as a result of Owner's providing incomplete or incorrect Project information, with respect to Exhibit B.
 6. Provide renderings or models for Owner's use.
 7. Undertake investigations and studies of Owner's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assist in obtaining financing for the Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing, audits, or inventories required in connection with construction performed by Owner.
 8. Perform services requiring out-of-town travel by Design/Builder, other than for visits to the Site or Owner's office.
 9. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Technical Exhibits or other Proposal Documents as a result of such review processes.

NOTE TO USER

If Design/Builder's services in this Agreement are to include services related to a Hazardous Environmental Condition, modifications will be necessary at Paragraph 6.10 of the Agreement.

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is EXHIBIT B, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Owner's Responsibilities

ARTICLE 1 – FURTHER RESPONSIBILITIES OF OWNER

B1.01 *In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:*

- A. Prepare and provide to Design/Builder the Agreement, General Conditions, Supplementary Conditions, and Bond Forms which will be included in the Proposal.
- B. Provide Design/Builder with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- C. Furnish copies of all design and construction standards which Owner will require to be included in the Contract Documents.
- D. Furnish to Design/Builder any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- E. Following Design/Builder's assessment of initially-available Project information and data, upon Design/Builder's request, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable Design/Builder to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions;
 - 2. Zoning, deed, and other land use restrictions;
 - 3. Property, boundary, easement, right-of-way, and other special engineering surveys or data, including establishing relevant reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
 - 4. Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in

- or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof;
5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas; and
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- F. Give prompt written notice to Design/Builder whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Design/Builder's services, or any defect or nonconformance in Design/Builder's services.
- G. Furnish, as appropriate, other services or provide written authorization to Design/Builder to provide required Additional Services as set forth in Article A2.
- H. Arrange for safe access to and make all provisions for Design/Builder and Design/Builder's subconsultants to enter upon public and private property as may reasonably be required for Design/Builder to perform services under the Agreement.
- I. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Design/Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination) and render in writing decisions pertaining thereto within a reasonable time after receipt of documents.
- J. Obtain reviews, approvals, and permits from all governmental authorities having jurisdiction over the Project or from such others as may be necessary for completion of each Phase of the services in this Agreement.

NOTE TO USER

EJCDC recommends that both this Agreement and the Design/Build Agreement for final design and construction contain a list designating responsibilities for obtaining and paying for permits. (See also Paragraphs 6.08 and 8.01.A.6.g of the General Conditions.)

- K. Provide, as required for the Project:
1. Accounting, bond, financial advisory, and insurance counseling services;
 2. Legal services with regard to the Project as needed by Owner, or as Design/Builder reasonably requests.
- L. Advise Design/Builder of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not

limited to, cost estimating, project peer review, value engineering, and constructibility review.

M. Inform Design/Builder of any specific requirements of safety or security programs that are applicable to Design/Builder while providing services at the Site.

N. Additional Owner responsibilities: _____.

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

ARTICLE 4–PAYMENTS TO DESIGN/BUILDER –LUMP SUM METHOD OF PAYMENT

C4.01 For Basic Services Having a Determined Scope

- A. Owner shall pay Design/Builder for Basic Services set forth in Exhibit A, including all related expenses, as follows:
1. A Lump Sum of \$_____ for Basic Services in Exhibit A allocated as follows:
 - a. Study and Report Phase \$ _____
 - b. Technical Exhibit Phase \$ _____
 - c. Proposal Phase \$ _____
 2. The Lump Sum includes compensation for Design/Builder's services and services of Design/Builder's Subcontractors, if any. Appropriate factors have been incorporated into the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
 3. The portion of the Lump Sum billed will be based upon Design/Builder's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum for the phase.

C4.02 For Additional Services Not Covered by Lump Sum

- A. Owner shall pay Design/Builder for Additional Services as follows:
1. For services of Design/Builder's principals and employees engaged directly in providing services pursuant to Article A2 of Exhibit A an amount equal to the cumulative hours devoted to such services by each class of Design/Builder's employees times hourly rates for each applicable billing class for all Additional Services, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any. The Design/Builder's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1. The total compensation for services under this Paragraph is estimated to be \$_____ based upon Contract Times of ___ months.

2. The amounts payable to Design/Builder for Reimbursable Expenses will be the services-related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of _____.
3. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of ____.
4. Standard Hourly Rates set forth in Appendix 1 to this Exhibit C include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

ARTICLE 4 – PAYMENTS TO DESIGN/BUILDER – DIRECT LABOR COSTS TIMES A FACTOR

C4.01 For Basic Services Having a Determined Scope and Additional Services

A. Owner shall pay Design/Builder for Basic Services and Additional Services as follows:

1. An amount equal to Design/Builder's Direct Labor Costs times a factor of _____ for all Basic Services and Additional Services by principals and employees engaged directly in providing such services, plus Reimbursable Expenses, plus Design/Builder's Subcontractors' charges, if any, all for an estimated total compensation for services of \$ _____, based on the following assumed distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Technical Exhibit Phase \$ _____
 - c. Proposal Phase \$ _____
 - d. Additional Services \$ _____
2. Design/Builder may alter the distribution of compensation between individual phases and Additional Services, noted herein, to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by Owner.

C4.02 Direct Labor Costs

- A. Direct Labor Costs means salaries and wages paid to personnel but does not include payroll related costs or benefits.
- B. The Direct Labor Costs factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance and other operating costs, but excluding operating margin or profit.

C4.03 For Reimbursable Expenses

- A. Owner shall pay Design/Builder for Reimbursable Expenses.
- B. The amounts payable to Design/Builder for Reimbursable Expenses will be the services-related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of _____.

C4.04 *For Design/Builder's Subcontractor's Charges*

- A. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of _____.

C4.05 *Other Provisions Concerning Payment*

- A. *Progress Payments:* The portion of the amounts invoiced for Design/Builder's services which are on account of services rendered on the basis of the Direct Labor Costs Times a Factor Plus a Percentage Fee Method of Payment will be billed based on the Direct Labor Costs of the cumulative hours devoted to the services by all of Design/Builder's employees, times the Direct Labor Costs factor, plus a percentage fee, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges incurred during the billing period.

- B. *Estimated Compensation Amounts*

1. Design/Builder's estimate of the amounts that will become payable for Basic Services and Additional Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Design/Builder under the Agreement. Notwithstanding the fact that the estimated amounts for Basic Services or Additional Services are exceeded, Design/Builder shall receive appropriate compensation based on the Direct Labor Costs Times a Factor Plus a Percentage Fee Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Design/Builder that a compensation amount thus estimated will be exceeded, Design/Builder shall give Owner written notice thereof. Promptly thereafter Owner and Design/Builder shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Design/Builder shall agree to a reduction in the remaining services to be rendered by Design/Builder, so that total compensation for such services will not exceed said estimated amount when such services are completed.

SUGGESTED FORMAT
(for use with D-510, 2008 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

**ARTICLE 4 – PAYMENTS TO DESIGN/BUILDER – STANDARD HOURLY RATES
METHOD OF PAYMENT**

C4.01 For Basic Services Having a Determined Scope and Additional Services

A. Owner shall pay Design/Builder for Basic Services and Additional Services as follows:

1. An amount equal to cumulative hours devoted to the Project by each class of Design/Builder's employees times Standard Hourly Rates for each applicable billing class for all services rendered, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any.
2. Design/Builder's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1.
3. The total compensation for services under this Paragraph is estimated to be \$_____, based on the following assumed distribution of compensation:
 - a. Study and Report Phase \$ _____
 - b. Technical Exhibit Phase \$ _____
 - c. Proposal Phase \$ _____
 - d. Additional Services \$ _____

C4.02 For Reimbursable Expenses

- A. Owner shall pay Design/Builder for Reimbursable Expenses.
- B. The amounts payable to Design/Builder for Reimbursable Expenses will be the services-related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of _____.

C4.03 For Design/Builder's Subcontractor's Charges

- A. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of _____.

C4.04 *Standard Hourly Rates*

- A. Standard Hourly Rates set forth in Appendix 1 to this Exhibit C include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

C4.05 *Other Provisions Concerning Payment*

- A. *Progress Payments:* The portion of the amounts billed for Design/Builder's services which are related to services rendered on the basis of the Standard Hourly Rates Method of Payment will be billed based on the cumulative hours devoted to the Project by each class of Design/Builder's employees, times the Standard Hourly Rate for each such employee class, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any, incurred during the billing period.

- B. *Estimated Compensation Amounts*

1. Design/Builder's estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Design/Builder under the Agreement. Notwithstanding the fact that the estimated amounts for Basic Services and Additional Services are exceeded, Design/Builder shall receive appropriate compensation based on the Standard Hourly Rates Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Design/Builder that a compensation amount thus estimated will be exceeded, Design/Builder shall give Owner written notice thereof. Promptly thereafter Owner and Design/Builder shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Design/Builder shall agree to a reduction in the remaining services to be rendered by Design/Builder, so that total compensation for such services will not exceed said estimated amount when such services are completed.

SUGGESTED FORMAT
(for use with D-510, 2008 Edition)

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Standard Hourly Rates and Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the rates are subject to review and adjustment per Exhibit C. Standard Hourly Labor Rates and Reimbursable Expense rates on the date of the Agreement are:

| | | |
|---|----------|--|
| Billing Class 9 Senior Associate | \$ _____ | hour |
| Billing Class 8 Staff Manager | _____ | /hour |
| Billing Class 7 Professional VI | _____ | /hour |
| Billing Class 6 Professional V | _____ | /hour |
| Billing Class 5 Professional IV | _____ | hour |
| Billing Class 4 Professional III | _____ | /hour |
| Billing Class 3 Professional II | _____ | /hour |
| Billing Class 2 Technician II | _____ | /hour |
| Billing Class 1 Technician I | _____ | /hour |
| Principal | _____ | hour |
| Support Staff | _____ | /hour |
| FAX | \$ _____ | /page |
| 8"x11" Copies/Impression | _____ | /page |
| Blueprint Copies | _____ | /sq. ft. |
| Reproducible Copies (Mylar) | _____ | /sq. ft. |
| Reproducible Copies (Paper) | _____ | /sq. ft. |
| Mileage (auto) | _____ | mile |
| Field Truck Daily Charge | _____ | /day |
| Mileage (Field Truck) | _____ | /mile |
| Field Survey Equipment | _____ | /day |
| Confined Space Equipment | _____ | /day plus expenses |
| Resident Project Representative Equipment | _____ | /month |
| Computer CPU Charge | _____ | /hour |
| Personal Computer Charge | _____ | /hour |
| CAD Charge | _____ | /hour |
| CAE Terminal Charge | _____ | /hour |
| VCR and Monitor Charge | _____ | /day, \$ _____/week, or \$ _____/month |
| Video Camcorder | _____ | /day, plus \$ _____/tape |
| Electrical Meters Charge | _____ | /week, or \$ _____/month |
| Flow Meter Charge | _____ | /week, or \$ _____/month |
| Rain Gauge | _____ | /week, or \$ _____/month |
| Sampler Charge | _____ | /week, or \$ _____/month |
| Dissolved Oxygen Tester Charge | _____ | /week |

Fluorometer _____/week
Laboratory Pilot Testing Charge _____/week, or \$_____/month
Soil Gas Kit _____/day
Submersible Pump _____/day
Water Level Meter _____/day, or \$_____/month
Soil Sampling _____/sample
Groundwater Sampling _____/sample
Health and Safety Level D _____/day
Health and Safety Level C _____/day
Electronic Media Charge _____/hour
Long Distance and Mobile Phone Calls At Cost

- a. Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident \$_____
- 6. Professional Liability Insurance \$_____
- 7. Other (specify): \$_____
 - B. By Owner:
 - 1. General Liability: \$_____
 - 2. Property Damage Liability Insurance: \$_____
 - 3. Property Insurance: \$_____
 - 4. Other (specify): \$_____
- 8. Additional Insureds. The following individuals or entities are to be listed on Owner's policies of insurance as additional insureds as provided in Paragraph 6.05.B of the Agreement:

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is **EXHIBIT E**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Proposal Form

ARTICLE 1 – PROPOSAL FORM

E1.01 *General*

NOTES TO USER

1. *A Proposal Form should be included as an exhibit to this Preliminary Agreement. A sample Proposal Form is not provided herein. However, users are referred to Section III of EJCDC Document No. D-001, Guide to Use of EJCDC Design/Build Documents (2009 Edition) for guidance in preparing a proposal form for a particular project.*
2. *Note that in Exhibit B, the Owner is to prepare certain contract Documents including the Agreement, General Conditions, Supplementary Conditions, and the Bond Forms. These Contract Documents should be specifically identified in the Proposal Form.*
3. *In preparing the Proposal Form, the Owner should consider which options for establishing Contract Price and Contract Times should be available to the Design/Builder.*
4. *Note that in preparing the Proposal Form for use with this Preliminary Agreement, it is not necessary to refer to “Proposal Documents.” Rather, the term “Contract Documents” should be used.*
5. *If the Owner has prepared any Conceptual Documents for the work, such documents need to be specifically identified in the Proposal Form. The Design/Builder should be required to specifically identify in the Proposal any deviations from the Conceptual Documents.*

(Exhibit E – Proposal Form)

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services
Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Dispute Resolution

Paragraph 6.09 of the Agreement is amended and supplemented to include the following agreement of the parties:

F6.09 Dispute Resolution

- A. Owner and Design/Builder agree that they shall submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by _____.
- B. All disputes between Owner and Design/Builder not resolved under Paragraph F6.09.A will be decided by arbitration in accordance with the rules and procedures of _____ then obtaining, subject to the limitations and restrictions stated in Paragraph F6.09.B.2 below. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Paragraph F6.09 will be specifically enforceable under the prevailing law of any court having jurisdiction.
 - 1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the _____. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.
 - 2. No arbitration arising out of or relating to this Agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Agreement.
- C. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in Paragraph F6.09.B.2 may be waived in whole or in part as to any claim, counterclaim, dispute, or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute, or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute, or other matter in question which is not specifically described in such consent or which is with any party not specifically described therein.
- D. The award rendered by the arbitrators will be final and binding, and judgment may be entered

upon it in any court having jurisdiction thereof.

- E. The arbitration may, at the initiation of either party, include by consolidation or joinder an individual or entity who is not a party to the Agreement if:
1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and
 3. the written consent of the other individual or entity sought to be included has been obtained for such inclusion.

SUGGESTED FORMAT
(for use with D-510, 2008 Edition)

This is **EXHIBIT I**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated _____, _____.

Allocation of Risks

The limitations on Design/Builder's liability and on damages set forth in this Exhibit G shall have no force and effect if Design/Builder and Owner enter into a contract for the remainder of the Work; in such case the terms of the subsequent contract shall establish the contractual limitations, if any, on Design/Builder's liability and on damages.

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

G6.11.D Limitation of Design/Builder's Liability

1. [Design/Builder's Liability Limited to Amount of Design/Builder's Compensation]

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed the total compensation received by Design/Builder under this Agreement.

OR

1. [Design/Builder's Liability Limited to Amount of Insurance Proceeds]

Design/Builder shall procure and maintain insurance as required by and set forth in Exhibit E to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Design/Builder by Design/Builder's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Design/Builder's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage

(Exhibit I – Allocation of Risks)

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services
Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all such uninsured Owner's Claims shall not exceed \$_____.

OR

1. [Design/Builder's Liability Limited to the Sum of \$_____]

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed \$_____.

2. [Exclusion of Special, Incidental, Indirect and Consequential Damages]

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from or in any way related to services included in this Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or breach of warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, and including but not limited to:

[NOTE: List here particular types of damages that Design/Builder may be concerned about by reason of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them".]

[NOTE: The above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph 6.11.D.1 above, by providing that "Design/Builder's total liability for such damages shall not exceed \$_____."]

SUGGESTED FORMAT
(for use with D-510, 2009 Edition)

This is EXHIBIT J, consisting of _____ pages, referred to in and part of the Agreement between Owner and Design/Builder for Preliminary Services dated _____, _____.

Special Provisions

J1.01 Article(s) _____ of the Agreement is/are amended to include the following agreement(s) of the parties:

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE

Prepared by



Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Contract Between Owner and Design/Builder (EJCDC D-700, 2009 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The instructions and comments contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition), including guides to preparation of the Request for Proposal, the Proposal Form, and Supplementary Conditions, are also carefully interrelated with the wording of this Agreement.

Note to User

Before entering into this Agreement, it is recommended that the parties determine if applicable Laws and Regulations prohibit or require alterations in the contemplated contractual arrangements and the assignments of responsibilities for a design/build project. Check competitive bidding, contractor licensing, design professional licensing, and professional practice Laws and Regulations, among others.

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.



**AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between _____ (Owner)

and _____ (Design/Builder).

Owner and Design/Builder hereby agree as follows:

ARTICLE 1 - WORK

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

ARTICLE 2 - THE PROJECT

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

ARTICLE 3 - CONTRACT TIMES

3.01. *Time of the Essence*

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

3.02. *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed on or before_____, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions on or before _____.

[or] [strike inapplicable paragraph]

3.02. *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within ____ days after the date when the Contract Times commence to run as provided in Paragraph 2.02 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions within _____ days after the date when the Contract Times commence to run.

3.03. *Liquidated Damages*

- A. Design/Builder and Owner recognize that time is of the essence as stated in Paragraph 3.01 above, and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02.A above, plus any extensions thereof allowed in accordance with Article ____ of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal, arbitration, or similar proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty), Design/Builder shall pay Owner \$_____ for each day that expires after the time specified in Paragraph 3.02.A above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Design/Builder shall pay Owner \$_____ for each day that expires after the time specified in Paragraph 3.02.A for completion and readiness for final payment until the Work is completed and ready for final payment.

NOTES TO USER

- 1. If failure to reach a Milestone on time is of such consequence to Owner that the assessment of liquidated damages for failure to reach one or more Milestones on time is to be provided, appropriate amending or supplementing language should be inserted here.*
- 2. If Substantial Completion earlier than the date listed in Paragraph 3.02.A is of economic benefit to the Owner, and Owner and Design/Builder agree on a bonus for early completion, appropriate language should be inserted here. Users should consider whether an early completion bonus should be paid based on the Substantial Completion date printed in Paragraph 3.02, the Substantial Completion date as extended by time extensions for delays within the control of the Owner, or the Substantial Completion date as extended by time extensions for all delays including those beyond Owner's control as defined in Paragraph 11.02.D of the General*

Conditions. Any early completion bonus provision should also include adequate notice provisions to allow Owner adequate time to make any necessary arrangements in order to begin the early use of the Project.

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 4.01.A and 4.01.B below:

A. *For all Work other than Unit Price Work, a Lump Sum of:*

(\$_____)

The specific cash allowances are included in the above price and have been computed in accordance with Paragraph 10.02 of the General Conditions.

B. For Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

| <u>No.</u> | <u>Item</u> | <u>Unit</u> | <u>Estimated Quantity</u> | <u>Unit Price</u> | <u>Total Estimated</u> |
|------------|-------------|-------------|-------------------------------|-----------------------|----------------------------|
|------------|-------------|-------------|-------------------------------|-----------------------|----------------------------|

ESTIMATED TOTAL OF ALL UNIT PRICE WORK \$(_____)

As provided in Paragraph 10.03.A of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner as provided in Paragraph 10.03.A of the General Conditions. Unit prices have been computed as provided in Paragraph 10.03 of the General Conditions.

[or] [strike inapplicable Paragraph 4.01; strike any inapplicable subparagraph in the first 4.01 if that is used]

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds at the prices stated in Design/Builder's Proposal, attached hereto as an exhibit.

NOTES TO USER

1. If adjustment prices for variations from stipulated Proposal quantities have been agreed to, insert appropriate provisions.

2. Where both 4.01.A and 4.01.B are used in the first option, users may wish to insert a statement of the total Contract Price which includes the total of 4.01.A and 4.01.B.
 3. If the second Paragraph 4.01 option is used, Design/Builder's Proposal must be attached as an exhibit and listed in Article 8.
- 4.02. The factor used to calculate the cost of fee for employees in the direct employ of Design/Builder performing Design Professional Services in accordance with Paragraph 10.01.A.1.b of the General Conditions shall be _____.

ARTICLE 5 - PAYMENT PROCEDURES

5.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. *Progress Payments; Retainage:* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the _____ day of each month during performance of the Work as provided in Paragraphs 5.01.A.1 and A.2 below. All such payments will be measured by the Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with Paragraph 13.03.B of the General Conditions.
 - a. _____ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage on account of Work completed.; and
 - b. _____ percent of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 13.02.A of the General Conditions), with the balance being retainage.
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design/Builder to _____ percent of the Contract Price (with the balance being retainage), less such amounts as Owner may withhold in accordance with Paragraph 13.03.B of the General Conditions and less _____ percent of Owner's estimate of the value of the Work shown in the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

B. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of _____ percent per annum.

ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

7.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:

- A. Design/Builder has examined and carefully studied the Contract Documents and the other related data identified in the Request for Proposals, but excluding the documents described in paragraph 8.01.K.
- B. Design/Builder 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. Design/Builder 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. Design/Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Owner.

NOTE TO USER

Modify the above if there are no such reports or drawings.

- E. Design/Builder 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.
- F. Design/Builder has considered the information known to Design/Builder; information commonly known to design/builders doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design/Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Design/Builder's safety precautions and programs.
- G. Based on the information and observations referred to above, Design/Builder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- H. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design/Builder has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Design/Builder.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

- A. This Agreement
- B. Performance Bond
- C. Payment Bond
- D. Other Bonds, identified as Exhibits _____
- E. Standard General Conditions of the Contract Between Owner and Design/Builder
- F. Supplementary Conditions
- G. Conceptual Documents identified in the Request for Proposals

NOTE TO USER

In the event that the Contract is the result of a negotiated proposal process and not the result of a competitive proposal process, 8.01.G may have to be reworded to identify the Conceptual Documents since there may not be a Request for Proposals.

- H. Design/Builder's Proposal;
- I. Addenda numbers _____ through _____ inclusive
- J. Exhibits to this Agreement

NOTE TO USER

Such additional exhibits may include the schedule of job classifications referred to in paragraphs 10.01.A.1 and 10.01.B.1 of the General Conditions, lists designating responsibilities for obtaining and paying for specific permits (see paragraphs 6.08 and 8.01.A.6.g of the General Conditions), and other exhibits as required.

- K. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:
 - 1. Notice to Proceed;

2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
 3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and
 4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.
- 8.02. The documents listed in Paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).

NOTE TO USER

Modify paragraph 8.01 as appropriate to indicate those documents listed as being incorporated by reference which are not to be attached to the Agreement.

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

ARTICLE 9 - MISCELLANEOUS

- 9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.
- 9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.
- 9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.05. 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 Design/Builder, 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.
- 9.06. Other Provisions

NOTE TO USER

Insert other provisions here if applicable.

IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

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

OWNER:

DESIGN/BUILDER:

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

Engineer License No. or
Certificate No.: _____
(Where applicable)

State: _____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor License No.: _____
(Where applicable)

State: _____

(If Design/Builder is a corporation, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Facsimile: _____

Phone: _____

Facsimile: _____

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SUBAGREEMENT BETWEEN DESIGN/BUILDER AND SUBCONTRACTOR ON THE BASIS OF A STIPULATED PRICE

Prepared by



ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Subagreement has been prepared for use with the Standard General Conditions of the Subcontract between Design/Builder and Subcontractor (EJCDC D-750, 2009 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The comments and instructions contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition) are also carefully interrelated with the language of this Subagreement.

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.



**SUBAGREEMENT
BETWEEN DESIGN/BUILDER AND SUBCONTRACTOR
ON THE BASIS OF A FIXED PRICE**

THIS SUBAGREEMENT is by and between _____ (“Design/Builder”) and _____ (“Subcontractor”).

Design/Builder and Subcontractor hereby agree as follows:

ARTICLE 1 – THE WORK

1.01. Subcontractor shall complete all Work as specified or indicated in the Subcontract Documents. The Work is described as follows:

NOTES TO USER

1. *The Work to be undertaken by the Subcontractor must be described in sufficient detail to establish clearly both the responsibilities of the Subcontractor and those of others including the Design/Builder.*
2. *It is recommended that particular attention be paid to the points and areas where the work of others contact that of this Subcontractor and where those respective responsibilities begin and end.*

ARTICLE 2 –THE PROJECT

2.01. The Project, of which the Work under the Subcontract Documents may be the whole or only a part, is generally described as follows:

ARTICLE 3 – SUBCONTRACT TIMES

3.01. *Time of the Essence*

- A. All times and time limits stated for Substantial Completion, completion, and readiness for final payment and Milestones, if any are of the essence of this Subcontract.

[Strike inapplicable paragraph(s)]

3.02. *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed on or before _____, _____, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions [confirm that this

refers to GCs for subagreement] on or before _____, _____.

[or]

3.02. *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within _____ days after the date when the Subcontract Times commence to run as provided in Paragraph 2.02.A of the General Conditions, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions within _____ days after the date when the Subcontract Times commence to run.

[or]

3.02. *Compliance with Design/Builder's Schedule*

- A. The Work will be pursued in compliance with the Design/Builder's schedule as set forth in the Supplementary Conditions of this Subcontract and as it may from time to time be amended or changed by Design/Builder.

NOTES TO USER

1. *Care should be taken to reflect any Milestones that may be significant to the progress of the Project, other subcontracts or to Design/Builder.*
2. *Where parts of the Work must be made available or released to others as a part of this Subcontract, the user must clearly define the acceptable conditions under which the release will be acceptable.*
3. *The requirements of Design/Builder's schedule with which the Subcontractor must comply must be set forth in detail in the Supplementary Conditions.*
4. *It may be appropriate to cite Design/Builder's schedule even if the time is determined by days or date. In these cases the third optional paragraph should be renumbered and retained.*

3.03. *Damages for Subcontractor Delay*

- A. Design/Builder and Subcontractor recognize that time is of the essence as stated in Paragraph 3.01 and that Design/Builder will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02.A above, plus any extensions thereof allowed in accordance with Article 11.02 the General Conditions. Subcontractor shall pay to Design/Builder its actual damages, including those damages paid to Owner or others by Design/Builder attributable to Subcontractor's failure to timely perform.

ARTICLE 4 – SUBCONTRACT PRICE

4.01. Design/Builder shall pay Subcontractor for completion of the Work in accordance with the Subcontract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following:

A. For all Work other than Unit Price Work, a Lump Sum of:

\$(_____)

All specific cash allowances are included in the above price and have been computed in accordance with the terms of the General Conditions.

NOTE TO USER

Where Unit Price Work is a part of the Subcontract, include Paragraph 4.01.B; otherwise omit it.

B. For all Unit Price Work, Design/Builder shall pay Subcontractor an amount equal to the **sum** [product?] of the established unit price as indicated in this Paragraph 5.01.B for each separately identified item of Unit Price Work times the actual quantity of that item completed:

UNIT PRICE WORK

| <u>No.</u> | <u>Item</u> | <u>Unit</u> | <u>Estimated Quantity</u> | <u>Unit Price</u> | <u>Total Estimated</u> |
|------------|-------------|-------------|-------------------------------|-----------------------|----------------------------|
|------------|-------------|-------------|-------------------------------|-----------------------|----------------------------|

ESTIMATED TOTAL OF ALL UNIT PRICE WORK \$(_____)

NOTE TO USER

Where Subcontractor’s Proposal is used to set unit prices, the following Paragraph should be used instead of 4.01.B above.

B. For all Unit Price Work, the unit prices shall be as stated in Subcontractor’s Proposal attached hereto as an exhibit. As provided in Paragraph 10.03.A of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Design/Builder as provided in Paragraph 10.03.A of the General Conditions. Unit prices have been computed as provided in Paragraph 10.03.B of the General Conditions.

ARTICLE 5 – PAYMENT PROCEDURES

5.01. Subcontractor shall submit and Design/Builder will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. *Progress Payments; Retainage:* Design/Builder shall make progress payments on account of the Subcontract Price on the basis of Subcontractor's Applications for Payment to be submitted on or about the ____ day of each month during performance of the Work as provided in Paragraphs 5.01.A.1.a and A.1.b below. All such payments will be measured by the Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions or, in the case of Unit Price Work, by the number of units completed.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Design/Builder may withhold in accordance with Paragraph 13.03.B of the General Conditions:

a. ____ percent of Cost of the Work completed (with the balance being retainage). If 50 percent of the Work has been completed as determined by Design/Builder, and if the character and progress of the Work have been satisfactory to Design/Builder, then as long as the character and progress of the Work remain satisfactory, there will be no additional retainage on account of Work completed; and

b. ____ percent (with the balance being retainage) of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Design/Builder as provided in Paragraph 13.02.A of the General Conditions), with the balance being retainage.

2. Upon Substantial Completion, in an amount sufficient to increase total payments to Subcontractor to ____ percent of the Subcontract Price (with the balance being retainage), less such amounts as Design/Builder may withhold, in accordance with Paragraph 13.03.B of the General Conditions and less ____ percent of Design/Builder's estimate of the value of the Work under this Subcontract shown in the list of items to be completed or corrected that is attached to the certificate of Substantial Completion.

B. *Final Payment:* Upon final completion and acceptance of the Work in accordance with Paragraph 13.08 of the General Conditions, Design/Builder shall pay the remainder of the Subcontract Price.

ARTICLE 6 – INTEREST

6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of __ percent per annum.

ARTICLE 7 – SUBCONTRACTOR'S REPRESENTATIONS

7.01. *Subcontractor makes the following representations:*

- A. Subcontractor has examined and carefully studied the Subcontract Documents and the other related data identified in the Request for Proposals.
- B. Subcontractor 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. Subcontractor 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. Subcontractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in the Supplementary Conditions and (2) reports and drawings of a Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Design/Builder.

NOTE TO USER

If the site condition reports and/or drawings referred to in Paragraph 7.01.D do not exist, either modify that paragraph or delete it and renumber the following accordingly.

- E. Subcontractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) 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 Subcontractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Subcontract Documents to be employed by Subcontractor, and safety precautions and programs incident thereto.

NOTE TO USER

If the site condition reports and/or drawings referred to in Paragraph 7.01.D. do not exist, delete the phrase “additional or supplementary” in the first sentence of Paragraph 7.01.E.

- F. Subcontractor is aware of the general nature of work to be performed by Design/Builder and others at the Site that relates to the Work as indicated in the Subcontract Documents.
- G. Subcontractor has considered the information known to Subcontractor; information commonly known to trade contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Subcontractor, including any specific means, methods, techniques, sequences, and procedures of

construction expressly required by the Subcontract Documents; and (3) Subcontractor's safety precautions and programs.

- H. Based on the information and observations referred to above, Subcontractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Subcontract for the performance of the Work at the Subcontract Price, within the Contract Times, and in accordance with the other terms and conditions of the Subcontract Documents.
- I. Subcontractor has given Design/Builder written notice of all conflicts, errors, ambiguities, or discrepancies that Subcontractor has discovered in the Subcontract Documents, and the written resolution thereof by Design/Builder is acceptable to Subcontractor.
- J. The Subcontract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – SUBCONTRACT DOCUMENTS

- 8.01. The Subcontract Documents which comprise the entire agreement between Design/Builder and Subcontractor concerning the Work consist of the following:
- A. This Construction Subagreement.
 - B. The Performance Bond, identified as Exhibit _____.
 - C. The Payment Bond, identified as Exhibit _____.
 - D. Any Other Bonds, identified as Exhibit _____.
 - E. Standard General Conditions of the Subcontract between Design/Builder and Subcontractor.
 - F. Supplementary Conditions.
 - G. Specifications bearing the title _____, as listed in table of contents thereof.
 - H. Drawings consisting of a cover sheet with each sheet bearing the following general title: _____

NOTE TO USER

Fill in, and, if a set of Drawings is not attached to each signed counterpart of Subcontract, so indicate, in which case Design/Builder and Subcontractor should initial or otherwise appropriately identify each Drawing.

- I. Subcontractor's Proposal, identified as Exhibit _____

[If applicable]

J. Addenda numbers _____ to _____, inclusive.

[Those Addenda which pertain exclusively to the bidding process need not be listed.]

K. Exhibits to this Subagreement, if any

[List those Exhibits not named above]

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

Notice to Proceed
Change Orders
Work Change Directives
Other Bonds as may be required

8.02. The documents listed in Paragraph 8.01 above are attached to this Subcontract (except as expressly noted otherwise above).

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

ARTICLE 9 – MISCELLANEOUS

9.01. The Standard General Conditions of the Subcontract between Design/Builder and Subcontractor are referred to herein as the General Conditions.

9.02. Terms used in this Subcontract which are defined in Article 1 of the General Conditions will have the meanings indicated therein.

9.03. No assignment by a party hereto of any rights under or interests in the Subcontract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Subcontract Documents.

9.04. Design/Builder and Subcontractor 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 Subcontract Documents.

9.05. Subcontractor binds itself to Design/Builder under this Subcontract in the same manner as the Design/Builder is bound to Owner under the Owner-Design/Builder Contract Documents.

Design/Builder has made relevant portions of the Owner-Design/Builder Contract Documents available to Subcontractor.

- 9.06. Any provision or part of the Subcontract 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 Design/Builder and Subcontractor, who agree that the Subcontract 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.

9.07. Other Provisions:

[Insert other provisions here if applicable.]

IN WITNESS WHEREOF, Design/Builder and Subcontractor have signed this Subagreement in duplicate. One counterpart each has been delivered to Design/Builder and Subcontractor. All portions of the Subcontract Documents have been signed, initialed or identified by Design/Builder and Subcontractor.

The Effective Date of this Subcontract will be _____, 20_____.

Design/Builder:

Subcontractor:

By

By:

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(If Design/Builder is a corporation, attach evidence of authority to sign.)

Contractor License No.: _____
(If Subcontractor is a corporation, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile : _____

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.



AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF COST-PLUS

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Contract Between Owner and Design/Builder (EJCDC D-700, 2009 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The instructions and comments contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition), including guides to preparation of the Request for Proposal, the Proposal Form, and Supplementary Conditions, are also carefully interrelated with the wording of this Agreement.

Note to User

Before entering into this Agreement, it is recommended that the parties determine if applicable Laws and Regulations prohibit or require alterations in the contemplated contractual arrangements and the assignments of responsibilities for a design/build project. Check competitive bidding, contractor licensing, design professional licensing, and professional practice Laws and Regulations, among others.

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.



ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER ON THE BASIS OF COST-PLUS

THIS AGREEMENT is by and between _____ (Owner) and _____ (Design/Builder).

Owner and Design/Builder hereby agree as follows:

ARTICLE 1 – THE WORK

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

ARTICLE 2 - THE PROJECT

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

ARTICLE 3 - CONTRACT TIMES

3.01. Time of the Essence

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

3.02. Dates for Substantial Completion and Final Payment

A. The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions on or before _____.

[or] [strike inapplicable paragraph]

3.02. Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within _____ days after the date when the Contract Times commence to run as provided in Paragraph 2.02 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions within _____ days after the date when the Contract Times commence to run.

3.03. Liquidated Damages

A. Design/Builder and Owner recognize that time is of the essence as stated in Paragraph 3.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02.A above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expenses, and difficulties involved in proving in a legal, arbitration, or similar proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty) Design/Builder shall pay Owner \$_____ for each day that expires after the time specified in Paragraph 3.02.A for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Design/Builder shall pay Owner \$_____ for each day that expires after the time specified in Paragraph 3.02.A for completion and readiness for final payment until the Work is completed and ready for final payment.

NOTES TO USER

- 1. If failure to reach a Milestone on time is of such consequence to Owner that the assessment of liquidated damages for failure to reach one or more Milestones on time is to be provided, appropriate amending or supplementing language should be inserted here.*
- 2. If Substantial Completion earlier than the date listed in Paragraph 3.02.A is of economic benefit to the Owner, and Owner and Design/Builder agree on a bonus for early completion, appropriate language should be inserted here. Users should consider whether an early completion bonus should be paid based on the Substantial Completion date printed in Paragraph 3.02, the Substantial Completion date as extended by time extensions for delays within the control of the Owner, or the Substantial Completion date as extended by time extensions for all delays including those beyond Owner's control as defined in Paragraph 11.02.D of the General Conditions. Any early completion bonus provision should also include adequate notice provisions to allow Owner adequate time to make necessary arrangements to begin the early use of the Project.*

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the amounts determined pursuant to Paragraphs 4.01.A, 4.01.B, and 4.01.C below:

A. For all Work other than Unit Price Work, the Cost of the Work which shall be determined as provided in Articles 5 and 6 below, subject to additions and deletions as provided in the Contract Documents and subject to the limitations set forth in Article 8 below.

B. Design/Builder's fee for overhead and profit in accordance with Article 6.

C. For Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item completed:

UNIT PRICE WORK

| No. | Item | Unit | Estimated Quantity | Unit Price | Total Estimated |
|-----|------|------|--------------------|------------|-----------------|
|-----|------|------|--------------------|------------|-----------------|

ESTIMATED TOTAL OF ALL UNIT PRICE WORK \$(_____)

The prices for Unit Price Work as of the Effective Date are based on estimated quantities. As provided in Paragraph 10.03.A of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner as provided in Paragraph 10.03.A of the General Conditions. Unit prices have been computed as provided in Paragraph 10.03 of the General Conditions.

[strike either subparagraphs A-C above or A below]

A. For all Work, at the prices stated in Design/Builder's Proposal, attached hereto as an exhibit.

NOTES TO USER

- 1. If adjustment prices for variations from stipulated Proposal quantities have been agreed to, insert appropriate provisions.*
- 2. Note that the Guaranteed Maximum Price in Article 7 does not include unit price work.*
- 3. If alternate 4.01.A is used, Design/Builder's Proposal must be attached as an exhibit and listed in Article 13.*
- 4. Where combinations of subparagraphs are used, users may also wish to include a statement for the total Contract Price based on estimated quantities listed in 4.01.C.*

ARTICLE 5 - COST OF THE WORK

5.01. Cost of the Work shall be determined as provided in Paragraph 10.01 of the General Conditions, but, in addition to any limitations therein set forth, it shall not include costs in excess of any Guaranteed Maximum Contract Price as set forth in Article 7 hereof.

ARTICLE 6 - DESIGN/BUILDER'S FEE

6.01. The Design/Builder's fee shall be determined as follows:

[Strike inapplicable paragraph(s)]

A. A fixed fee of _____dollars (\$_____) which shall be subject to increases or decreases for changes in the Work as provided in Paragraph 8.01.A below.

[or]

A. A fee based on the following percentages of the various portions of the Cost of the Work:

1. Payroll costs for

- a. employees other than engineers and engineering technicians (see Paragraph 10.01.A.1.a of the General Conditions): _____ percent.
- b. engineers and engineering technicians who are employees of Design/Builder (see Paragraph 10.01.A.1.b of the General Conditions): _____percent.

2. Material and equipment costs amounts (see Paragraphs 10.01.A.2 of the General Conditions): _____ percent.

3. Amounts paid to Subcontractors (see Paragraphs 10.01.A.3 and 10.01.A.4 of the General Conditions):_____ percent.

4. Amounts paid to special consultants and supplemental costs (see Paragraphs 10.01.A.5 and 10.01.A.6 of the General Conditions):_____ percent.

5. No fee shall be paid for costs listed in Paragraph 10.01.B of the General Conditions.

6.02. Design/Builder guarantees that the maximum fee amount payable by Owner in accordance with Paragraph 6.01.A will not exceed \$_____ subject to increases or decreases for changes in the Work as provided in Paragraph 8.01 below.

ARTICLE 7 - GUARANTEED MAXIMUM PRICE

7.01. Design/Builder guarantees that the maximum obligation of Owner for the sum of the Cost of the Work plus the Design/Builder's fee under Article 6 will not exceed _____ dollars (\$_____) "Guaranteed Maximum Price" subject to increases or decreases for changes in the Work. The Guaranteed Maximum Price includes cash allowances in accordance with Paragraph 10.02 of the General Conditions. The Guaranteed Maximum Price will not apply to Unit Price Work.

NOTES TO USER

1. If a Guaranteed Maximum Price is not to be included as a term of the Contract, insert the words "Not Applicable" following the \$ sign, rather than deleting Article 7 in its entirety. Such deletion of Article 7 would result in incorrect cross-references to other Articles.

2. As an incentive to Design/Builder to complete the Work for an amount less than the Guaranteed Maximum Price (particularly when the Guaranteed Maximum Price is established based on definitive documentation), the parties may agree to a shared savings of the amount of the Guaranteed Maximum Price less the Contract Price. Sample language is as follows (with an appropriate change at Paragraph 9.03):

7.02. If the Contract Price is less than the Guaranteed Maximum Price, Owner shall pay Design/Builder _____ percent of the difference of the Guaranteed Maximum Price and the Contract Price. Such payment shall become due at the end of the correction period in accordance with Paragraph 12.07 of the General Conditions.

ARTICLE 8 - CHANGES IN THE CONTRACT PRICE

8.01. The amount of any increases or decreases in Design/Builder's fee or in any Guaranteed Maximum Price or fee which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

[strike inapplicable paragraphs]

A. If Design/Builder's fee is a fixed fee, any increase or decrease in Design/Builder's fee resulting from net additions or decreases in the Cost of the Work shall be determined in accordance with Paragraph 11.01.C of the General Conditions.

[or]

A. If the Design/Builder's fee is a percentage fee not subject to any guaranteed maximum limitation, Design/Builder's fee will adjust automatically as the Cost of the Work changes.

B. Wherever there is a Guaranteed Maximum Price or Guaranteed Maximum [Design/Builder's] fee:

1. In the case of net additions in the Work, the amount of any increase in the Guaranteed Maximum (Price or Fee) shall be determined in accordance with Paragraph 10.01 and 10.02 of the General Conditions.

2. In the case of net deletions in the Work, the amount of any such decrease shall be determined in accordance with Paragraph 10.02.C of the General Conditions, and any Guaranteed Maximum (Price or Fee) shall be reduced by mutual agreement.

ARTICLE 9 - PAYMENT PROCEDURES

9.01. Submittal and Processing of Payments

A. Design/Builder shall submit, and Owner will process, Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will indicate the amount of the Design/Builder's fee then payable.

9.02. Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the _____ day of each month during performance of the Work as provided in Paragraphs 9.02.A.1 and 9.02.A.2 below. All such payments will be measured by the Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

1. *For Cost of Work:* Progress payments on account of the Cost of the Work will be made:

a. Prior to Substantial Completion, in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with Paragraph 13.03.B of the General Conditions.

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

(2) _____ percent of (with the balance being retainage) of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in Paragraph 13.02.A of the General Conditions), with the balance being retainage.

b. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design/Builder to _____ percent of the Contract Price (with the balance being retainage), less such amounts as Owner shall determine that Owner may withhold, in accordance with Paragraph 13.03.B of the General Conditions and less _____ percent of Owner's estimate of the value of the Work shown in the list of items to be completed or corrected that is attached to the certificate of Substantial Completion..

2. *For Design/Builder's fee:* Progress payments on account of the Design/Builder's fee will be made as follows:

[strike inapplicable paragraph]

a. If the Design/Builder's fee is a fixed fee, payments prior to Substantial Completion will be in an amount equal to _____ percent of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work measured by the Schedule of Values established as provided in Paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work on the number of units completed), and upon Substantial Completion in an amount sufficient to increase total payments to Design/Builder on account of that fee to _____ percent of the Design/Builder's fee.

[or]

- a. If the Design/Builder's fee is a percentage fee, payments prior to Substantial Completion will be in an amount equal to _____ percent of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion in an amount sufficient to increase total payments to Design/Builder on account of that fee to _____ percent of the Design/Builder's fee.

9.03. Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 10 - INTEREST

- 10.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of _____ percent per annum.

ARTICLE 11 - DESIGN/BUILDER'S REPRESENTATIONS

- 11.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:
 - A. Design/Builder has examined and carefully studied the Contract Documents (including the Addenda) listed in Paragraphs 13.01.A through J and the other related data identified in the Request for Proposals but excluding the documents described in Paragraph 13.01.K.
 - B. Design/Builder 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. Design/Builder 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. Design/Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Owner.

NOTE TO USER

If some or all of the reports and/or drawings described in 11.01.D do not exist, either modify 11.01.D or delete 11.01.D and renumber accordingly.

- E. Design/Builder 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.
- F. Design/Builder has considered the information known to Design/Builder; information commonly known to design/builders doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design/Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Design/Builder's safety precautions and programs.
- G. Based on the information and observations referred to above, Design/Builder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- H. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design/Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design/Builder.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 12 - ACCOUNTING RECORDS

- 12.01. Design/Builder shall keep such full and detailed accounts of all materials, equipment, and labor entering into the Work as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to Owner. Owner shall be afforded access to all Design/Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and other similar data relating to the Cost of the Work and Design/Builder's fee. Design/Builder shall preserve all such documents for a period of three years after final payment by Owner.

ARTICLE 13 - CONTRACT DOCUMENTS

- 13.01. The Contract Documents consist of the following:
 - A. This Agreement;
 - B. Performance Bond;
 - C. Payment Bond;
 - D. Other Bonds, identified as Exhibits _____;
 - E. Standard General Conditions of the Contract Between Owner and Design/Builder;

F. Supplementary Conditions;

G. Conceptual Documents identified in the Request for Proposals;

NOTE TO USER

In the event that the Contract is the result of a negotiated proposal process and not the result of a competitive proposal process, 13.01.G may have to be reworded to identify the Conceptual Documents since there may not be a Request for Proposals.

H. Design/Builder's Proposal;

I. Addenda numbers _____ through _____ inclusive;

J. Exhibits to this Agreement (pages _____ to _____, inclusive);

NOTE TO USER

Such additional exhibits may include the schedule of job classifications referred to in Paragraphs 10.01.A.1 and 10.01.B.1 of the General Conditions, lists designating responsibilities for obtaining and paying for specific permits (see Paragraphs 6.08 and 8.01.A.6.g of the General Conditions), and other exhibits as required.

K. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:

1. Notice to Proceed;
2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to Paragraph 3.04.A of the General Conditions;
3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and
4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

13.02. The documents listed in Paragraph 13.01 above are attached to this Agreement (except as expressly noted otherwise above).

NOTE TO USER

Modify Paragraph 13.01 as appropriate to indicate those documents listed as being incorporated by reference which are not to be attached to the Agreement.

13.03. There are no Contract Documents other than those listed above in this Article 13.

13.04. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.03.A of the General Conditions.

ARTICLE 14 - MISCELLANEOUS

- 14.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.
- 14.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.
- 14.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 14.04. Owner and Design/Builder 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.
- 14.05. 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 Design/Builder, 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.
- 14.06. Other Provisions

NOTE TO USER

Insert other provisions here if applicable. WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Design/Builder.

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

OWNER:

DESIGN/BUILDER:

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Engineer License or Certificate No. _____
(Where applicable)

State: _____

Contractor License No. _____
(Where applicable)

State: _____

(If Design/Builder is a corporation, attach evidence of authority to sign.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

Phone: _____

Facsimile: _____

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SUGGESTED FORM OF SUBAGREEMENT BETWEEN DESIGN/BUILDER AND SUBCONTRACTOR ON THE BASIS OF COST-PLUS

Prepared by



Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Subagreement has been prepared for use with the Standard General Conditions of the Subcontract between Design/Builder and Subcontractor (EJCDC D-750, 2009 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The comments and instructions contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition) are also carefully interrelated with the language of this Subagreement.

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

**SUBAGREEMENT
BETWEEN DESIGN/BUILDER AND SUBCONTRACTOR
ON THE BASIS OF COST-PLUS**

THIS SUBAGREEMENT is by and between _____ (Design/Builder)
and _____ (Subcontractor).

Design/Builder and Subcontractor hereby agree as follows:

ARTICLE 1 – THE WORK

- 1.01. Subcontractor shall complete all Work as specified or indicated in the Subcontract Documents.
The Work is described as follows:

NOTES TO USER

1. *The Work to be undertaken by the Subcontractor must be described in sufficient detail to establish clearly both the responsibilities of the Subcontractor and those of others including the Design/Builder.*
2. *It is recommended that particular attention be paid to the points and areas where the work of others contact that of this Subcontractor and where those respective responsibilities begin and end.*

ARTICLE 2 – THE PROJECT

- 2.01. The Project, of which the Work under the Subcontract Documents may be the whole or only a part, is generally described as follows:

ARTICLE 3 – SUBCONTRACT TIMES

3.01. Time of the Essence

- A. All times and time limits stated for Substantial Completion, completion and readiness for final payment, and Milestones, if any, are of the essence of this Subcontract.

[Strike inapplicable paragraph(s)]

3.02. Dates for Substantial Completion and Final Payment

- A. The Work will be substantially completed on or before _____, _____, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions [confirm that this refers to GCs for subagreement] on or before _____, _____.

[or]

3.02. Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within _____ days after the date when the Subcontract Times commence to run as provided in Paragraph 2.02.A of the General Conditions, and completed and ready for final payment in accordance with Paragraph 13.08 of the General Conditions within _____ days after the date when the Subcontract Times commence to run.

[or]

3.02. Compliance with Design/Builder's Schedule

- A. The Work will be pursued in compliance with the Design/Builder's Schedule as set forth in the Supplementary Conditions of this Subcontract and as it may from time to time be amended or changed by Design/Builder.

NOTES TO USER

1. *Care should be taken to reflect any Milestones that may be significant to the progress of the Project, other subcontracts, or to Design/Builder.*
2. *Where parts of the Work must be made available or released to others as a part of this Subcontract, the user must clearly define the acceptable conditions under which the release will be acceptable.*
3. *The requirements of Design/Builder's schedule with which the Subcontractor must comply must be set forth in detail in the Supplementary Conditions.*
4. *It may be appropriate to cite Design/Builder's schedule even if the time is determined by days or date. In these cases the third optional paragraph should be renumbered and retained.*

3.03. Damages for Subcontractor's Delay

- A. Design/Builder and Subcontractor recognize that time is of the essence as stated in Paragraph 3.01 and that Design/Builder will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02.A above, plus any extensions thereof allowed in accordance with Article 11.02 of the General Conditions. Subcontractor shall pay to Design/Builder its actual damages, including those damages paid to Owner or others by Design/Builder, attributable to Subcontractor's failure to timely perform.

ARTICLE 4 – SUBCONTRACT PRICE

4.01. Design/Builder shall pay Subcontractor for completion of the Work in accordance with the Subcontract Documents an amount in current funds equal to the Cost of the Work plus a Subcontractor's Fee for overhead and profit, plus unit price work, if any, all of which shall be determined as provided below.

NOTE TO USER

Where Unit Price Work is a part of the Subcontract, include Paragraph 4.02; otherwise omit it.

4.02. For all Unit Price Work, Design/Builder shall pay Subcontractor an amount equal to the sum of the established unit price, as indicated in this Paragraph 4.02, for each separately identified item of Unit Price Work times the actual quantity of that item completed.

| <u>No.</u> | Item | Unit | UNIT PRICE WORK | | |
|------------|------|------|--------------------|------------|-----------------|
| | | | Estimated Quantity | Unit Price | Total Estimated |

ESTIMATED TOTAL OF ALL UNIT PRICE WORK (\$_____)

The prices for Unit Price Work set forth as of the Effective Date are based on estimated quantities. As provided in Paragraph 10.03.A of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Design/Builder as provided in Paragraph 10.03.A of the General Conditions. All Unit Prices have been computed as provided in 10.03.B the General Conditions.

NOTE TO USER

Where Subcontractor’s Proposal is used to set unit prices, the following paragraph should be used instead of 4.02 above.

4.02. For all Unit Price Work, the unit prices shall be as stated in Subcontractor’s Proposal attached hereto as an exhibit.

ARTICLE 5 – COST OF THE WORK

5.01. The Cost of the Work shall be determined as provided in Paragraph 10.01.A of the General Conditions, subject to the limitations set forth in Paragraph 10.01.B of the General Conditions and to the Guaranteed Maximum Price set forth in Article 7 below. The Cost of the Work shall also be subject to additions and deletions as provided in the Subcontract Documents and subject to the limitations set forth in Article 8 below.

ARTICLE 6 – SUBCONTRACTOR'S FEE

6.01. Subcontractor's Fee shall be determined as follows:

[Strike inapplicable paragraph(s)]

- A. A fixed Fee of _____ dollars (\$_____) which shall be subject to increases or decreases for changes in the Work as provided in Paragraph 8.01 below.

[or]

- A. A Fee based on the following percentages of the various portions of the Cost of the Work all as described in Article 11 of the General Conditions:
 - 1. _____ percent of amounts paid as Payroll costs as described in Paragraph 10.01.A.1
 - 2. _____ percent of amounts paid for Material and Equipment costs as described in Paragraph 10.01.A.2
 - 3. _____ percent of amounts paid to Subsubcontractors as described in Paragraph 10.01.A.3
 - 4. _____ percent of amounts paid to Special Consultants described in Paragraph 10.01.A.4, and
 - 5. _____ percent of amounts paid as Supplemental costs as described in Paragraph 10.01.A.5
 - 6. No fee shall be paid for costs listed in Paragraph 10.01.B of the General Conditions.

[In either case include the following if part of the agreement between the parties]

- B. Subcontractor guarantees that the maximum amount payable by Design/Builder as a Fee in accordance with this Paragraph 6.01 will not exceed \$_____ subject to increases or decreases for changes in the Work as provided in Paragraph 8.01 below.

ARTICLE 7 – GUARANTEED MAXIMUM PRICE

7.01. Subcontractor guarantees that the maximum obligation of the Design/Builder for the sum of the Cost of the Work plus the Subcontractor's Fee will not exceed _____ dollars (\$_____) subject to increases or decreases for changes in the Work, hereinafter the Guaranteed Maximum Price. The Guaranteed Maximum Price does not include Unit Price Work.

Note to User

- 1. *If a Guaranteed Maximum Price is not to be included as a term of the Contract, insert the words "Not Applicable" following the \$ sign, rather than deleting Article 7 in its entirety. Such deletion of Article 7 would result in incorrect cross-references to other Articles.*

ARTICLE 8 – CHANGES IN THE SUBCONTRACT PRICE

8.01. The amount of any increases or decreases in the Subcontractor's Fee and in any Guaranteed Maximum Price which results from a Change Order shall be set forth in the applicable Change Order subject to the following:

[Strike inappropriate paragraphs]

A. If Subcontractor's Fee is a fixed fee, any increase or decrease in the Subcontractor's Fee shall be determined in accordance with Paragraph 11.01.C.2 of the General Conditions.

[or]

A. If Subcontractor's Fee is a percentage fee and is not subject to any guaranteed maximum limitation, Subcontractor's Fee will adjust automatically as the Cost of the Work changes.

[or]

A. If Subcontractor's Fee is subject to a guaranteed maximum limitation, the amount of any increase or decrease shall be determined in accordance with Paragraph 11.01.C.2 of the General Conditions, subject to the fee limitation.

ARTICLE 9 – PAYMENT PROCEDURES

9.01. Subcontractor shall submit and Design/Builder will process Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will indicate the amount of the Subcontractor's Fee then payable.

A. Progress Payments; Retainage. Design/Builder shall make progress payments as provided in Paragraphs 9.01.A.1.a and A.1.b below on account of the Subcontract Price on the basis of Subcontractor's Applications for Payment, which are to be submitted on or about the ____ day of each month during performance of the Work. All such payments will be subject to the limitations of any Guaranteed Maximum Price or Subcontractor's Fee and will be *measured by* the acceptable Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions (and in the case of Unit Price Work, the number of units completed).

1. For Cost of Work: Progress payments on account of the Cost of the Work will be made as follows:

a. 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 Design/Builder may withhold in accordance with Paragraph 13.03.B of the General Conditions.

(1) ____ percent of Cost of the Work completed (with the balance being retainage). If 50 percent of the Work has been completed as determined by Design/Builder, and if the character and progress of the Work have been satisfactory to Design/Builder, then as long as the character and progress of the Work remain satisfactory to Design/Builder, there will be no additional retainage on account of Work completed.

(2) ____ percent of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Design/Builder as provided in Paragraph 13.02.A of the General Conditions), with the balance being retainage.

- b. Upon Substantial Completion, in an amount sufficient to increase total payments to Subcontractor to ____ percent of the Contract Price (with the balance being retainage), less such amounts as Design/Builder shall determine, or Design/Builder may withhold, in accordance with Paragraph 13.04.B of the General Conditions and less ____ percent of Design/Builder's estimate of the value of the Work under this Subcontract shown in the tentative list of items to be completed or corrected that is attached to the certificate of Substantial Completion.

2. For Subcontractor's Fee: Progress payments on account of the Subcontractor's Fee will be made as follows:

[Delete inapplicable paragraphs]

- a. If the Subcontractor's Fee is a fixed fee, payments prior to Substantial Completion will be in an amount equal to ____ percent of such fee earned to the date of the approved Application for Payment (less in each case payments previously made on account of such fee) based on the progress of the Work measured by the Schedule of Values established as provided in Paragraph 2.06.A of the General Conditions, and in the case of Unit Price Work on the number of units completed; and upon Substantial Completion in an amount sufficient to increase total payments to Subcontractor on account of its fee to ____ percent of the Subcontractor's Fee.

[or]

- a. If the Subcontractor's Fee is a percentage fee, payments prior to Substantial Completion will be in an amount equal to ____ percent of such fee (less in each case payments previously made on account of such fee) based on the Cost of the Work completed, and upon Substantial Completion in an amount sufficient to increase total payments to Subcontractor on account of that fee to ____ percent of the Subcontractor's Fee.

B. Final Payment: Upon final completion and acceptance of the Work in accordance with Paragraph 13.08 of the General Conditions, Design/Builder shall pay the remainder of the Contract Price.

ARTICLE 10 – INTEREST

- 10.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of ____ percent per annum.

ARTICLE 11 – SUBCONTRACTOR'S REPRESENTATIONS

11.01. Subcontractor makes the following representations:

- A. Subcontractor has examined and carefully studied the Subcontract Documents and the other related data identified in the Request for Proposals.

- B. Subcontractor 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. Subcontractor 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. Subcontractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site *that have been identified or made available by Design/Builder*.

NOTE TO USER

If the site condition reports and/or drawings referred to in Paragraph 11.01.D do not exist, either modify it or delete.

- E. Subcontractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) 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 Subcontractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Subcontract Documents to be employed by Subcontractor, and safety precautions and programs incident thereto.

NOTE TO USER

If the site condition reports and/or drawings referred to in Paragraph 7.01.D do not exist, delete the phrase "additional or supplementary" in the first sentence of Paragraph 7.01.E.

- F. Subcontractor is aware of the general nature of work to be performed by Design/Builder and others at the Site that relates to the Work as indicated in the Subcontract Documents.
- G. Subcontractor has considered the information known to Subcontractor; information commonly known to trade contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Subcontractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Subcontract Documents; and (3) Subcontractor's safety precautions and programs.
- H. Based on the information and observations referred to above, Subcontractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Subcontract for the performance of the Work at the Subcontract Price, within the Contract Times, and in accordance with the other terms and conditions of the Subcontract Documents.

- I. Subcontractor has given Design/Builder written notice of all conflicts, errors, ambiguities, or discrepancies that Subcontractor has discovered in the Subcontract Documents, and the written resolution thereof by Design/Builder is acceptable to Subcontractor.
- J. The Subcontract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 12 – ACCOUNTING RECORDS

- 12.01. Subcontractor shall keep such full and detailed accounts as may be necessary for proper financial management under the Subcontract Documents with respect to all materials, equipment and labor entering into the Work. The accounting methods shall be satisfactory to Design/Builder. Design/Builder shall be afforded reasonable access to all of Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Subcontractor's Fee. Subcontractor shall preserve all such documents for a period of three years after final payment by Design/Builder.

ARTICLE 13 – SUBCONTRACT DOCUMENTS

- 13.01. The Subcontract Documents which comprise the entire agreement between Design/Builder and Subcontractor concerning the Work consist of the following:
- A. This Construction Subagreement (pages 1 to _____, inclusive).
 - B. The Performance Bond, identified as Exhibit _____ and consisting of _____ pages.
 - C. The Payment Bond, identified as Exhibit _____ and consisting of _____ pages.
 - D. Any Other Bonds, identified as Exhibit _____ and consisting of _____ pages.
 - E. Standard General Conditions of the Subcontract between Design/Builder and Subcontractor (pages _____ to _____, inclusive).
 - F. Supplementary Conditions (pages _____ to _____, inclusive).
 - G. Specifications bearing the title _____ and consisting of _____ divisions and _____ pages, as listed in the table of contents thereof.
 - H. Drawings consisting of a cover sheet and sheets numbered _____ through _____, inclusive with each sheet bearing the following general title: _____

NOTE TO USER

Fill in, and, if a set of Drawings is not attached to each signed counterpart of Subcontract, so indicate in which case Design/Builder and Subcontractor should initial or otherwise appropriately identify each Drawing.

I. Subcontractor's Proposal, identified as Exhibit _____ and consisting of _____ pages.

[If applicable]

J. Addenda numbers _____ to _____, inclusive.

[Those Addenda which pertain exclusively to the bidding process need not be listed.]

K. Exhibits to this Subagreement, if any.

[List those Exhibits not named above]

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

1. Notice to Proceed.
2. Change Orders
3. Work Change Directives
4. Other Bonds as may be required

13.02. The documents listed in Paragraph 13.01 above are attached to this Subcontract (except as expressly noted otherwise above).

13.03. There are no Subcontract Documents other than those listed above in this Article 13. The Subcontract Documents may only be amended, modified or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 14 – MISCELLANEOUS

14.01. The Standard General Conditions of the Subcontract between Design/Builder and Subcontractor are referred to herein as the General Conditions.

14.02. Terms used in this Subagreement which are defined in Article 1 of the General Conditions will have the meanings indicated therein.

14.03. No assignment by a party hereto of any rights under or interests in the Subcontract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Subcontract Documents.

14.04. Design/Builder and Subcontractor 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 Subcontract Documents.

14.05. Subcontractor binds itself to Design/Builder under this Subcontract in the same manner as the Design/Builder is bound to Owner under the Owner-Design/Builder Contract Documents. Design/Builder has made relevant portions of the Owner -Design/Builder Contract Documents available to Subcontractor.

14.06. Any provision or part of the Subcontract 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 Design/Builder and Subcontractor, who agree that the Subcontract 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.

14.07. Other Provisions

[Insert other provisions here if applicable.]

IN WITNESS WHEREOF, Design/Builder and Subcontractor have signed this Subagreement in duplicate. One counterpart each has been delivered to Design/Builder and Subcontractor. All portions of the Subcontract Documents have been signed, initialed, or identified by Design/Builder and Subcontractor.

The Effective Date of this Subcontract will be _____, 20_____.

DESIGN/BUILDER:

SUBCONTRACTOR:

By

By:

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest:

Attest:

Address for giving notices:

Address for giving notices:

Contractor License No. _____

(If Design/Builder is a corporation, attach evidence of authority to sign.)

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

Designated Representative

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

DESIGN/BUILD CONTRACT PERFORMANCE BOND

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

DESIGN/BUILDER (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 Design/Builder, 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.

DESIGN/BUILDER AS PRINCIPAL

Company: _____

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By: _____

Signature and Title

(Attach Power of Attorney)

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

Attest: _____

Signature and Title

DESIGN/BUILDER AS PRINCIPAL

SURETY

Company: _____

Signature: _____ (Seal)
Name and
Title:

Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

EJCDC No. D-610 (2008 Edition)

1. Design/Builder 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 Design/Builder performs the Contract, Surety and Design/Builder 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 Design/Builder and Surety at the addresses described in Paragraph 10 below, that Owner is considering declaring a Design/Builder Default and has requested and attempted to arrange a conference with Design/Builder and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Design/Builder and Surety agree, Design/Builder 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 Design/Builder Default; and
 - 3.2. Owner has declared a Design/Builder Default and formally terminated Design/Builder's right to complete the Contract. Such Design/Builder Default shall not be declared earlier than 20 days after Design/Builder 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; or
 2. Another design/builder 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 Design/Builder, 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 design/builders; or
 - 4.3. Obtain bids or negotiated proposals from qualified design-builders 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 a design/builder 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 Design/Builder Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new design/builder 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 Design/Builder'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 Design/Builder 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 Design/Builder for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from Design/Builder'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 Design/Builder.
7. Surety shall not be liable to Owner or others for obligations of Design/Builder 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 Design/Builder Default or within two years after Design/Builder 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 Design/Builder 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. Surety's performance obligation includes completion of the design responsibilities of Design/Builder. However, Surety shall not be liable for damages of the type specified to be covered by design/builder's liability insurance required by the Contract Documents even if such insurance was not obtained or is not sufficient to cover the damages.

13. Definitions.

- 13.1 Balance of the Contract Price: The total amount payable by Owner to Design/Builder under the Contract after all proper adjustments have been made, including allowance to Design/Builder of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Design/Builder is entitled, reduced by all valid and proper payments made to or on behalf of Design/Builder under the Contract.
- 13.2. Contract: The agreement between Owner and Design/Builder identified on the signature page, including all Contract Documents and changes thereto.
- 13.3. Design/Builder Default: Failure of Design/Builder, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 13.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Design/Builder as required by the Contract or to perform and complete or comply with the other terms thereof.

DESIGN/BUILD CONTRACT PAYMENT BOND

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

DESIGN/BUILDER (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 Design/Builder, 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.

DESIGN/BUILDER AS PRINCIPAL

Company: _____

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By: _____

Signature and Title

(Attach Power of Attorney)

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

Attest: _____

Signature and Title

DESIGN/BUILDER AS PRINCIPAL

SURETY

Company: _____

Signature: _____ (Seal)
Name and
Title:

Surety's Name and Corporate Seal (Seal)

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

EJCDC No. D-615 (2008 Edition)

1. Design/Builder 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 Design/Builder:
 - 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 Design/Builder by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided Owner has promptly notified Design/Builder 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 Design/Builder and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Design/Builder 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 Design/Builder 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 Design/Builder:
 1. Have furnished written notice to Design/Builder 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 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 Design/Builder, or not received within 30 days of furnishing the above notice any communication from Design/Builder by which Design/Builder 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 Design/Builder.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Design/Builder or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Design/Builder under the Contract shall be used for the performance of

the Contract and to satisfy claims, if any, under any performance bond. By Design/Builder furnishing and Owner accepting this Bond, they agree that all funds earned by Design/Builder in the performance of the Contract are dedicated to satisfy obligations of Design/Builder 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 Design/Builder 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 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 Design/Builder shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner or Design/Builder, 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 or 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, Design/Builder 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 Design/Builder, or with a first-tier subcontractor of Design/Builder, 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 Design/Builder and Design/Builder'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 Design/Builder 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 Design/Builder as required by the Contract or to perform and complete or comply with the other terms thereof.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

These General Conditions have been prepared for use with either one of the two Agreements between Owner and Design/Builder (EJCDC D-520 and D-525, 2009 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. The comments and instructions contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition) are also carefully interrelated with the wording of these General Conditions.

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY4
1.01 Defined Terms4
1.02 Terminology8

ARTICLE 2 – PRELIMINARY MATTERS9
2.01 Delivery of Bonds9
2.02 Commencement of Contract Times; Notice to Proceed9
2.03 Starting the Work9
2.04 Before Starting the Work9
2.05 Initial Conference10
2.06 Initial Acceptance of Schedules10

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE 11
3.01 Intent 11
3.02 Reference Standards 11
3.03 Resolving Discrepancies 11
3.04 Amending and Supplementing Contract Documents 12
3.05 Reuse of Documents 12
3.06 Electronic Data 12

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS 13
4.01 Availability of Lands 13
4.02 Differing Site Conditions 13
4.03 Reference Points 14
4.04 Hazardous Environmental Condition at Site 14

ARTICLE 5 – BONDS AND INSURANCE 15
5.01 Performance, Payment and Other Bonds 15
5.02 Licensed Sureties and Insurers 16
5.03 Certificates of Insurance 16
5.04 Design/Builder's Insurance 16
5.05 Owner's Liability Insurance 18
5.06 Property Insurance 18
5.07 Waiver of Rights 19
5.08 Receipt and Application of Insurance Proceeds 20
5.09 Acceptance of Bonds and Insurance; Option to Replace 21
5.10 Partial Utilization, Acknowledgment of Property Insurance 21

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES 21
6.01 Design Professional Services 21
6.02 Supervision and Superintendence of Construction 22
6.03 Labor, Working Hours 22
6.04 Services, Materials, and Equipment 23
6.05 Progress Schedule 23
6.06 Concerning Subcontractors, Suppliers, and Others 23
6.07 Patent Fees and Royalties 24

| | |
|--|----|
| 6.08 Permits..... | 25 |
| 6.09 Laws or Regulations..... | 25 |
| 6.10 Taxes..... | 25 |
| 6.11 Use of Site and Other Areas..... | 26 |
| 6.12 Record Documents..... | 26 |
| 6.13 Safety and Protection..... | 27 |
| 6.14 Safety Representative..... | 27 |
| 6.15 Hazard Communication Programs..... | 28 |
| 6.16 Emergencies..... | 28 |
| 6.17 Submittals..... | 28 |
| 6.18 Continuing the Work..... | 28 |
| 6.19 Post-Construction Phase..... | 29 |
| 6.20 Design/Builder's General Warranty and Guarantee..... | 29 |
| 6.21 Indemnification..... | 29 |
| | |
| ARTICLE 7 – OTHER CONSTRUCTION..... | 30 |
| 7.01 Related Work at Site..... | 30 |
| 7.02 Coordination..... | 31 |
| 7.03 Legal Relationships..... | 31 |
| | |
| ARTICLE 8 – OWNER'S RESPONSIBILITIES..... | 31 |
| 8.01 General..... | 31 |
| 8.02 Insurance..... | 32 |
| 8.03 Limitations on Owner's Responsibilities..... | 33 |
| 8.04 Undisclosed Hazardous Environmental Condition..... | 33 |
| 8.05 Resident Project Representation..... | 33 |
| 8.06 Owner's Consultant..... | 33 |
| 8.07 Compliance with Safety Program..... | 33 |
| | |
| ARTICLE 9 – CHANGES IN THE WORK; CLAIMS..... | 33 |
| 9.01 Authorized Changes in the Work..... | 33 |
| 9.02 Unauthorized Changes in the Work..... | 33 |
| 9.03 Claims..... | 34 |
| 9.04 Execution of Change Orders..... | 34 |
| 9.05 Notice to Sureties..... | 34 |
| | |
| ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK..... | 35 |
| 10.01 Cost of the Work..... | 35 |
| 10.02 Cash Allowances..... | 37 |
| 10.03 Unit Prices..... | 38 |
| | |
| ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES..... | 38 |
| 11.01 Change of Contract Price..... | 38 |
| 11.02 Change of Contract Times..... | 40 |
| | |
| ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION..... | 40 |
| 12.01 Notice of Defects..... | 40 |
| 12.02 Access to Construction..... | 41 |

| | |
|--|----|
| 12.03 Tests and Inspections | 41 |
| 12.04 Uncovering Construction | 41 |
| 12.05 Owner May Stop Construction | 42 |
| 12.06 Correction or Removal of Defective Construction | 42 |
| 12.07 Correction Period | 42 |
| 12.08 Acceptance of Defective Construction | 43 |
| 12.09 Owner May Correct Defective Construction | 43 |
| | |
| ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION | 44 |
| 13.01 Schedule of Values | 44 |
| 13.02 Application for Progress Payment | 44 |
| 13.03 Progress Payments | 44 |
| 13.04 Design/Builder's Warranty of Title | 46 |
| 13.05 Substantial Completion | 46 |
| 13.06 Partial Utilization | 46 |
| 13.07 Final Inspection | 47 |
| 13.08 Final Payment | 47 |
| 13.09 Final Completion Delayed | 48 |
| 13.10 Waiver of Claims | 48 |
| | |
| ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION | 48 |
| 14.01 Owner May Suspend Work | 48 |
| 14.02 Owner May Terminate for Cause | 48 |
| 14.03 Owner May Terminate for Convenience | 49 |
| 14.04 Design/Builder May Stop Work or Terminate | 50 |
| | |
| ARTICLE 15 – DISPUTE RESOLUTION | 50 |
| 15.01 Methods and Procedures | 50 |
| | |
| ARTICLE 16 – MISCELLANEOUS | 51 |
| 16.01 Giving Notice | 51 |
| 16.02 Computation of Times | 51 |
| 16.03 Cumulative Remedies | 51 |
| 16.04 Survival of Obligations | 51 |
| 16.05 Controlling Law | 51 |



**STANDARD GENERAL CONDITIONS OF THE
CONTRACT BETWEEN
OWNER AND DESIGN/BUILDER**

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial capital letters, the following terms 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 Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.
2. *Agreement*: The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.
3. *Application for Payment*: The form which is to be used by Design/Builder 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. *Bonds*: Performance and payment bonds and other instruments of security.
6. *Change Order*: A written order which is signed by Design/Builder and Owner which 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.
7. *Claim*: A demand or assertion by Owner or Design/Builder 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.
8. *Conceptual Documents*: The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements,

flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.

9. *Construction*: The part of the Work that is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.
10. *Construction Subagreement*: A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.
11. *Contract*: The entire and integrated written agreement between Owner and Design/Builder 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.
13. *Contract Price*: The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.
14. *Contract Times*: The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with Paragraph 13.08.
15. *Design/Builder*: The individual or entity with whom Owner has entered into the Agreement.
16. *Design Subagreement*: A written agreement between Design/Builder and a design professional for provision of Design Professional Services.
17. *Design Professional Services*: That part of the Work comprised of services relating to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.
18. *Drawings*: Those portions of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.
19. *Effective Date of the Agreement*: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Field Order*: A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *Hazardous Environmental Condition*: The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.
22. *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.
23. *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.
24. *Liens*: Charges, security interests or encumbrances upon real property or personal property.
25. *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.
26. *Notice of Award*: The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.
27. *Notice to Proceed*: A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.
28. *Owner*: The individual or entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed.
29. *Owner's Consultant*: An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.
30. *Partial Utilization*: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
31. *PCBs*: Polychlorinated biphenyls.
32. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
33. *Project*: The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

34. *Proposal*: The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.
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. *Request for Proposals*: The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.
37. *Resident Project Representative*: The authorized representative of Owner who may be assigned to the Site or any part thereof.
38. *Schedule of Values*: A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.
39. *Site*: Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.
40. *Specifications*: The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
41. *Subcontractor*: An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.
42. *Submittal*: A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.
43. *Substantial Completion*: The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) 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.
44. *Supplementary Conditions*: The part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.
46. *Unit Price Work*: Work to be paid for on the basis of unit prices.
47. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.
48. *Work Change Directive*: A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site 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 directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B are not defined terms, but when used in the Contract Documents have the indicated meanings.

B. *Intent of Certain Terms or Adjectives*:

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.
3. 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.
4. 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 or equipment complete and ready for intended use.
5. 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.

6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.
7. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

- A. When Design/Builder delivers the executed Agreements to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with Paragraph 5.01.A.
- B. *Evidence of Insurance:* Before any Work is started, Design/Builder and Owner shall each deliver to the other those certificates of insurance that Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 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 thirty days after the Effective Date of the Agreement. Unless agreed to in writing by Owner and Design/Builder, the Contract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.03 Starting the Work

- A. Design/Builder 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.

2.04 Before Starting the Work

- A. *Design/Builder's Review of Conceptual Documents:* Before undertaking the Work, Design/Builder shall carefully study and compare those Conceptual Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Conceptual Documents unless Design/Builder knew thereof.

B. Preliminary Schedules: Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its 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 which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
3. A preliminary Schedule of Values for all of the Work which will include 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; and
4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

2.05 Initial Conference

- A. Within twenty days after the Contract Times start to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in Paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to Paragraph 8.01.A.6 and other matters.
- B. At the initial conference Owner and Design/Builder each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.06 Initial Acceptance of Schedules

- A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with Paragraph 2.04.B. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.
 1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for

sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.

2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.
3. Design/Builder's Schedule of Values will be acceptable to Owner 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 called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents including but not limited to the Conceptual Documents, the Drawings, and the Specifications to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Design/Builder will furnish or perform all labor, documentation, services, materials, and 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 whether or not specifically called, for at no additional cost to Owner.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws or 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 on the Effective Date except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or instruction of a Supplier, shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner or its officers, directors, members, partners, employees, agents, consultants, or subcontractors any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

- A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to Paragraph 6.17.B.
- B. Except as 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:
1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 2. The provisions of any such 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 in one or more of the following ways:
1. Owner's approval of required Submittals (pursuant to Paragraph 6.17.B);
 2. A Work Change Directive;
 3. A Change Order;
 4. A Field Order.

3.05 *Reuse of Documents*

- A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement are for Design/Builder's own use, and Design/Builder shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Design/Builder to further compensation at rates to be agreed upon by Owner and Design/Builder.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner to Design/Builder or Design/Builder to Owner 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; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.
- B. Upon reasonable written request, Owner shall furnish Design/Builder with a current statement of record legal title and legal description of the lands upon which the Construction 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 or Regulations.
- C. Design/Builder 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 Differing Site Conditions

- A. Design/Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

- B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.
- C. No request by Design/Builder for an equitable adjustment under Paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.
- D. The provisions of this Paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 *Reference Points*

- A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to Paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Hazardous Environmental Condition at Site*

- A. Design/Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design/Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible.
- B. If Design/Builder encounters a Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.
- C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.

- D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, 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 Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other 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 resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this Paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- F. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other 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 resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this Paragraph 4.04.F shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

- A. Design/Builder 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 Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design/Builder 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 or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

- C. If the surety on any Bond furnished by Design/Builder is declared a 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 and 5.02, Design/Builder shall within twenty days thereafter substitute 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 Design/Builder 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. Design/Builder shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured or loss payee) which Design/Builder is required to purchase and maintain.
- B. Owner shall deliver to Design/Builder, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Design/Builder's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Design/Builder's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Design/Builder.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Design/Builder's liability under the indemnities granted to Owner and others in the Contract Documents.

5.04 *Design/Builder's Insurance*

- A. Design/Builder shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations

under the Contract Documents, whether it is to be performed by Design/Builder, 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 based on the provision of professional services, including but not limited to the design services performed by Design/Builder, to be insured under a professional liability insurance policy or endorsement;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;
4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) 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 paragraph 5.04.A shall:

1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds Owner and Owner's Consultants and any other persons or entities indicated in the Supplementary Conditions (subject to any customary exclusion in respect of professional liability), all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, and employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. Include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. Include contractual liability insurance covering Design/Builder's indemnity obligations under Paragraphs 6.11 and 6.21;
4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has

been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to Paragraph 5.03 will so provide);

5. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with Paragraphs 12.06 and 12.07; and
7. Include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Design/Builder shall furnish Owner and each other additional insured indicated 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 Design/Builder 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 Construction 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 or Regulations). This insurance will:
 1. Include the interests of Owner, Owner's Consultant, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. Be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and damage to the Construction, temporary buildings, falsework, and all 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 or Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;
5. Allow for partial utilization by Owner of the Work;
6. Include testing and start-up; and
7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design/Builder with thirty days' written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, 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 Design/Builder, Subcontractor, 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 Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

A. Owner and Design/Builder intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Owner's Consultant, Design/Builder, Subcontractors, Suppliers, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Design/Builder waive

all rights against each other and their respective officers, directors, members, partners, employees, agents, and other 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 Owner's Consultant, Subcontractors, Suppliers, and all other individuals or entities identified in the Supplementary Conditions as insureds or loss payees 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 Design/Builder, Subcontractors, and Suppliers and the officers, directors, members, employees and agents of 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 caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and
2. Loss or damage to the completed Project or any part thereof caused by, arising out of or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 13.06, after Substantial Completion pursuant to Paragraph 13.05, or after final payment pursuant to Paragraph 13.08.

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 Design/Builder, Subcontractors, Owner's Consultant, and the officers, directors, members, partners, employees, agents, and other 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 Construction 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 Design/Builder 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 their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.04.C. Owner and Design/Builder 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 supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurance*

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 13.06, 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 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

A. *Standard of Care:* The standard of care for all Design Professional Services performed or furnished by Design/Builder under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar conditions at the same time and in the same locality.

B. *Preliminary Design Phase:* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;
2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in Paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;

4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;
5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;
6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in Paragraphs 2.06.A.1 and 2.06.A.2; and
7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. Final Design Phase:

After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the format recommended by the Construction Specifications Institute);
2. Provide technical criteria, written descriptions, and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;
3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in Paragraphs 2.06.A.1 and 2.06.A.2; and
4. Identify any deviations from other Contract Documents in accordance with Paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

A. Design/Builder shall supervise, inspect, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies fully with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent who shall not be replaced without written notice to Owner except under extraordinary circumstances.

6.03 Labor, Working Hours

- A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder 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 indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld).

6.04 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished 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 by Owner, or in the Drawings or Specifications, or if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design/Builder 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 provided in the Contract Documents.

6.05 Progress Schedule

- A. Design/Builder shall adhere to the progress schedule established in accordance with Paragraph 2.06.A as it may be adjusted from time to time as provided below:
 - 1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11.02. Such adjustments may only be made by a Change Order or .

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design/Builder shall not be required to employ

any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Design/Builder has reasonable objection.

B. Design/Builder shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder'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 and any such Subcontractor, Supplier, or other individual or entity;
2. shall create any obligation on the part of Owner 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 or Regulations.

C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers, and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.

D. Design/Builder shall require all Subcontractors, Suppliers, and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design/Builder.

E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder 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. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other loss payees (and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by 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, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

A. Design/Builder 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 Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner 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 Conceptual Documents.

- B. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants 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 resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the specification or incorporation in the Work of any invention, design, process, product or device except those required by the Conceptual Documents.
- C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, members, partners, employees or agents, Subcontractors and Suppliers 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 resulting from 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 required by the Conceptual Documents, but not identified by Owner as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.08 Permits

- A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design/Builder shall pay all charges of utility owners for connections for providing permanent service to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

- A. Design/Builder shall give all notices required by and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.
- B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder 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.
- C. Changes in Laws or Regulations not known on the Effective Date having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or 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. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design/Builder 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 Work, Design/Builder 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 or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

B. *Removal of Debris:* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning:* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good

order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals will be delivered to Owner.

6.13 Safety and Protection

- A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Design/Builder 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. Design/Builder shall comply with 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. Design/Builder shall notify owners of adjacent property and of underground facilities and 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. Design/Builder shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Design/Builder shall inform Owner of the specific requirements of Design/Builder's safety program with which Owner and its employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, 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 Design/Builder.
- F. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with Paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Design/Builder 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. Design/Builder 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, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder 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 a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, 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. Owner'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.

B. Owner's review and approval of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Design/Builder.

6.18 Continuing the Work

A. Design/Builder shall continue 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 Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Design/Builder shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.
2. Assist Owner in training staff to operate and maintain the Work.
3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty and Guarantee

A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective.

B. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or
2. normal wear and tear under normal usage.

C. Design/Builder'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 Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any review and approval of a Submittal;
6. Any inspection, test, or approval by others; or
7. Any correction of defective Construction by Owner.

6.21 Indemnification

A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants, and the officers, members, directors, partners, employees,

agents, other consultants and subcontractors of each 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 resulting from 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 Design/Builder, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.

- B. In any and all claims against Owner, Owner's Consultant, or any of their respective consultants, agents, officers, members, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design/Builder, any Subcontractor, any Supplier, 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 6.21.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 Design/Builder 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 Design/Builder under Paragraph 6.21.A shall not extend to the liability of Owner's Consultant, and their officers, directors, members, partners, employees, agents, other consultants, and subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

- A. Owner may perform other Work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and
 - 2. if Owner and Design/Builder are unable to agree on entitlement to or on the extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, Design/Builder may make a Claim therefor as provided in Article 9.
- B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder

shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design/Builder may cut or alter others' work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder 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 Design/Builder in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent 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 prime 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 in respect of 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 Design/Builder for the reasonable direct delay and disruption costs incurred by Design/Builder as a result of the other contractor's wrongful actions or inactions.

C. Design/Builder shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Design/Builder's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:

EJCDC D-700 Standard General Conditions of the Contract Between Owner and Design/Builder
Copyright © 2009 National Society of Professional Engineers for EJCDC. All rights reserved.

1. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design/Builder;
2. If requested in writing by Design/Builder, furnish reasonable evidence satisfactory to Design/Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design/Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days notice to the Owner;
3. Make payments to Design/Builder promptly when they are due as provided in Paragraph 13.03 and 13.08;
4. Furnish the Site as set forth in Paragraph 4.01.A;
5. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
 - f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;
 - g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and
 - h. Identify all reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings known to owner of physical conditions relating to existing surface or subsurface structures at the Site, and any information or data known to Owner concerning underground facilities at the Site.
6. Review Submittals subject to Owner review pursuant to Paragraph 6.17.A; and
7. Provide information known to Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

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

8.04 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in Paragraph 4.04.

8.05 Resident Project Representation

A. Owner may furnish a Resident Project Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

8.06 Owner's Consultant

A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

8.07 Compliance with Safety Program

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

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 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 within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Design/Builder 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 and 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 Construction as provided in Paragraph 12.04.

9.03 Claims

- A. *Notice:* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to Paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.
- B. *Documentation:* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by Paragraph 9.03.A.
- C. *Decision:* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by Paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.
- D. *Time Limit Extension:* The time limits of Paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.

9.04 Execution of Change Orders

- A. Owner and Design/Builder shall execute appropriate Change Orders covering:
1. Changes in the Work which are (i) ordered by Owner pursuant to Paragraph 9.01, (ii) required because of acceptance of defective Construction under Paragraph 12.08 or Owner's correction of defective Work under Paragraph 12.09 or (iii) agreed to by the parties; and
 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.

9.05 Notice to Sureties

- 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 Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

A. **Costs Included:** The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of 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 Design/Builder will be only those additional or incremental costs required because of the change of 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, and shall not include any of the costs itemized in Paragraph 10.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.
 - a. 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 after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.
 - b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this Paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.
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 Design/Builder unless Owner deposits funds with Design/Builder 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 Design/Builder shall make provisions so that they may be obtained.
3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to Paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. 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 Design/Builder's Cost of the Work and fee.

4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.
5. 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.
6. Supplemental costs including the following items:
 - a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder'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 Design/Builder.
 - c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, 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 Design/Builder is liable, imposed by Laws or Regulations.
 - e. Deposits lost for causes other than negligence of Design/Builder, 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, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, 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 Design/Builder's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services,, and similar petty cash items in connection with the Work.

- i. Cost of premiums for all Bonds and insurance Design/Builder 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 Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Design/Builder's fee.
2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.
3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.
4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.01.A.

C. Design/Builder's Fee: When all the Work is performed on the basis of cost-plus, Design/Builder's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in Paragraph 11.01.C.

D. Documentation: Whenever the cost of any Work is to be determined pursuant to Paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:

1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the 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.
- B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

- 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 of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. 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 Design/Builder will be made by Owner.
- B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.
- C. Design/Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:
1. the quantity of any item of Unit Price Work performed by Design/Builder differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents;
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes it 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 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 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 delivered by the party making the Claim to the other party promptly in accordance with Paragraph 9.03.A.

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 10.03); 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 11.01.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 11.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in Paragraph 11.01.C).

C. *Design/Builder's Fee:* The Design/Builder's fee for overhead and profit on Change Orders 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 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;
 - b. For costs incurred under Paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and Design/Builder will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. The amount of credit to be allowed by Design/Builder 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 Design/Builder's fee by an amount equal to five percent of such net decrease; and
 - e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 Change of Contract Times

- A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to Paragraph 9.03.A.
- B. *Delays Beyond Design/Builder's Control:* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) 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 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- C. If Owner or other contractor 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 Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.
- D. If Design/Builder 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 Design/Builder, then Design/Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C.
- E. Owner and Owner's Consultant shall not be liable to Design/Builder 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 Design/Builder on or in connection with any other project or anticipated project.
- F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

- A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

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

12.03 Tests and Inspections

- A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/ Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.
- B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.
- C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, then Contractor shall, if requested by Owner, uncover such Construction for observation.
- D. Uncovering Construction as provided in Paragraph 13.03.E shall be at Design/Builder's expense unless Design/ Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

- A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.
- B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be

entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), 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, Design/Builder may make a Claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

- A. If Construction is defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party.

12.06 Correction or Removal of Defective Construction

- A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 Correction Period

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.

- B. 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 Conceptual Documents.
- C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this Paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Construction

- A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 Owner May Correct Defective Construction

- A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with Paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this Paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, 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 Article 9.

D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) 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 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 Schedule of Values

A. The Schedule of Values established as provided in Paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 Application for Progress Payment

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as 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 and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

13.03 Progress Payments

A. *Procedure:* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Design/Builder.

2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.
3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment:* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged requiring correction or replacement; or
2. the Contract Price has been reduced by Change Order; or
3. Owner has been required to correct defective Construction or complete Work in accordance with Paragraph 12.09.A; or
4. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.A.; or
5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or
6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
7. There are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder remedies the reason for such action.

- D. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

13.04 Design/Builder's Warranty of Title

- A. Design/Builder warrants and guarantees that title to all Construction, 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.

13.05 Substantial Completion

- A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.
- B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

13.06 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/ Builder's performance of the remainder of the Construction, subject to the following:
 1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder and Owner will follow the procedures of Paragraph 13.05 for that part of the Construction.
 2. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 13.05 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 of part of the Construction will be accomplished prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

13.07 Final Inspection

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

13.08 Final Payment

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in Paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Final Payment and Acceptance:* If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to

Design/Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.

C. Payment Becomes Due: Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 Final Completion Delayed

A.If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, 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.A, 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 Design/Builder to Owner 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.

13.10 Waiver of Claims

A.The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to Paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and
2. A waiver of all Claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 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 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design/Builder'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 2.06.A as adjusted from time to time pursuant to Paragraph 6.05).
2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.
3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of Paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (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) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be 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.

C. Notwithstanding Paragraph 14.02.B, Design/ Builder's services will not be terminated if Design/Builder 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.

D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

14.03 Owner May Terminate for Convenience

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

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. Amounts paid in settlement of terminated contracts with Subcontractors, Suppliers and others (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 connection with termination of contracts with Subcontractors, Suppliers and others); and
4. Reasonable expenses directly attributable to termination.

B. Except as provided in Paragraph 14.03.C, Design/Builder 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.

14.04 Design/Builder May Stop Work or Terminate

A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in Paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this Paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no such method and procedure has been set forth, Owner and Design/Builder may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 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 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 if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.02 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.

16.03 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:

1. Laws or Regulations; or
2. any special warranty or guarantee; or
3. other provisions of the Contract Documents.

- B. The provisions of Paragraph 16.03.A 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.

16.04 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 and termination or completion of the Contract.

16.05 Controlling Law

- A. The Contract Documents will be construed in accordance with the law of the place of the Project.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE SUBCONTRACT BETWEEN DESIGN/BUILDER AND SUBCONTRACTOR

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

These General Conditions have been prepared for use with either one of the two Construction Subagreements between Design/Builder and Subcontractor (EJCDC D-521 and D-526, 2009 Editions) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the others. Comments concerning their usage are contained in the Guide to Use of EJCDC Design/Build Documents, (EJCDC D-001, 2009 Edition).

Copyright © 2009 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

Associated General Contractors of America
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308
(703) 548-3118
www.agc.org

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

TABLE OF CONTENTS

| | Page |
|---|--------|
| ARTICLE 1 – DEFINITIONS..... | 1 |
| 1.01 Defined Terms | 1 |
| 1.02 Terminology..... | 5 |
| ARTICLE 2 – PRELIMINARY MATTERS..... | 6 |
| 2.01 Delivery of Bonds | 6 |
| 2.02 Commencement of Subcontract Times; Notice to Proceed | 6 |
| 2.03 Starting the Work..... | 6 |
| 2.04 Before Starting Construction | 6 |
| 2.05 Preconstruction Conference | 7 |
| 2.06 Initial Acceptance of Schedules..... | 7 |
| ARTICLE 3 – SUBCONTRACT DOCUMENTS: INTENT, AMENDING, REUSE | 7 |
| 3.01 Intent..... | 7 |
| 3.02 Reference Standards | 8 |
| 3.03 Resolving Discrepancies..... | 8 |
| 3.04 Amending and Supplementing Subcontract Documents | 8 |
| 3.05 Reuse of Documents | 8 |
| ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITION..... | 9 |
| 4.01 Availability of Lands | 9 |
| 4.02 Differing Site Conditions..... | 9 |
| 4.03 Reference Points | 10 |
| 4.04 Hazardous Environmental Conditions at Site..... | 10 |
| ARTICLE 5 – BONDS AND INSURANCE..... | 11 |
| 5.01 Performance, Payment and Other Bonds..... | 11 |
| 5.02 Licensed Sureties and Insurers | 11 |
| 5.03 Certificates of Insurance | 12 |
| 5.04 Subcontractor’s Insurance | 12 |
| 5.05 Design/Builder’s Liability Insurance..... | 13 |
| 5.07 Waiver of Rights..... | 15 |
| 5.08 Receipt and Application of Insurance Proceeds | 16 |
| 5.09 Acceptance of Bonds and Insurance; Option to Replace | 16 |
| 5.10 Partial Utilization, Acknowledgment of Property Insurance..... | 17 |
| ARTICLE 6 – SUBCONTRACTOR’S RESPONSIBILITIES | 17 |
| 6.01 Supervision and Superintendence..... | 17 |
| 6.02 Labor, Working Hours..... | 17 |
| 6.03 Services, Materials, and Equipment | 17 |
| 6.04 Progress Schedule..... | 18 |
| 6.05 Concerning Subsubcontractors, Suppliers, and Others | 18 |
| 6.06 Patent Fees and Royalties | 19 |
| 6.07 Permits | 20 |

6.08 Laws and Regulations..... 20

6.09 Taxes..... 20

6.10 Use of Site and Other Areas 20

6.11 Record Documents 21

6.12 Safety and Protection..... 21

6.13 Safety Representative 22

6.14 Hazard Communication Programs..... 22

6.15 Emergencies..... 23

6.16 Shop Drawings and Samples 23

6.17 Continuing the Work 24

6.18 Subcontractor’s General Warranty and Guarantee 25

6.19 Indemnification..... 25

ARTICLE 7 – OTHER WORK AT THE SITE..... 26

7.01 Related Work at Site..... 26

7.02 Legal Relationships 27

ARTICLE 8—DESIGN/BUILDER’S RESPONSIBILITIES 27

8.01 Communications..... 27

8.02 Furnish Data 27

8.03 Pay Promptly When Due 27

8.04 Lands and Easements..... 27

8.05 Insurance..... 27

8.06 Change Orders 28

8.07 Inspections, Tests, and Approvals 28

8.08 Undisclosed Hazardous Environmental Condition..... 28

8.09 Evidence of Financial Arrangements 28

8.10 Compliance with Safety Program..... 28

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS 28

9.01 Authorized Changes in the Work 28

9.02 Unauthorized Changes in the Work..... 28

9.03 Claims..... 29

9.04 Execution of Change Orders..... 29

9.05 Notice to Sureties..... 29

ARTICLE 10 – COST OF THE WORK; FEE; CASH ALLOWANCES; UNIT PRICE WORK..... 30

10.01 Cost of the Work..... 30

10.02 Cash Allowances 32

10.03 Unit Price Work 33

ARTICLE 11 – CHANGE OF SUBCONTRACT PRICE; CHANGE OF SUBCONTRACT TIMES 33

11.01 Change of Subcontract Price 33

11.02 Change of Subcontract Times..... 34

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK..... 36

12.01 Notice of Defects 36

12.02 Access to Work..... 36

12.03 Tests and Inspections..... 36

12.04 Uncovering Work..... 37

12.05 Design/Builder May Stop the Work..... 37

12.06 Correction or Removal of Defective Work..... 37

12.07 Correction Period..... 38

12.08 Acceptance of Defective Work..... 38

12.09 Design/Builder May Correct Defective Work..... 39

ARTICLE 13 – PAYMENTS TO SUBCONTRACTOR AND COMPLETION 39

13.01 Schedule of Values 39

13.02 Application for Progress Payment..... 39

13.03 Progress Payments 40

13.04 Subcontractor’s Warranty of Title 41

13.05 Substantial Completion..... 41

13.06 Partial Utilization..... 42

13.07 Final Inspection 42

13.08 Final Payment 43

13.09 Final Completion Delayed..... 43

13.10 Waiver of Claims 44

ARTICLE 14—SUSPENSION OF WORK AND TERMINATION 44

14.01 Design/Builder May Suspend Work..... 44

14.02 Subcontractor’s Failure to Perform; Design/Builder May Terminate for Cause..... 44

14.03 Design/Builder May Terminate for Convenience..... 45

14.04 Subcontractor May Stop Work or Terminate 46

ARTICLE 15 – DISPUTE RESOLUTION 46

15.01 Methods and Procedures..... 46

ARTICLE 16 – MISCELLANEOUS 46

16.01 Giving Notice..... 46

16.02 Computation of Times 47

16.03 Cumulative Remedies..... 47

16.04 Survival of Obligations..... 47

16.05 Controlling Law 47

**STANDARD GENERAL CONDITIONS OF THE
SUBCONTRACT BETWEEN
DESIGN/BUILDER AND SUBCONTRACTOR**

ARTICLE 1 – DEFINITIONS

1.01 *Defined Terms*

- A. Wherever used in the Subcontract Documents and printed with initial or all capital letters, the following terms 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 Proposals which clarify, correct, or change the Request for Proposals or the Subcontract Documents.
 2. *Application for Payment*: The form which is to be used by Subcontractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Subcontract Documents.
 3. *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.
 4. *Bonds*: Performance and payment bonds and other instruments of security.
 5. *Change Order*: A written order which is signed by Subcontractor and Design/Builder which authorizes an addition, deletion, or revision in the Work, or an adjustment in the Subcontract Price or the Subcontract Times, issued on or after the Effective Date of the Construction Subagreement.
 6. *Claim*: A demand or assertion by Design/Builder or Subcontractor seeking an adjustment of Subcontract Price or Subcontract Times, or both, or other relief with respect to the terms of the Subcontract. A demand for money or services by a third party is not a Claim.
 7. *Design/Builder*: The individual or entity with whom Subcontractor has entered into the Subagreement and for whom the Work is to be provided.
 8. *Design/Builder's Consultant*: An individual or entity having a contract with Design/Builder to furnish consulting services with respect to the Project and who is identified as such in the Supplementary Conditions.
 9. *Drawings*: Those portions of the Subcontract Documents consisting of drawings, diagrams, illustrations, schedules, and other data which show the scope, extent, and character of the Work.

10. *Effective Date of the Subagreement:* The date indicated in the Subagreement on which it becomes effective but, if no such date is indicated, it means the date on which the Subagreement is signed and delivered by the last of the two parties to sign and deliver.
11. *Field Order:* A written order issued by Design/Builder which orders minor changes in the Work but which does not involve a change in the Subcontract Price or the Subcontract Times.
12. *Hazardous Environmental Condition:* The presence at the site of Asbestos, Hazardous Waste, PCBs, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
13. *Hazardous Waste:* The term Hazardous Waste shall have the meaning provided in Article 1004 of the Solid Waste Disposal Act (42 USC Article 6903) as amended from time to time.
14. *Laws and Regulations:* Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
15. *Liens:* Charges, security interests, or encumbrances upon real property or personal property.
16. *Milestone:* A principal event specified in the Subcontract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
17. *Notice of Award:* The written notice by Design/Builder to the successful proposer stating that, upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Design/Builder will sign and deliver the Subagreement.
18. *Notice to Proceed:* A written notice given by Design/Builder to Subcontractor fixing the date on which the Subcontract Times will commence to run and on which Subcontractor shall start to perform the work.
19. *Owner:* The individual or entity with whom Design/Builder has entered into an agreement to design and build the Project.
20. *Owner's Consultant:* An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the project.
21. *Partial Utilization:* Use by Design/Builder or Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
22. *PCBs:* Polychlorinated Biphenyls.
23. *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 Wastes and crude oils.
24. *Project*: The total construction of which the Work to be provided under the Subcontract Documents may be the whole, or a part as indicated elsewhere in the Subcontract Documents.
 25. *Proposal*: The documents submitted by Subcontractor in response to the Request for Proposals setting forth the proposed prices and other conditions for the Work to be performed.
 26. *Radioactive Material*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Article 2011 et seq.) as amended from time to time.
 27. *Request for Proposals*: Those documents setting forth the Design/Builder's needs and requirements for the services of subcontractors on the Project and the procedures for submitting proposals.
 28. *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.
 29. *Schedule of Values*: A schedule prepared by Subcontractor and acceptable to Design/Builder indicating that portion of the Subcontract Price to be paid for each major component of the Work.
 30. *Shop Drawings*: All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Subcontractor and submitted by Subcontractor to illustrate some portion of the Work.
 31. *Site*: Lands or other areas designated in the Subcontract Documents as being furnished by Design/Builder to Subcontractor upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Design/Builder which are designated for the use of the Subcontractor.
 32. *Specifications*: Those portions of the Subcontract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work, and certain administrative details applicable thereto.
 33. *Subagreement*: The written instrument which is the evidence of the agreement between Design/Builder and Subcontractor covering the Work.
 34. *Subcontract*: The entire and integrated written agreement between the Design/Builder and Subcontractor concerning the Work. The Subcontract supersedes prior negotiations, representations, or agreements, whether written or oral.
 35. *Subcontract Documents*: The Subagreement, Addenda (which pertain to the Subcontract Documents), Subcontractor's Proposal (including documentation accompanying such

- Proposal and any post-Proposal documentation submitted prior to the Notice of Award) when attached as an exhibit to the Subagreement, Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Subagreement, together with all Work Change Directives, Change Orders, and Field Orders, issued on or after the Effective Date of this Subagreement. The Subcontract Documents also include those documents specifically identified by Design/Builder as Subcontract Documents for this Subcontract in the Request for Proposals.
36. *Subcontractor*: The individual or entity with whom Design/Builder has entered into the Subagreement.
 37. *Subcontract Price*: The moneys payable by Design/Builder to Subcontractor for completion of the Work in accordance with the Subcontract Documents as stated in this Subagreement.
 38. *Subcontract Times*: The number of days or the dates stated in the Subagreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment.
 39. *Submittal*: A written or graphic document prepared by or for Subcontractor which is required by the Subcontract Documents to be submitted to Design/Builder. Submittals may include progress schedules, Shop Drawings, Samples, cash flow projections, and Schedules of Values and schedules of Submittals.
 40. *Substantial Completion*: The time at which the Work (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Subcontract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
 41. *Subsubcontractor*: An individual or entity other than a Supplier having a direct contract with Subcontractor or with any other Subsubcontractor for the performance or furnishing of a part of the Work at the Site.
 42. *Supplementary Conditions*: The part of the Subcontract Documents which amends or supplements these General Conditions.
 43. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Subcontractor or with any Subsubcontractor to furnish materials or equipment to be incorporated in the Work by Subcontractor or any Subsubcontractor.
 44. *Unit Price Work*: Work to be paid for on the basis of unit prices.
 45. *Work*: The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Subcontract Documents. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into the construction, all as required by the Subcontract Documents.

46. *Work Change Directive*: A written directive to Subcontractor, issued on or after the Effective Date of the Subagreement and signed by Design/Builder, 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 Subcontract Price or the Subcontract Times, but is evidence that the parties expect that the change directed 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 Subcontract Price or Subcontract Times.

1.02 *Terminology*

- A. The words and terms discussed in Paragraph 1.02.B are not defined terms, but when used in the Subcontract Documents have the indicated meanings.
- B. Intent of Certain Terms or Adjectives:
1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
 2. The word “defective”, when modifying the word “Work”, refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Subcontract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Subcontract Documents, or has been damaged prior to Design/Builder’s final payment (unless responsibility for the protection thereof has been assumed by Design/Builder at Substantial Completion).
 3. 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)in accordance with the Specifications.
 4. 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.
 5. 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.
 6. When “furnish”, “install”, “perform”, or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Subcontractor, “provide” is implied.
 7. Unless stated otherwise in the Subcontract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Subcontract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

- A. When Subcontractor delivers the executed Subagreement to Design/Builder, Subcontractor shall also deliver to Design/Builder such Bonds as Subcontractor may be required to furnish in accordance with Paragraph 5.01.A.

2.02 *Commencement of Subcontract Times; Notice to Proceed*

- A. The Subcontract Times will commence to run on the date 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 Subagreement. Unless otherwise agreed to in writing by Design/Builder and Subcontractor, the Subcontract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Subagreement, whichever date is earlier.

2.03 *Starting the Work*

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

2.04 *Before Starting Construction*

- A. *Subcontractor's Review of Subcontract Documents:* Before undertaking each part of the Work, Subcontractor shall carefully study and compare the Subcontract Documents and check and verify pertinent figures therein and all applicable field measurements. Subcontractor shall promptly report in writing to Design/Builder any conflict, error, ambiguity, or discrepancy which Subcontractor may discover or reasonably should have discovered and shall obtain a written interpretation or clarification from Design/Builder before proceeding with any Work affected thereby; however, Subcontractor shall not be liable to Design/Builder for failure to report any conflict, error, ambiguity or discrepancy in the Subcontract Documents, unless Subcontractor knew thereof.
- B. *Preliminary Schedule:* Within ten days after commencement of the Subcontract Times (unless otherwise specified in the Subcontract Documents), Subcontractor shall submit to Design/Builder for its 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 each Milestone specified in the Subcontract Documents and shall be consistent with Design/Builder's progress schedule;
 2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing, and processing each such Submittal;
 3. A preliminary Schedule of Values for all of the Work which includes quantities and prices of items which, when added together, equal the Subcontract 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 a pro rata amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Subcontract Price to be due during each month of performance.

2.05 *Preconstruction Conference*

- A. Within twenty days after the Subcontract Times start to run, Design/Builder will arrange a conference to be attended by Subcontractor and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.04.B, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

2.06 *Initial Acceptance of Schedules*

- A. Unless otherwise provided in the Subcontract Documents, at least ten days before submission of the first Application for Payment, Design/Builder will arrange a conference to be attended by Subcontractor and others as appropriate to review for acceptability the schedules submitted in accordance with Paragraph 2.04.B. Subcontractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Subcontractor until acceptable schedules are submitted to Design/Builder.
 1. Subcontractor's progress schedule will be acceptable to Design/Builder if it provides an orderly progression of the Work to completion within any specified Milestones and the Subcontract Times and conforms to Design/Builder's progress schedule.
 2. Subcontractor's schedule of Shop Drawings and Sample submittals will be acceptable to Design/Builder if it provides a workable arrangement for reviewing and processing the required Submittals.
 3. Subcontractor's Schedule of Values will be acceptable to Design/Builder as to form and substance if it provides a reasonable allocation of the Subcontract Price to components of the Work.

ARTICLE 3 – SUBCONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Subcontract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Subcontract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Subcontract Documents. Subcontractor shall furnish or perform all labor, documentation, services, materials, and equipment that may reasonably be inferred from the Subcontract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for, at no additional cost to Design/Builder.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, or Regulations

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date except as may be otherwise specifically stated in the Subcontract 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 Subcontractor or Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Subcontract Documents, nor shall any such provision or instruction be effective to assign to Design/Builder or its officers, directors, members, partners, employees, agents, consultants, or other subcontractors any duty or authority to undertake responsibility inconsistent with the provisions of the Subcontract Documents.

3.03 *Resolving Discrepancies*

A. Except as may be otherwise specifically stated in the Subcontract Documents, the provisions of the Subcontract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Subcontract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Subcontract Documents); or
2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Subcontract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Subcontract Documents*

- A. The Subcontract 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 Subcontract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) Design/Builder's approval of a Shop Drawing or Sample; or (iii) Design/Builder's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Subcontractor, and any Subsubcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Design/Builder: (i) shall not 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 Design/Builder or Design/Builder's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies thereof on extensions of the Project or any other project without written consent of Design/Builder, and specific written verification or adaptation by Design/Builder.

This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Subagreement. Nothing herein shall preclude Subcontractor from retaining copies of the Subcontract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, data furnished by Design/Builder to Subcontractor or Subcontractor to Design/Builder 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 sixty days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the sixty-day acceptance period will be corrected by the party delivering the electronic files.
- 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 preparer.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITION

4.01 *Availability of Lands*

- A. Design/Builder will furnish the Site.
- B. Upon reasonable written request, Design/Builder will furnish Subcontractor with a correct 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. Subcontractor 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 *Differing Site Conditions*

- A. Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to Design/Builder of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Subcontract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Subcontract Documents.

- B. Design/Builder will investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the Work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Subcontract Price or Times modified in writing by Change Order in accordance with Article 9.
- C. No request by Subcontractor for an equitable adjustment under this Paragraph 4.02 shall be allowed unless Subcontractor has given the written notice required; provided that the time prescribed in Paragraph 9.03.A for giving written notice may be extended by Design/Builder.
- D. The provisions of this Paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 *Reference Points*

- A. Design/Builder shall provide engineering surveys to establish reference points for construction which in Design/Builder's judgment are necessary to enable Subcontractor to proceed with the Work.
- B. Subcontractor 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 Design/Builder. Subcontractor shall report to Design/Builder whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Hazardous Environmental Conditions at Site*

- A. As between Design/Builder and Subcontractor, Design/Builder will be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not identified in the Subcontract Documents or Request for Proposals to be within the scope of the Work. However, Subcontractor shall be responsible for materials creating a Hazardous Environmental Condition created with any materials brought to the Site by Subcontractor, Subsubcontractors, Suppliers or anyone else for whom Subcontractor is responsible.
- B. If Subcontractor encounters a Hazardous Environmental Condition or if Subcontractor or anyone for whom Subcontractor is responsible creates a Hazardous Environmental Condition, Subcontractor 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 6.15), and (iii) notify Design/Builder (and promptly thereafter confirm such notice in writing). Design/Builder shall promptly request Owner to determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.
- C. Subcontractor shall not be required to resume Work in connection with such condition or in any affected area until after Design/Builder has obtained any required permits related thereto and delivered to Subcontractor 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 Design/Builder and Subcontractor

cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Subcontract Price or Subcontract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Subcontractor, either party may make a Claim therefor as provided in Paragraph 9.03.

- D. If after receipt of such written notice Subcontractor 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 Design/Builder may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Design/Builder and Subcontractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Subcontract Price or Subcontract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 9.03. Design/Builder may have such deleted portion of the Work performed by Design/Builder's own forces or others in accordance with Article 7.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

- A. Subcontractor shall furnish performance and payment Bonds, each in an amount at least equal to the Subcontract Price as security for the faithful performance and payment of all Subcontractor's obligations under the Subcontract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Subcontract Documents. Subcontractor shall also furnish such other Bonds as are required by the Subcontract Documents.
- B. All Bonds shall be in the form prescribed by the Subcontract 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. Treasury Department. All Bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any Bond furnished by Subcontractor 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 Paragraphs 5.01.B or 5.02, Subcontractor shall within thirty days thereafter substitute 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 Subcontract Documents to be purchased and maintained by Design/Builder or Subcontractor 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. Subcontractor shall deliver to Design/Builder, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured or loss payee) which Subcontractor is required to purchase and maintain.
- B. Design/Builder shall deliver to Subcontractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Subcontractor or any other additional insured) which Design/Builder is required to purchase and maintain.
- C. Failure of Design/Builder to demand such certificates or other evidence of Subcontractor's full compliance with these insurance requirements or failure of Design/Builder to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance.
- D. Design/Builder does not represent that insurance coverage and limits established in this Subcontract necessarily will be adequate to protect Subcontractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Subcontractor's liability under the indemnities granted to Design/Builder and others in the Subcontract Documents.

5.04 *Subcontractor's Insurance*

- A. Subcontractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Subcontractor's performance of the Work and Subcontractor's other obligations under the Subcontract Documents, whether it is to be performed by Subcontractor, any Subsubcontractor 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 Subcontractor's employees;
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Subcontractor's employees;
 - 4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Subcontractor, or (ii) 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 Paragraph 5.04.A shall:*

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner, Owner's Consultants, Design/Builder, and Design/Builder's Consultants and any other individuals or entities indicated in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Subcontractor's indemnity obligations under Paragraphs 6.10.A.3 and 6.19;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder 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 Subcontractor pursuant to Paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when Subcontractor may be correcting, removing or replacing defective Work in accordance with Paragraphs 12.06 and 12.07; and
7. Include completed operations insurance:
 - a. such insurance shall remain in effect for at least two years after final payment.
 - b. Subcontractor shall furnish Design/Builder and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Design/Builder and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Design/Builder's Liability Insurance*

- A. In addition to the insurance required to be provided by Subcontractor under Paragraph 5.04, Design/Builder, at Design/Builder's option, may purchase and maintain at Design/Builder's expense Design/Builder's own liability insurance as will protect Design/Builder against claims which may arise from operations under the Subcontract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Design/Builder shall provide 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 will:
1. Include the interests of Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants, Subcontractor, Subsubcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. Be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Design/Builder prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment approved by Design/Builder;
 5. Allow for partial utilization of the Work in accordance with Paragraph 5.10;
 6. Include testing and start-up; and
 7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Design/Builder and Subcontractor with thirty days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Design/Builder shall purchase and maintain, or cause Owner to purchase and maintain, such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants, Subcontractor, Subsubcontractors, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Design/Builder 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 thirty days' prior written notice has been given to Design/Builder

and Subcontractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

- D. Design/Builder shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Subcontractor, Subsubcontractors, 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 Subcontractor, Subsubcontractor, 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 Subcontractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Design/Builder shall, if possible, include such insurance, and the cost thereof will be charged to Subcontractor by appropriate Change Order. Prior to commencement of the Work at the Site, Design/Builder shall in writing advise Subcontractor whether or not such other insurance has been procured by Design/Builder.

5.07 *Waiver of Rights*

- A. Design/Builder and Subcontractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants, Subcontractor, Subsubcontractors, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Design/Builder and Subcontractor waive all rights against each other and their respective officers, directors, members, employees and agents, and other 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 Owner, Owner's Consultants, Design/Builder's Consultants, Subsubcontractors, and all other individuals or entities identified in the Supplementary Conditions as insureds or loss payees (and the officers, directors, partners, employees, agents, and other 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 Design/Builder as trustee or otherwise payable under any policy so issued.
- B. Design/Builder waives, and will cause Owner to waive, all rights against Subcontractor, Subsubcontractors, Suppliers and Design/Builder's Consultants and the officers, directors, members, partners, employees and agents, and other consultants and subcontractors of any 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 or Design/Builder's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by Owner or Design/Builder; 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 13.05, after substantial completion pursuant to Paragraph 13.04, or after final payment pursuant to Paragraph 13.07.
- C. Any insurance policy maintained by Owner or Design/Builder 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 Subcontractor, Subsubcontractors, Design/Builder's Consultants and the officers, directors, partners, employees, agents, other 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 the purchaser of such policy and made payable to such purchaser 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. Said purchaser 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. The purchaser of policies required under Paragraphs 5.04 through 5.06 as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to said purchaser's exercise of this power. If such objection be made, said purchaser 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, said purchaser as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Design/Builder 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 Design/Builder or Subcontractor 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 Subcontract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.04.C. Design/Builder and Subcontractor 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 Subcontract 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 Subcontract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurance*

- A. If Owner or Design/Builder 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 13.05, 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 – SUBCONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Subcontractor 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 Subcontract Documents. Subcontractor shall be responsible for the means, methods, techniques, sequences and procedures of construction subject to the Design/Builder’s progress schedule as it may be adjusted from time to time. Subcontractor shall be responsible to see that the completed Work complies fully with the Subcontract Documents and shall keep Design/Builder advised as to the quality and progress of the Work.
- B. At all times during the progress of the work, Subcontractor shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Design/Builder. The superintendent will be Subcontractor’s representative at the Site and shall have authority to act on behalf of Subcontractor. All communications given to or received from the superintendent shall be binding on Subcontractor.

6.02 *Labor, Working Hours*

- A. Subcontractor shall provide competent, suitably qualified personnel to perform the Work as required by the Subcontract Documents. Subcontractor 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 indicated in the Subcontract Documents, all Work at the Site shall be performed during regular working hours, and Subcontractor will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without Design/Builder’s written consent (which will not be unreasonably withheld).

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Subcontract Documents, Subcontractor shall furnish 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 in the Subcontract Documents or, if not specified, shall be of good quality and new, except as otherwise provided in the Subcontract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Design/Builder, Subcontractor shall furnish satisfactory evidence (including reports of required tests) as to the 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 Subcontract Documents.

6.04 *Progress Schedule*

- A. Subcontractor shall adhere to the progress schedule established in accordance with Paragraph 2.06 as it may be adjusted from time to time as provided below:
 - 1. Subcontractor shall submit to Design/Builder for acceptance (to the extent indicated in Paragraph 2.06) proposed adjustments in the progress schedule that will not change the Subcontract Times (or Milestones). Such adjustments will conform generally to Design/Builder's progress schedule then in effect and additionally will comply with any provisions of the Subcontract Documents applicable thereto.
 - 2. Proposed adjustments in the progress schedule that will change the Subcontract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11. Such adjustments may only be made by a Change Order.

6.05 *Concerning Subsubcontractors, Suppliers, and Others*

- A. Subcontractor shall not employ any Subsubcontractor, Supplier, or other individual or entity against whom Design/Builder may have reasonable objection. Subcontractor shall not be required to employ any Subsubcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Subcontractor has reasonable objection.
- B. Subcontractor shall be fully responsible to Design/Builder for all acts and omissions of the Subsubcontractors, Suppliers, and other individuals and entities performing or furnishing any of the Work just as Subcontractor is responsible for Subcontractor's own acts and omissions. Nothing in the Subcontract Documents shall create for the benefit of any such Subsubcontractor, Supplier or other individual or entity any contractual relationship between Design/Builder and any such Subsubcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Design/Builder to pay or to see to the payment of any moneys due any such Subsubcontractor, Supplier or other individual or entity except as may otherwise be required by Laws and Regulations.
- C. Subcontractor shall be solely responsible for scheduling and coordinating the Work of Subsubcontractors, Suppliers, and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Subcontractor.

- D. Subcontractor shall require all Subsubcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Design/Builder through Subcontractor.
- E. All Work performed for Subcontractor by a Subsubcontractor or Supplier will be pursuant to an appropriate subcontract between Subcontractor and the Subsubcontractor or Supplier which specifically binds the Subsubcontractor or Supplier to the applicable terms and conditions of the Subcontract Documents for the benefit of Design/Builder. Whenever any such agreement is with a Subsubcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Subcontractor and the Subsubcontractor or Supplier will contain provisions whereby the Subsubcontractor or Supplier waives all rights against Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants, Subcontractor, and all other additional insureds (and the officers, directors, members, partners, employees, agents, and other 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 Subsubcontractor or Supplier, Subcontractor will obtain the same.

6.06 *Patent Fees and Royalties*

- A. Subcontractor 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 Subcontract Documents for use in the performance of the Work and if to the actual knowledge of Design/Builder 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 Design/Builder in the Subcontract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Subcontractor shall indemnify and hold harmless Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants and the officers, directors, partners, employees, agents, and other consultants 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 resulting from 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 Subcontract Documents.
- C. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Subcontractor and its officers, directors, members, partners, employees or agents, Subsubcontractors and Suppliers 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 resulting from 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 required by the Subcontract Documents, but not identified by

Design/Builder as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

6.07 *Permits*

- A. Unless otherwise provided in the Subcontract Documents, Subcontractor shall obtain and pay for all construction permits and licenses. Design/Builder shall assist Subcontractor, when necessary, in obtaining such permits and licenses. Subcontractor shall pay those 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 Subagreement. Subcontractor shall pay all charges of utility owners for connections to the Work, but Subcontractor shall not be responsible for charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.08 *Laws and Regulations*

- A. Subcontractor shall give all notices and comply with all Laws and Regulations which are applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Design/Builder shall not be responsible for monitoring Subcontractor's compliance with any Laws or Regulations.
- B. If Subcontractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Subcontractor 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. d/s
- C. Changes in Laws and Regulations not known on the Effective Date having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Subcontract Price or Subcontract Times. d/s

6.09 *Taxes*

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

6.10 *Use of Site and Other Areas*

- A. **Limitation on Use of Site and Other Areas**
 - 1. Subcontractor 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. Subcontractor 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, Subcontractor 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, Subcontractor shall indemnify and hold harmless Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including, but not limited to, 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 brought by any such owner or occupant against Design/Builder or any other party indemnified hereunder to the extent caused by or based upon Subcontractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work, Subcontractor shall keep the Site 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, Subcontractor shall clean the Site and make it ready for utilization by Owner. At the completion of the Work, Subcontractor 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 Subcontract Documents.

D. *Loading Structures:* Subcontractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Subcontractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.11 *Record Documents*

A. Subcontractor 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 all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be available to Design/Builder for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Design/Builder.

6.12 *Safety and Protection*

A. Subcontractor shall conform to such safety precautions and programs of Design/Builder or Owner as are identified in the Subcontract Documents.

B. Subcontractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Subcontractor 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.
- C. Subcontractor 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. Subcontractor shall notify Design/Builder and owners of adjacent property and of underground facilities and 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.
- D. Subcontractor shall inform Design/Builder of the specific requirements of Subcontractor's safety program with which Design/Builder, Owner, and their employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.12.B.2 or 6.12.B.3 caused, directly or indirectly, in whole or in part, by Subcontractor, any Subsubcontractor, 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 Subcontractor (except damage or loss attributable to the fault of the Subcontract Documents or to the acts or omissions of Owner, Design/Builder, or Design/Builder's Consultant, 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 Subcontractor or any Subsubcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Subcontractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Design/Builder has issued a notice to Subcontractor in accordance with Paragraph 13.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.13 *Safety Representative*

- A. Subcontractor 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.

6.14 *Hazard Communication Programs*

- A. Subcontractor 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.

6.15 *Emergencies*

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

6.16 *Shop Drawings and Samples*

- A. Subcontractor shall submit Shop Drawings to Design/Builder for review and approval in accordance with the accepted schedule of Submittals. All Submittals will be identified as Design/Builder may require and in the number of copies specified in the Subcontract Documents. The 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 Design/Builder the services, materials, and equipment Subcontractor proposes to provide and to enable Design/Builder to review the information as required by Paragraph 6.16.E.
- B. Subcontractor shall also submit Samples to Design/Builder for review and approval in accordance with the accepted schedule of Submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as Design/Builder may require to enable Design/Builder to review the Submittal as required by Paragraph 6.16.E. The numbers of each Sample to be submitted will be as required by the Specifications.
- C. Where a Shop Drawing or Sample is required by the Subcontract Documents or the schedule of Submittals acceptable to Design/Builder as required by Paragraph 2.06.A.2, any related Work performed prior to Design/Builder's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Subcontractor.
- D. *Submittal Procedures:*
 1. Before submitting each Shop Drawing or Sample, Subcontractor shall have determined and verified:
 - a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - b. 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 means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

- d. Subcontractor 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 Subcontract Documents.
2. Each Submittal will bear a stamp or specific written indication that Subcontractor has satisfied Subcontractor's obligations under the Subcontract Documents with respect to Subcontractor's review and approval of that Submittal.
3. At the time of each Submittal, Subcontractor shall give Design/Builder specific written notice of such variation, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Subcontract Documents, such notice to be in a written communication separate from the Submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to Design/Builder for review and approval of each such variation.

E. *Design/Builder's Review:*

1. Design/Builder will timely review and approve Shop Drawings and Samples in accordance with the schedule of Submittals acceptable to Design/Builder. Design/Builder'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 Subcontract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Subcontract Documents.
2. Design/Builder'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 Subcontract Documents). The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Design/Builder's review and approval of required Shop Drawings or Samples shall not relieve Subcontractor from responsibility for any variation from the requirements of the Subcontract Documents unless Subcontractor has in writing called Design/Builder's attention to each such variation at the time of submission and Design/Builder has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by Design/Builder relieve Subcontractor from responsibility for complying with the requirements of Paragraph 6.16.D.1.

- F. *Resubmittal Procedures:* Subcontractor shall make corrections required by Design/Builder and shall return the required number of corrected copies of the Submittal for review and approval. Subcontractor shall direct specific attention in writing to revisions other than the corrections called for by Design/Builder on previous Submittals.

6.17 *Continuing the Work*

- A. Subcontractor shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Design/Builder. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 14.04 or as Design/Builder

and Subcontractor may otherwise agree in writing.

6.18 *Subcontractor's General Warranty and Guarantee*

A. Subcontractor warrants and guarantees to Design/Builder that all Work will be in accordance with the Subcontract Documents and will not be defective.

B. Subcontractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification or improper maintenance or operation by persons other than Subcontractor, Subsubcontractors or Suppliers, or any other individual or entity for whom Subcontractor is responsible; or

2. normal wear and tear under normal usage.

B. Subcontractor's obligation to perform and complete the Work in accordance with the Subcontract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Subcontract Documents or a release of Subcontractor's obligation to perform the Work in accordance with the Subcontract Documents:

1. Observations by Design/Builder;

2. The making of any progress or final payment;

3. The issuance of a certificate of Substantial Completion or any payment related thereto by Design/Builder;

4. Use or occupancy of the Work or any part thereof by Owner or Design/Builder;

5. Any review and approval of a Submittal or the issuance of a notice of acceptability by Design/Builder;

6. Any inspection, test, or approval by others; or

7. Any correction of defective Work by Design/Builder.

6.19 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Subcontractor shall indemnify and hold harmless Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants and the officers, directors, members, partners, employees, agents, and other 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) to the extent caused by Subcontractor's 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 Subcontractor, or any Subsubcontractor, Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work.

- B. In any and all claims against Owner, Design/Builder, Design/Builder's Consultants or any of their respective consultants, agents, officers, directors, members, partners, or employees by any employee (or the survivor or personal representative of such employee) of Subcontractor, any Subsubcontractor, any Supplier, 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 6.19.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 Subcontractor or any such Subsubcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.
- C. The indemnification obligations of Subcontractor under Paragraph 6.19.A shall not extend to the liability of Design/Builder's Consultant or to the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
 - 1. The preparation or approval of or the failure to prepare or approve, maps, drawings, opinions, reports, surveys, 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.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner or Design/Builder may perform other work related to the Project at the Site with Owner's or Design/Builder's employees, or let other contracts therefor or have other work performed by utility owners. Design/Builder shall have the responsibility for coordination of such other work. Subcontractor shall perform its Work to avoid conflict and so as not to hinder or delay the work of others.
- B. Subcontractor shall afford each other contractor who is a party to such a contract and each utility owner (and Owner and Design/Builder, if either of them is performing the additional work with their own employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Subcontract Documents, Subcontractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together and properly integrate with such other work. Subcontractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Subcontractor may cut or alter others' work with the written consent of Design/Builder and the others whose work will be affected. The duties and responsibilities of Subcontractor under this Paragraph 7.01.B are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Subcontractor in said direct contracts between Owner or Design/Builder and such utility owners and other contractors.
- C. If the proper execution or results of any part of Subcontractor's Work depends upon work performed by others under this Article 7, Subcontractor shall inspect such other work and

promptly report to Design/Builder in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Subcontractor's Work. Subcontractor's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Subcontractor's Work except for latent or non-apparent defects and deficiencies in such other work.

7.02 *Legal Relationships*

- A. Each other direct contract of Design/Builder under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Subcontractor for the reasonable direct delay and disruption costs incurred by Subcontractor as a result of the other contractor's actions or inactions.
- B. Subcontractor shall be liable to Design/Builder and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Subcontractor's actions or inactions.

ARTICLE 8—DESIGN/BUILDER'S RESPONSIBILITIES

8.01 *Communications*

- A. Design/Builder shall designate in writing a person to act as Design/Builder's Representative with respect to the services to be rendered under this Subagreement.

8.02 *Furnish Data*

- A. Design/Builder will promptly furnish the data required of Design/Builder under the Subcontract Documents.
- B. Design/Builder will provide information known to or in the possession of Design/Builder relating to:
 - 1. Any subsurface data at or contiguous to the site that Design/Builder may have obtained; and
 - 2. The presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.03 *Pay Promptly When Due*

- A. Design/Builder shall make payments to Subcontractor promptly when they are due as provided in Paragraphs 13.03 and 13.08.C.

8.04 *Lands and Easements*

- A. Design/Builder's duties in respect of providing access to lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.03.

8.05 *Insurance*

- A. Design/Builder's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.06 *Change Orders*

- A. Design/Builder is obligated to execute Change Orders as indicated in Paragraph 9.04.

8.07 *Inspections, Tests, and Approvals*

- A. Design/Builder's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 12.03.B.

8.08 *Undisclosed Hazardous Environmental Condition*

- A. Design/Builder's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.04.

8.09 *Evidence of Financial Arrangements*

- A. If and to the extent Design/Builder has agreed to furnish Subcontractor reasonable evidence that financial arrangements have been made to satisfy Design/Builder's obligations under the Subcontract Documents, Design/ Builder's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

8.10 *Compliance with Safety Program*

- A. While at the Site, Design/Builder's employees and representatives shall comply with the specific applicable requirements of Subcontractor's safety programs of which Design/Builder has been informed pursuant to Paragraph 6.12.D.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 *Authorized Changes in the Work*

- A. Without invalidating the Subcontract and without notice to any surety, Design/Builder may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the contract by a Change Order, or a Work Change Directive. Upon receipt of any such document, Subcontractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Subcontract Documents (except as otherwise specifically provided).
- B. If Design/Builder and Subcontractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Subcontract Price or Subcontract 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 9.03.

9.02 *Unauthorized Changes in the Work*

- A. Subcontractor shall not be entitled to an increase in the Subcontract Price or an extension of the Subcontract Times with respect to any Work performed that is not required by the Subcontract Documents as amended and supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.15 or in the case of uncovering Work as provided in Paragraph 12.04.B.

9.03 *Claims*

- A. *Notice:* If Design/Builder and Subcontractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Subcontract Price or the Subcontract Times that should be allowed as a result of any order of Design/Builder pursuant to Paragraph 9.01.A or other occurrence for which the Subcontract Documents provide that such adjustment(s) may be made, a claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than ten days after the start of the occurrence or event giving rise to the claim.
- B. *Documentation:* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by Paragraph 9.03A.
- C. *Decision:* The other party should render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by Paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.
- D. *Time Limit Extension:* The time limits of Paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.
- E. If Subcontractor makes a claim in connection to any action or lack of action of the Owner, Subcontractor's compensation for such claim shall be limited to that received by Design/Builder from Owner for such claim, less Design/Builder's markups for overhead and profit as allowed by the Design/Builder's contract with Owner. Subcontractor shall be bound by all procedural provisions, administrative determinations, and final judgments which are binding on the Design/Builder. Subcontractor shall bear the expenses and the burden of prosecuting any such claim and shall give Design/Builder adequate notification of any action as required by Paragraph 9.03A. Design/Builder will facilitate Subcontractor's pursuit of such claims with Owner.

9.04 *Execution of Change Orders*

- A. Design/Builder and Subcontractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Work which are: (i) ordered by Design/Builder pursuant to Paragraph 9.01.A, (ii) required because of acceptance of defective Work under Paragraph 12.08.A or correcting defective Work under Paragraph 12.09, or (iii) agreed to by the parties; and
 - 2. Changes in the Subcontract Price or Subcontract Times which are agreed to by the parties, including any undisputed sum or amount of Work actually performed in accordance with a Work Change Directive.

9.05 *Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Subcontract Documents (including, but not limited to, Subcontract Price or Subcontract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice

will be Subcontractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; FEE; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Subcontractor 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 Subcontract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Subcontractor 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 Design/Builder, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 10.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Subcontractor in the performance of the Work under schedules of job classifications agreed upon by Design/Builder and Subcontractor. 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 after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Design/Builder.
 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 Subcontractor unless Design/Builder deposits funds with Subcontractor with which to make payments, in which case the cash discounts shall accrue to Design/Builder. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Design/Builder, and Subcontractor shall make provisions so that they may be obtained.
 3. Payments made by Subcontractor to the Subsubcontractors for Work performed or furnished by Subsubcontractors. Subsubcontractor's cost of the work shall be calculated in the same manner as the Subcontractor's cost of the Work.
 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 items:

- a. The proportion of necessary transportation, travel and subsistence expenses of Subcontractor'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 Subcontractor.
- c. Rentals of all construction equipment and machinery and the parts thereof whether rented from Subcontractor or others in accordance with rental agreements approved by Design/Builder, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof – all 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 or similar taxes related to the Work, and for which Subcontractor is liable, imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Subcontractor, any Subsubcontractor 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, damages, and related expenses caused by damage to the Work, not compensated by insurance or otherwise, sustained by Subcontractor in connection with the performance and furnishing of the Work provided they have resulted from causes other than the negligence of Subcontractor, any Subsubcontractor, 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 Design/Builder. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Subcontractor'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, expressage and similar petty cash items in connection with the Work.
- i. Cost of premiums for all Bonds and insurance Subcontractor is required by the Subcontract 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 Subcontractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Subcontractor whether at the Site or in Subcontractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications

referred to in Paragraph 10.02.A.1 or specifically covered by Paragraph 10.02.A.4 – all of which are to be considered administrative costs covered by Subcontractor's fee.

2. Expenses of Subcontractor's principal and branch offices other than Subcontractor's office at the Site.
 3. Any part of Subcontractor's capital expenses, including interest on Subcontractor's capital employed for the Work and charges against Subcontractor for delinquent payments.
 4. Costs due to the negligence of Subcontractor, any Subsubcontractor, 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, general expense, or other costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.01.A.
- C. *Subcontractor's Fee:* When all the Work is performed on the basis of cost-plus, Subcontractor's fee shall be determined as set forth in the Subagreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Subcontract Price is determined on the basis of Cost of the Work, Subcontractor's fee shall be determined as set forth in Paragraph 11.01.C.
- D. *Documentation:* Whenever the cost of any Work is to be determined for any purpose pursuant to Paragraph 10.01.A and 10.01.B, Subcontractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to Design/Builder an itemized cost breakdown together with supporting data.

10.02 *Cash Allowances*

- A. The Subcontract Price includes all allowances so named in the Subcontract Documents. Subcontractor shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to Design/Builder. Subcontractor agrees that:
1. The allowances include the cost to Subcontractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Work Site, and all applicable taxes; and
 2. Except as set forth in the Subcontract Documents, Subcontractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Subcontract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.
- B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Subcontractor on account of Work covered by allowances, and the Subcontract Price shall be correspondingly adjusted.

10.03 *Unit Price Work*

- A. Where the Subcontract Documents provide that all or part of the Work is to be Unit Price Work, initially the Subcontract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Subagreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Subcontract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Subcontractor will be made by Design/Builder.
- B. Each unit price will be deemed to include an amount considered by Subcontractor to be adequate to cover Subcontractor's overhead and profit for each separately identified item.
- C. Design/Builder or Subcontractor may make a claim for an adjustment in the Subcontract Price in accordance with Paragraph 9.03 if:
 - 1. The quantity of any item of Unit Price Work performed by Subcontractor differs materially and significantly from the estimated quantity of such item indicated in the Subagreement by more than the quantity indicated in the Supplementary Conditions;
 - 2. There is no corresponding adjustment with respect to any other item of Work; and
 - 3. If Subcontractor believes that Subcontractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Design/Builder believes the Design/Builder 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 11 – CHANGE OF SUBCONTRACT PRICE; CHANGE OF SUBCONTRACT TIMES

11.01 *Change of Subcontract Price*

- A. The Subcontract Price may only be changed by a Change Order. Any Claim for an adjustment in the Subcontract Price shall be based on written notice submitted by the party making the Claim to the other party in accordance with the provisions of Paragraph 9.03.A.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Subcontract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Subcontract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 10.03); or
 - 2. Where the Work involved is not covered by unit prices contained in the Subcontract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.01.C.2; or
 - 3. Where the Work involved is not covered by unit prices contained in the Subcontract Documents and agreement to a lump sum is not reached under Paragraph 11.01.B.2, on

the basis of the Cost of the Work (determined as provided in Paragraph 10.01) plus a Subcontractor's Fee for overhead and profit (determined as provided in Paragraph 11.01.C).

C. *The Subcontractor's fee for overhead and profit on Change Orders 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 10.01.A.1 (payroll) and 10.01.A.2 (material and equipment), the Subcontractor's fee shall be 15 percent;
 - b. For costs incurred under Paragraphs 10.01.A.3 (subsubcontractors), 10.01.A.4 (special consultants), and 10.01.A.5 (supplemental costs), the Subcontractor'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 11.01.C.2.a, is that the Subsubcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such subsubcontractor under Paragraphs 10.02A.1 and 10.02.A.2 and that any higher tier subsubcontractor and Subcontractor will each be paid a fee of five percent of the amount paid to the next lower tier subsubcontractor;
 - d. The amount of credit for overhead and profit to be allowed by Subcontractor to Design/Builder 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 Subcontractor's fee by an amount equal to five percent of the net decrease; and
 - e. When both additions and credits are involved in any one change, the adjustment in Subcontractor's fee shall be computed on the basis of the net change in the costs for the categories stated in Paragraphs 10.01.C.2.a through 10.01.C.2.e inclusive.

11.02 *Change of Subcontract Times*

- A. The Subcontract Times or Milestones may only be changed by a Change Order . Any claim for an adjustment of the Subcontract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party in accordance with Paragraph 9.03.A.
- B. *Delays Beyond Subcontractor's Control:* Where Subcontractor is prevented from completing any part of the Work within the Subcontract Times or Milestones due to delay beyond the control of Subcontractor, the Subcontract Times (or Milestones) 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 11.02.A. Delays beyond the control of Subcontractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect by Design/Builder, acts or neglect of governmental agencies, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or other acts of God.

- C. If Owner, Design/Builder, or other contractors or utility owners performing other work for Owner or Design/Builder as contemplated by Article 7, or anyone for whom Owner or Design/Builder is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Subcontractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Subcontractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Subcontractor's ability to complete the Work within the Contract Times.
- D. If Subcontractor 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 Design/Builder, or other causes not the fault of and beyond control of Owner, Design/Builder, and Subcontractor, then Subcontractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Subcontractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Subcontractor's sole and exclusive remedy for the delays described in this Paragraph 12.3.D.
- E. Design/Builder shall not be liable to Subcontractor 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 Subcontractor on or in connection with any other project or anticipated project.
- F. Subcontractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Subcontractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Subcontractor

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 *Notice of Defects*

- A. Prompt written notice of all defective Work of which Design/Builder has actual knowledge will be given to Subcontractor. All defective Work may be rejected, corrected or accepted as provided in this Article 12.

12.02 *Access to Work*

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

12.03 *Tests and Inspections*

- A. Subcontractor shall give Design/Builder timely notice of readiness of the Work for all required inspections, tests or approval, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Design/Builder shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Subcontract Documents except:
 - 1. For inspections, tests or approvals covered by Paragraph 12.03.C and 12.03.D below;
 - 2. That costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.04.B below will be paid as provided in said Paragraph 12.04.B; and
 - 3. As otherwise specifically provided in the Subcontract 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, Subcontractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Design/Builder the required certificates of inspection or approval.
- D. Subcontractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for Design/ Builder'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 Subcontractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Design/Builder.
- E. If any Work (or the work of others) that is to be inspected, tested or approved is covered by Subcontractor without written concurrence of Design/Builder, it must, if requested by Design/Builder, be uncovered for observation.

- F. Uncovering Work as provided in Paragraph 11.03.E shall be at Subcontractor's expense unless Subcontractor has given Design/Builder timely notice of Subcontractor's intention to cover the same and Design/Builder has not acted with reasonable promptness in response to such notice.

12.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Design/Builder, it must, if requested by Design/Builder, be uncovered for Design/Builder's observation and replaced at Subcontractor's expense.
- B. If Design/Builder considers it necessary or advisable that covered Work be observed by Design/Builder or inspected or tested by others, Subcontractor, at Design/Builder's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Design/Builder may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Subcontractor shall pay all claims, costs, losses and damages arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, 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 Design/Builder shall be entitled to an appropriate decrease in the Subcontract Price. If the parties are unable to agree as to the amount thereof, Design/Builder may make a Claim therefor as provided in Paragraph 9.03. If, however, such Work is not found to be defective, Subcontractor shall be allowed an increase in the Subcontract Price or an extension of the Subcontract Times (or Milestones), 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, Subcontractor may make a Claim therefor as provided in Paragraph 9.03.

12.05 *Design/Builder May Stop the Work*

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

12.06 *Correction or Removal of Defective Work*

- A. Subcontractor shall correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Design/Builder, remove it from the Site and replace it with Work that is not defective. Subcontractor 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).

12.07 *Correction Period*

- A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Subcontract Documents or by any specific provision of the Subcontract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Subcontractor's use by Design/Builder or permitted by Laws and Regulations as contemplated in Paragraph 6.10.A is found to be defective, Subcontractor shall promptly, without cost to Design/Builder and in accordance with Design/Builder's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work, or, if the defective Work has been rejected by Design/Builder, remove it from the project and replace it with Work that is not defective, and (iii) satisfactorily correct or remove and replace any damage to other Work, to the work of others or other lands or areas resulting therefrom. If Subcontractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Design/Builder may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and 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 Subcontractor.
- B. 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.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Paragraph 12.07, 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.
- D. Subcontractor obligations under this Paragraph 12.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 12.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

12.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Design/Builder prefers to accept it, Design/Builder may do so. Subcontractor 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 Design/Builder's evaluation of and determination to accept such defective Work. If any such acceptance occurs, a Change Order will be issued incorporating the necessary revisions in the Subcontract Documents with respect to the Work, and Design/Builder shall be entitled to an appropriate decrease in the Subcontract Price reflecting the diminished value of the Work so accepted. If the parties are unable to agree as to the amount thereof, Design/Builder may make a Claim therefor as provided in Paragraph 9.03. If the acceptance occurs after final payment, an appropriate amount will be paid by Subcontractor to Design/Builder.

12.09 *Design/Builder May Correct Defective Work*

- A. If Subcontractor fails within a reasonable time after written notice from Design/Builder to correct defective Work or to remove and replace rejected Work as required by Design/Builder in accordance with Paragraph 12.07.A, or if Subcontractor fails to perform the Work in accordance with the Subcontract Documents, or if Subcontractor fails to comply with any other provision of the Subcontract Documents, Design/Builder may, after seven days' written notice to Subcontractor, correct and remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 12.09, Design/Builder shall proceed expeditiously. In connection with such corrective and remedial action, Design/Builder may exclude Subcontractor from all or part of the Site, take possession of all or part of the Work, and suspend Subcontractor's services related thereto, take possession of Subcontractor'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 Design/Builder has paid Subcontractor but which are stored elsewhere. Subcontractor shall allow Design/Builder, Design/Builder's Consultants and other representatives, agents, employees, and other contractors access to the Site to enable Design/Builder 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 Design/Builder in exercising such rights and remedies under this Paragraph 12.09 will be charged against Subcontractor, and a Change Order will be issued incorporating the necessary revisions in the Subcontract Documents with respect to the Work; and Design/Builder shall be entitled to an appropriate decrease in the Subcontract Price. If the parties are unable to agree as to the amount of the adjustment, Design/Builder may make a claim therefor as provided in Paragraph 9.03. 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 Subcontractor's defective Work.
- D. Subcontractor shall not be allowed an extension of the Subcontract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Design/Builder of Design/Builder's rights and remedies under this Paragraph 12.09.

ARTICLE 13 – PAYMENTS TO SUBCONTRACTOR AND COMPLETION

13.01 *Schedule of Values*

- A. The schedule of values established as provided in Paragraph 2.06 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Design/Builder. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 *Application for Progress Payment*

- A. On or about the date established in the Subagreement for submission of each application for progress payment (but not more often than once a month), Subcontractor shall submit to Design/Builder for review an Application for Payment filled out and signed by Subcontractor

covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Subcontract 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 Design/Builder 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 Design/Builder's interest therein, all of which must be satisfactory to Design/Builder.

- B. Beginning with the second Application for Payment, each Application shall include an affidavit of Subcontractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Subcontractor's legitimate obligations associated with prior Applications for Payment.
- C. The amount of retainage with respect to progress payments will be as stipulated in the Subagreement.

13.03 *Progress Payments*

- A. *Procedure:* Progress payments shall be made by the Design/Builder to the Subcontractor according to the following procedure:
 - 1. Design/Builder will, within 20 days after receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Subcontractor indicating in writing its reasons for refusing to accept the application. Within ten days after accepting each Application and five days after payment is received from Owner therefor, the amount will become due and when due will be paid by Design/Builder to Subcontractor. In the latter case, Subcontractor may make the necessary corrections and resubmit the Application. Each Application shall deduct the aggregate of amounts previously paid by Design/Builder.
 - 2. Subcontractor's Application for Payment will constitute a representation by Subcontractor to Design/ Builder that:
 - a. The Work has progressed to the point indicated;
 - b. The quality of the Work is generally in accordance with the Subcontract Documents; and
 - c. The conditions precedent to Sub-contractor's being entitled to such payment have been fulfilled.
 - 3. No Progress Payment nor any partial or entire use or occupancy of the Project by Design/Builder shall constitute an acceptance of any Work not in accordance with the Subcontract Documents.
- B. *Reduction in or Refusal to Make Payment:* Design/Builder may refuse to make the whole or any part of any such payment or, because of subsequently discovered evidence or the results of

subsequent inspections or tests, revise or revoke any such previous payment made, to such extent as may be necessary in Design/Builder's opinion to protect Design/Builder from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement; or
 2. The Subcontract Price has been reduced by Change Order; or
 3. Design/Builder has been required to correct defective Work or complete Work in accordance with Paragraph 12.09; or
 4. Design/Builder has actual knowledge of the occurrence of any of the events enumerated in Paragraph 14.02.A; or
 5. Claims have been made against Design/Builder on account of Subcontractor's performance or furnishing of the Work; or
 6. Liens have been filed in connection with the Work, except where Subcontractor has delivered a specific Bond satisfactory to Design/Builder to secure the satisfaction and discharge of such Liens; or
 7. There are other items entitling Design/Builder to a set-off against the amount recommended;
- C. In the event that Design/Builder withholds payment in accordance with Paragraph 13.03.B, Design/ Builder must give Subcontractor written notice stating the reasons for such action and promptly pay Subcontractor any amount remaining after deduction of the amount so withheld. Design/Builder shall pay Subcontractor the amount so withheld, or any adjustment thereto agreed to by Design/Builder and Subcontractor, when Subcontractor corrects to Design/Builder's satisfaction the reasons for such action.
- D. If it is subsequently determined that Design/ Builder's refusal of payment was not justified, the amount wrongfully withheld shall be paid within 30 days.

13.04 *Subcontractor's Warranty of Title*

- A. Subcontractor 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 Design/Builder free and clear of all Liens no later than the time of payment.

13.05 *Substantial Completion*

- A. When Subcontractor considers the entire Work ready for its intended use, Subcontractor shall notify Design/Builder in writing that the entire Work is substantially complete (except for items specifically listed by Subcontractor as incomplete) and request that Design/Builder issue a certificate of Substantial Completion. Promptly thereafter, Design/Builder and Subcontractor shall make an inspection of the Work to determine the status of completion. If Design/Builder does not consider the Work substantially complete, Design/Builder will notify Subcontractor in writing giving the reasons therefor. If Design/Builder considers the Work substantially complete, Design/Builder will prepare and deliver to Subcontractor a certificate of Substantial

Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion, Design/Builder will deliver to Subcontractor a written determination as to division of responsibilities pending final payment between Design/Builder and Subcontractor with respect to security, operation, safety, and protection of the work, maintenance, heat, utilities, insurance, and warranties and guarantees.

- B. Design/Builder will have the right to exclude Subcontractor from the Work after the date of Substantial Completion, but Design/Builder shall allow Subcontractor reasonable access to complete or correct items on the list of items to be completed.

13.06 *Partial Utilization*

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

1. Design/Builder at any time may request Subcontractor in writing to permit Design/Builder or Owner to use any such part of the Work which Design/Builder believes to be ready for its intended use and substantially complete. If Subcontractor agrees that such part of the Work is substantially complete, Subcontractor will certify to Design/Builder that such part of the Work is substantially complete and request Design/Builder to issue a certificate of Substantial Completion for that part of the Work. Subcontractor at any time may notify Design/Builder in writing that Subcontractor considers any such part of the Work ready for its intended use and substantially complete and request Design/Builder to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Design/Builder and Subcontractor shall make an inspection of that part of the Work to determine its status of completion. If Design/Builder does not consider that part of the Work to be substantially complete, Design/Builder will notify Subcontractor in writing giving the reasons therefor. If Design/Builder considers that part of the Work to be substantially complete, the provisions of Paragraph 13.05.A 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.
2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of Paragraph 5.10 in respect of property insurance.

13.07 *Final Inspection*

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

13.08 *Final Payment*

A. Application for Payment

1. After Subcontractor has, in the opinion of Design/Builder, satisfactorily completed all such corrections identified during the final inspection and has delivered, in accordance with the Subcontract 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 6.11) and other documents, Subcontractor 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: (i) all documentation called for in the Subcontract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Design/Builder) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in Paragraph 13.07.A.2 and as approved by Design/Builder, Subcontractor may furnish receipts or releases in full and an affidavit of Subcontractor 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 Design/Builder might in any way be responsible, or which might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subsubcontractor or Supplier fails to furnish such a release or receipt in full, Subcontractor may furnish a Bond or other collateral satisfactory to Design/Builder to indemnify Design/Builder against any Lien.

B. *Final Payment and Acceptance:* If Design/Builder is satisfied that the Work has been completed and Subcontractor's other obligations under the Subcontract Documents have been fulfilled, Design/Builder will, within fifteen days after receipt of the final Application for Payment, give written notice to Subcontractor that the Work is acceptable, subject to the provisions of Paragraph 13.09. Otherwise, Design/Builder will return the Application to Subcontractor, indicating in writing the reasons for refusing to process final payment, in which case Subcontractor shall make the necessary corrections and resubmit the Application for payment.

C. *Payment Becomes Due:* Thirty-five days after the presentation to Design/Builder of the Application for Payment and accompanying documentation, in appropriate form and substance and with Design/Builder's notice of acceptability, the amount will become due and, when due, will be paid by Design/Builder to Subcontractor.

13.09 *Final Completion Delayed*

- A. If, through no fault of Subcontractor, final completion of the Work is significantly delayed, Design/Builder shall, upon receipt of Subcontractor's final Application for Payment, and without terminating the Subagreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Design/Builder for Work

not fully completed or corrected is less than the retainage stipulated in the Subagreement, 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 Subcontractor to Design/Builder 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.

13.10 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 - 1. A waiver of all Claims by Design/Builder against Subcontractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 13.06, from failure to comply with the Subcontract Documents or the terms of any special guarantees specified therein, or from Subcontractor's continuing obligations under the Subcontract Documents; and
 - 2. A waiver of all Claims by Subcontractor against Design/Builder other than those previously made in writing and still unsettled.

ARTICLE 14—SUSPENSION OF WORK AND TERMINATION

14.01 *Design/Builder May Suspend Work*

- A. At any time and without cause, Design/Builder may suspend the Work or any portion thereof for a period of not more than ninety consecutive days by notice in writing to Subcontractor which will fix the date on which Work will be resumed. Subcontractor shall resume the Work on the date so fixed. Subcontractor shall be allowed an adjustment in the Subcontract Price or an extension of the Subcontract Times, or both, directly attributable to any such suspension if Subcontractor makes a claim therefor as provided in Paragraph 9.03.

14.02 *Subcontractor's Failure to Perform; Design/Builder May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify the rights and remedies of Design/Builder under this Paragraph 14.02:
 - 1. Subcontractor's failure to perform the Work in accordance with the Subcontract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, failure to adhere to the progress schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04 or failure to make payment to its employees, Subsubcontractors, or Suppliers);
 - 2. Subcontractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 3. Subcontractor's violation in any substantial way of any provisions of the Subcontract Documents.
- B. If one or more of the events identified in Paragraph 14.02.A occur, Design/Builder may, after giving Subcontractor (and the surety, if any) seven days' written notice:

1. Furnish any services, materials, equipment, labor, and other subcontractors that Design/Builder considers necessary for completion of the Work, or part thereof, for which Subcontractor is in default. All costs of this completion by Design/Builder (including but not limited to overhead, profit, fees of engineers, architects, attorneys, and other professionals) arising out of or relating to Subcontractor's failure of performance will be paid by Subcontractor. A Change Order will be issued incorporating the necessary revisions in the Subcontract Documents with respect to the Work.
 2. Terminate the services of Subcontractor, exclude Subcontractor from the Site, and take possession of the Work and of all Subcontractor's tools, appliances, construction equipment and machinery at the Site, and use the same to the full extent they could be used by Subcontractor (without liability to Subcontractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Design/Builder has paid Subcontractor but which are stored elsewhere, and finish the Work as Design/Builder may deem expedient. In such case, Subcontractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Subcontract 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 Design/Builder arising out of or relating to completing the Work, such excess will be paid to Subcontractor. If such claims, costs, losses and damages exceed such unpaid balance, Subcontractor shall pay the difference to Design/Builder. Such claims, costs, losses and damages incurred by Design/Builder will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Design/Builder shall not be required to obtain the lowest price for the Work performed.
- C. Notwithstanding Paragraph 14.02.B.2, Sub-contractor's services will not be terminated if Subcontractor 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.
- D. Where Subcontractor's services have been so terminated by Design/Builder, the termination will not affect any rights or remedies of Design/Builder against Subcontractor then existing or which may thereafter accrue. Any retention or payment of moneys due Subcontractor by Design/Builder will not release Subcontractor from liability.

14.03 *Design/Builder May Terminate for Convenience*

- A. Upon seven days' written notice to Subcontractor, Design/Builder may, without cause and without prejudice to any other right or remedy of Design/Builder, elect to terminate the Subagreement. In such case, Subcontractor shall be paid (without duplication of any items):
1. For completed and acceptable Work executed in accordance with the Subcontract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Subcontract Documents

- in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. For 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 Subsubcontractors, Suppliers; and
 4. For reasonable expenses directly attributable to termination.
- B. Subcontractor 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.

14.04 *Subcontractor May Stop Work or Terminate*

- A. If, through no act or fault of Subcontractor, the Work is suspended for a period of more than 90 days by Design/Builder or under an order of court or other public authority, or Design/Builder fails to act on any Application for Payment within 30 days after it is submitted, or Design/Builder fails for 30 days to pay Subcontractor any sum finally determined to be due and for which Owner has made payment to Design/Builder, then Subcontractor may, upon seven days' written notice to Design/Builder, and provided Design/Builder does not remedy such suspension or failure within that time, terminate the Subagreement and recover from Design/Builder payment on the same terms as provided in Paragraph 13.03. In lieu of terminating the Subagreement and without prejudice to any other right or remedy, if Design/Builder has failed for thirty days to pay Subcontractor any sum finally determined to be due, Subcontractor may, seven days after written notice to Design/Builder, stop the Work until payment is made of all such amounts due Subcontractor, including interest thereon. The provisions of this Paragraph 14.04 are not intended to preclude Subcontractor from making claim under Paragraph 9.03 for an increase in Subcontract Price or Subcontract Times or otherwise for expenses or damage directly attributable to Subcontractor's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 *Methods and Procedures*

- A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, Design/Builder and Subcontractor may exercise such rights or remedies as either may otherwise have under the Subcontract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 *Giving Notice*

- A. Whenever any provision of the Subcontract Documents requires the giving of written notice, it will be deemed to have been validly given if 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 if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of

the notice.

16.02 *Computation of Times*

- A. When any period of time is referred to in the Subcontract 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.

16.03 *Cumulative Remedies*

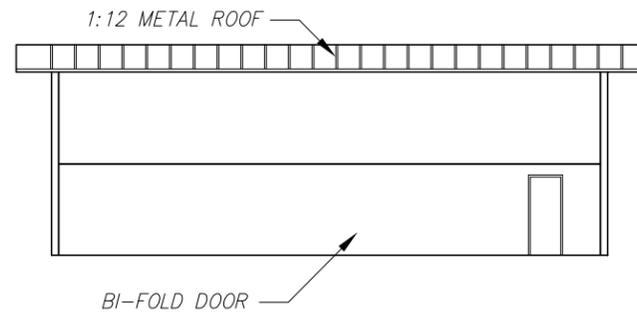
- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed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

16.04 *Survival of Obligations*

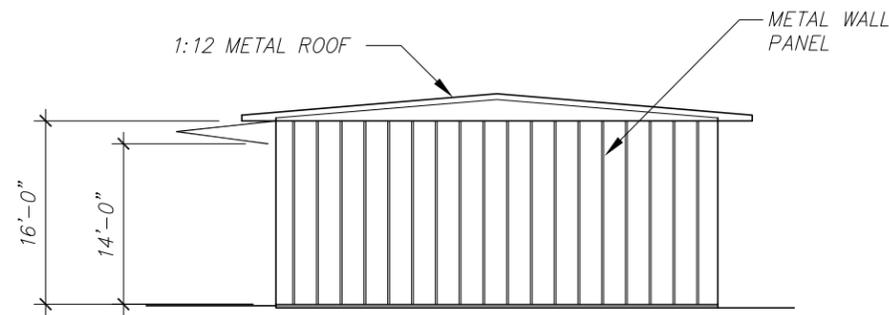
- A. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Subcontract Documents, as well as all continuing obligations indicated in the Subcontract Documents, will survive final payment, completion, and acceptance of the Work and termination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

16.05 *Controlling Law*

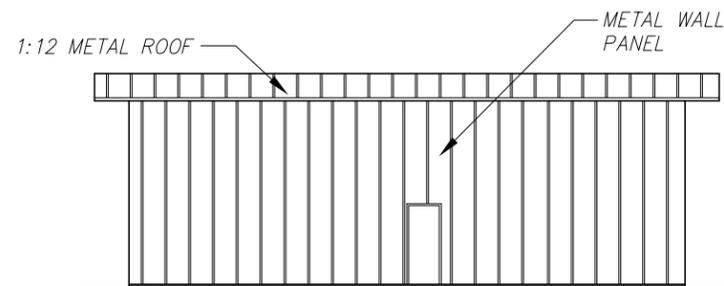
- A. This Subagreement is to be governed by the law of the state in which the Project is located.



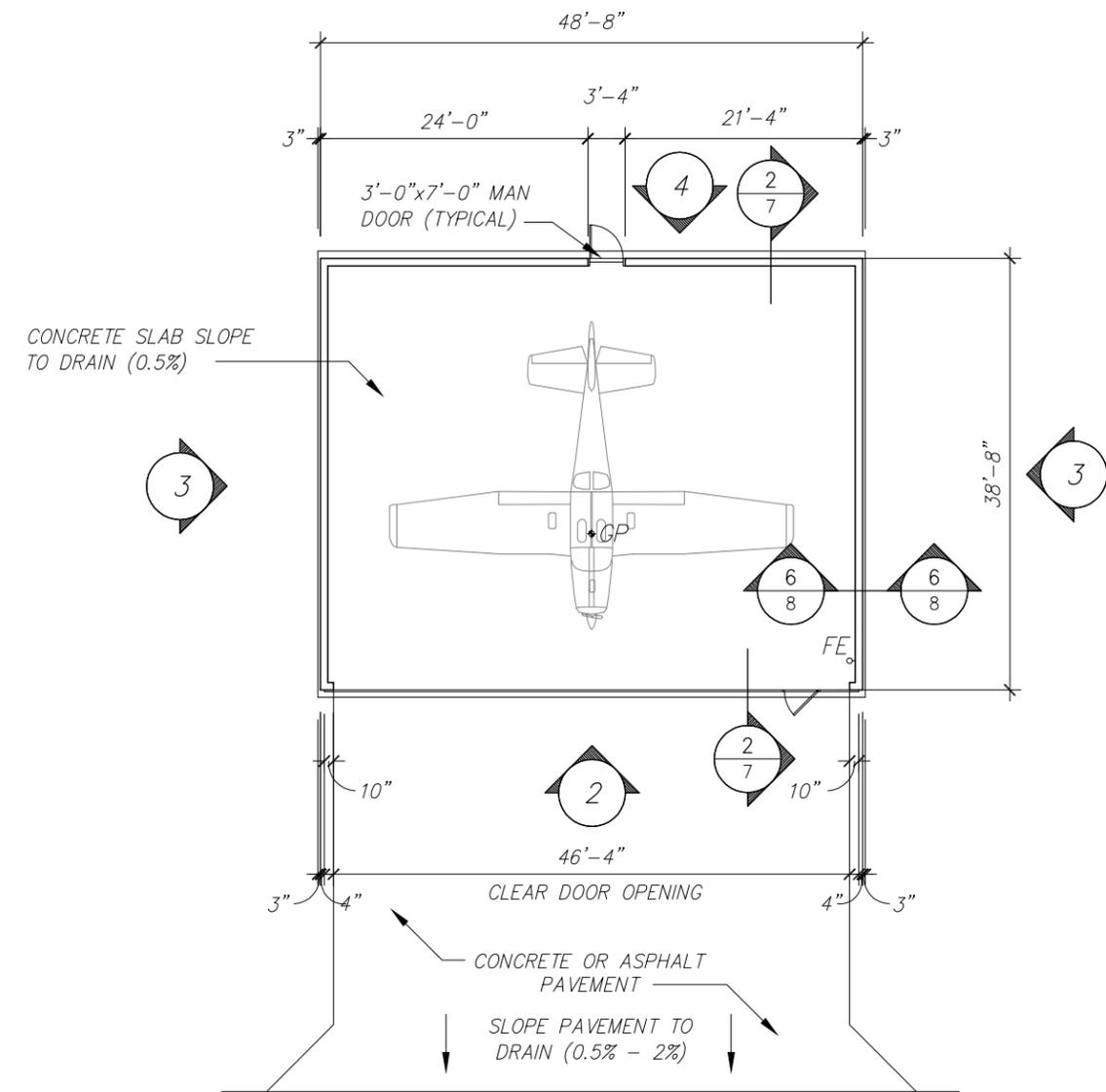
2 **FRONT ELEVATION**
SCALE : N.T.S.



3 **SIDE ELEVATION**
SCALE : N.T.S.



4 **REAR ELEVATION**
SCALE : N.T.S.



1 **FLOOR PLAN**
SCALE : N.T.S.

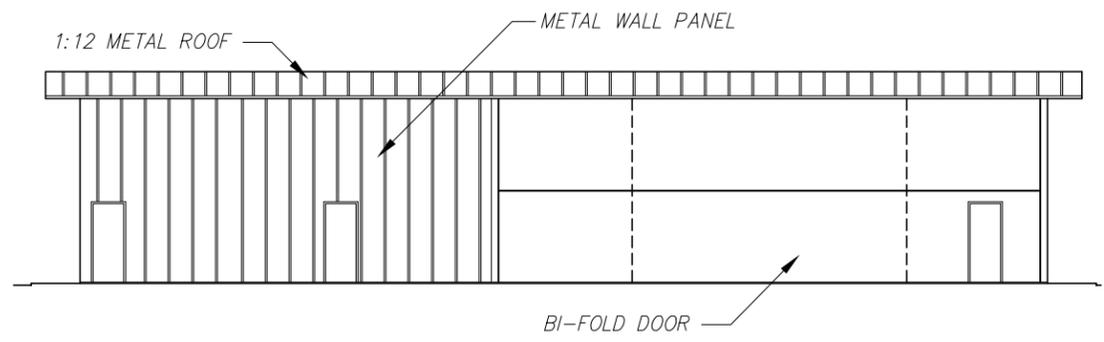
LEGEND:

- GP GROUND POINT
- FE FIRE EXTINGUISHER (10#, ABC MIN.)
- 2 DETAIL NUMBER
- 7 SHEET NUMBER WHERE DETAIL IS FOUND

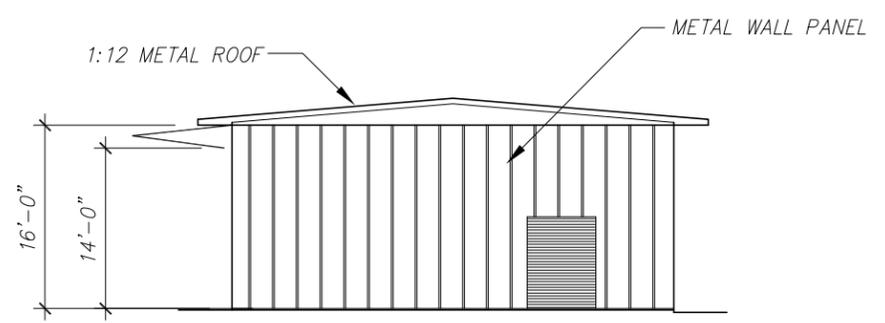
DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

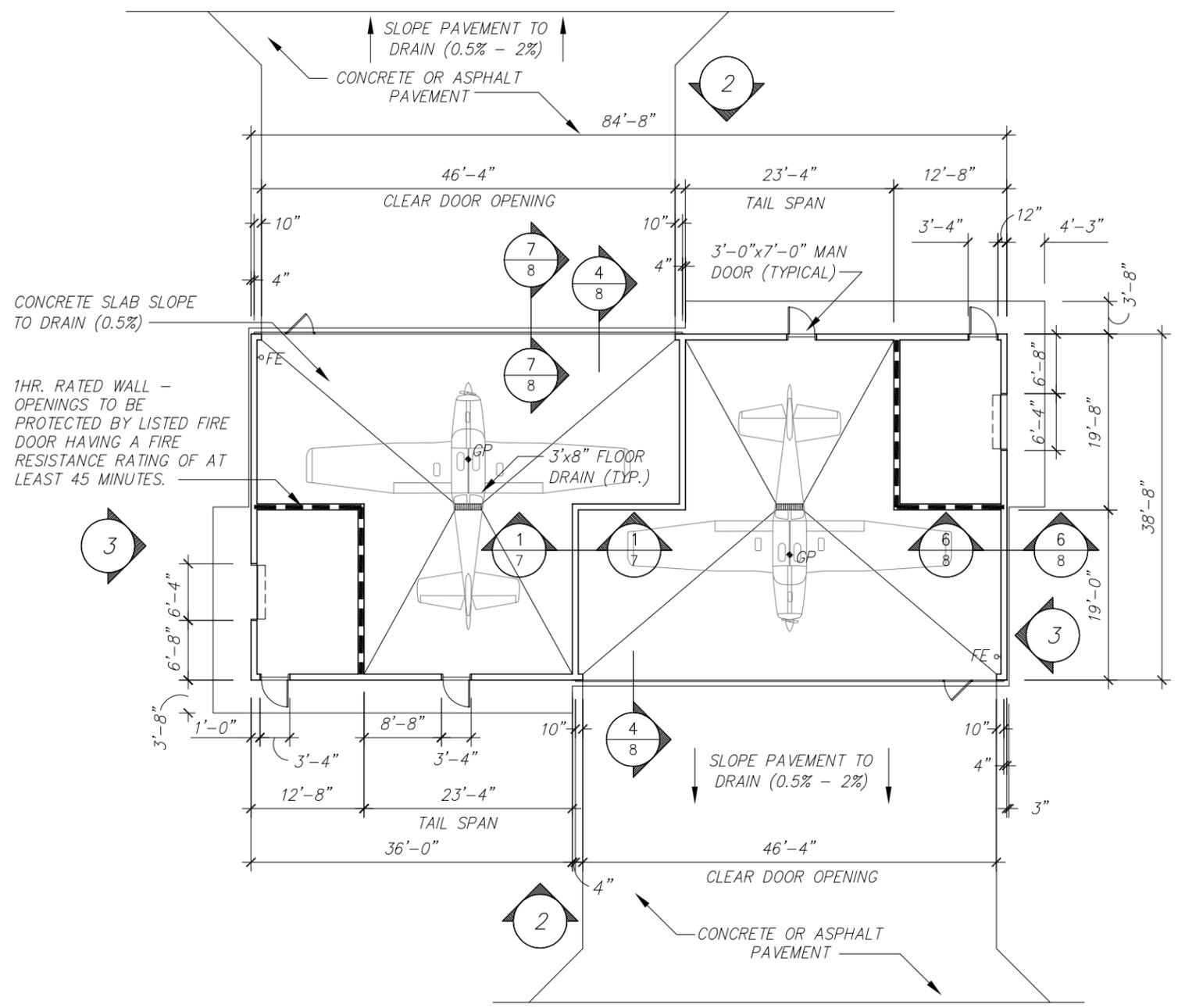
| REVISIONS | | | | | | Names | | Dates | | ENGINEER OF RECORD | | | FLORIDA DEPARTMENT OF TRANSPORTATION AVIATION OFFICE | | | SHEET TITLE: | |
|-----------|----|-------------|------|----|-------------|-------------|--|-------|--|---|--|--|--|--------|----------------------|--|--|
| Date | By | Description | Date | By | Description | Drawn by | | | | DAVID D. SKIPPER, P.E. FLORIDA LICENSE NO. 58972 | | | AIRPORT | COUNTY | FINANCIAL PROJECT ID | SINGLE HANGAR LAYOUT | |
| | | | | | | Checked by | | | | | | | | | | PROJECT NAME: T-HANGAR DESIGN GUIDELINES | |
| | | | | | | Designed by | | | | | | | | | | SHEET NO. 1 OF 9 | |
| | | | | | | Checked by | | | | | | | | | | | |
| | | | | | | Approved by | | | | | | | | | | | |



2 FRONT ELEVATION
SCALE : N.T.S.



3 SIDE ELEVATION
SCALE : N.T.S.



1HR. RATED WALL - OPENINGS TO BE PROTECTED BY LISTED FIRE DOOR HAVING A FIRE RESISTANCE RATING OF AT LEAST 45 MINUTES.

1 FLOOR PLAN
SCALE : N.T.S.

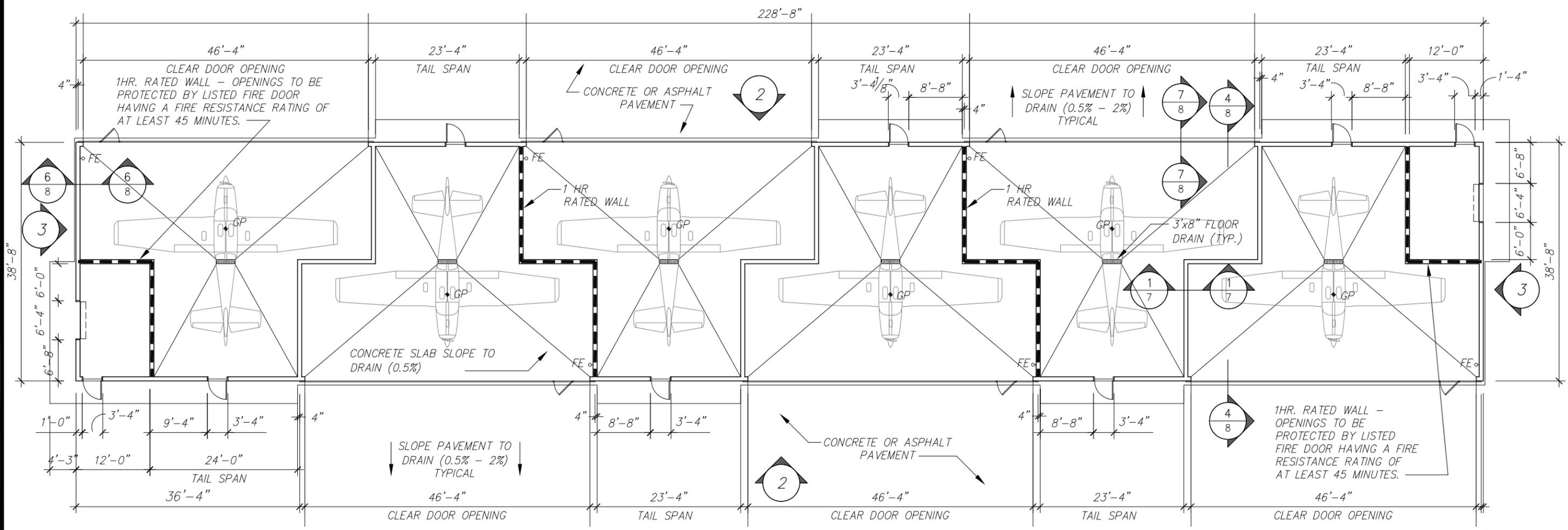
LEGEND:

- GP GROUND POINT
- FE FIRE EXTINGUISHER (10#, ABC MIN.)
- 2 DETAIL NUMBER
- 7 SHEET NUMBER WHERE DETAIL IS FOUND

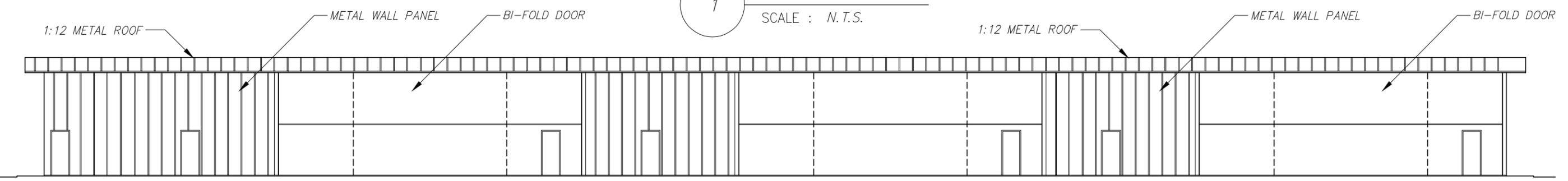
DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

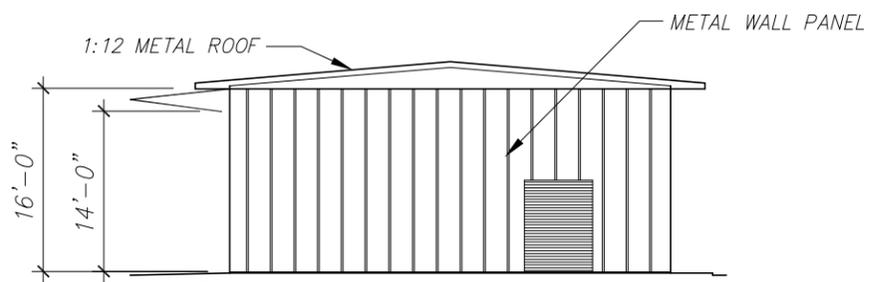
| REVISIONS | | | | | | Names | | ENGINEER OF RECORD | | FLORIDA DEPARTMENT OF TRANSPORTATION AVIATION OFFICE | | | SHEET TITLE: | | |
|-----------|----|-------------|------|----|-------------|----------|-------|--------------------|--|--|--------|----------------------|------------------------|----------------------------|-----------|
| Date | By | Description | Date | By | Description | Drawn by | Dates | | | AIRPORT | COUNTY | FINANCIAL PROJECT ID | DOUBLE T-HANGAR LAYOUT | | |
| | | | | | | | | | | | | | PROJECT NAME: | T-HANGAR DESIGN GUIDELINES | SHEET NO. |
| | | | | | | | | | | | | | | 2 OF 9 | |
| | | | | | | | | | | | | | | | |



1 **FLOOR PLAN**
SCALE : N.T.S.



2 **FRONT ELEVATION**
SCALE : N.T.S.



3 **SIDE ELEVATION**
SCALE : N.T.S.

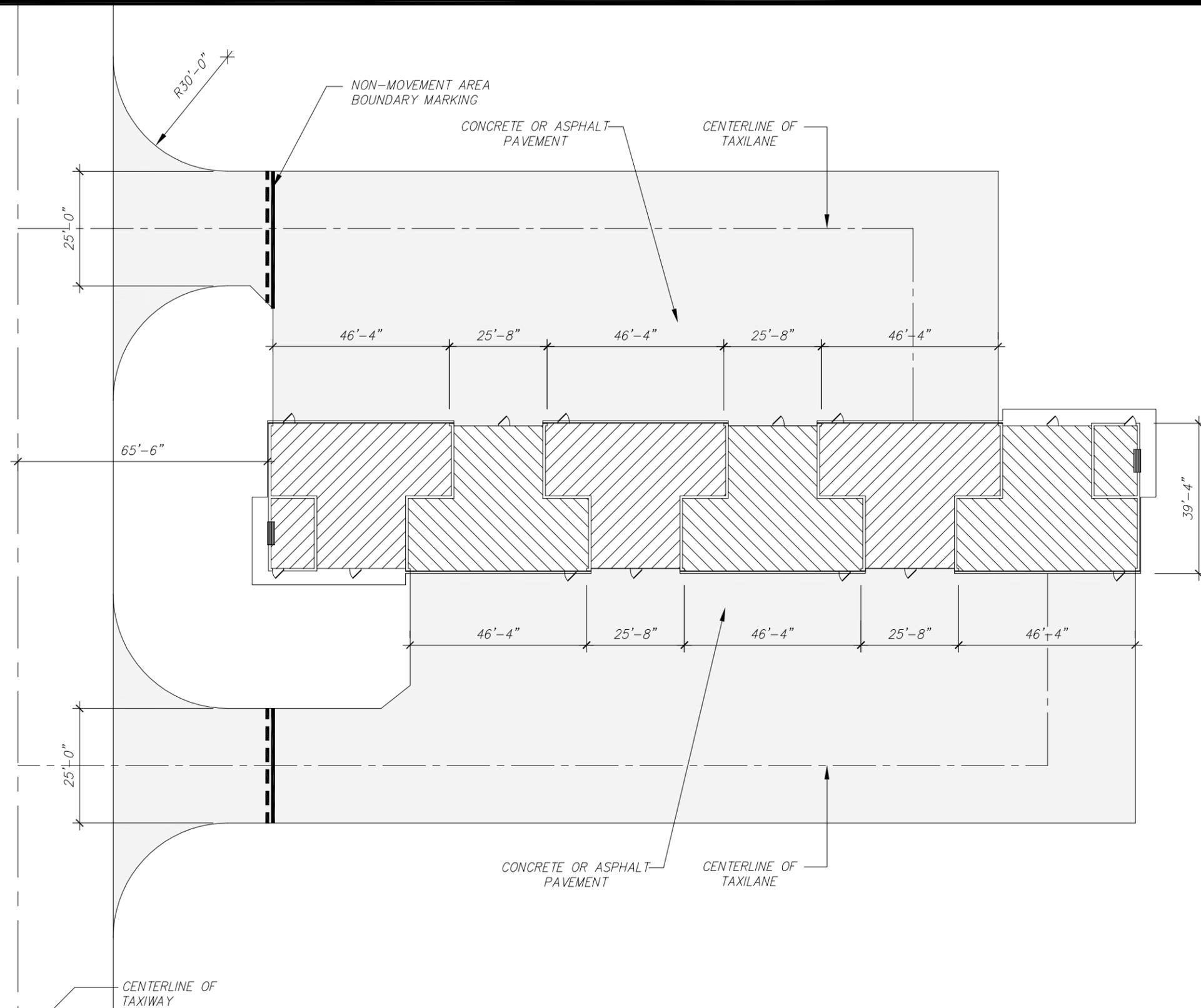
LEGEND:

- GP GROUND POINT
- FE FIRE EXTINGUISHER (10#, ABC MIN.)
- 2 DETAIL NUMBER
- 7 SHEET NUMBER WHERE DETAIL IS FOUND

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

| REVISIONS | | | | | | Names | | ENGINEER OF RECORD | | | FLORIDA DEPARTMENT OF TRANSPORTATION AVIATION OFFICE | | | SHEET TITLE: | | | | | | | |
|-----------|----|-------------|------|----|-------------|----------|-------|---|--|--|--|--|--|---------------------|--|---------------|--|----------------------------|--|-----------|--|
| Date | By | Description | Date | By | Description | Drawn by | Dates | DAVID D. SKIPPER, P.E. FLORIDA LICENSE NO. 58972 | | | AIRPORT COUNTY FINANCIAL PROJECT ID | | | SIX T-HANGAR LAYOUT | | | | | | | |
| | | | | | | | | | | | | | | | | PROJECT NAME: | | T-HANGAR DESIGN GUIDELINES | | SHEET NO. | |
| | | | | | | | | | | | | | | | | | | | | 3 OF 9 | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |



NOTE:
REFER TO LATEST EDITION OF FAA AC150/5300-13 AND
FDOT STANDARDS FOR TAXIWAY/TAXILANE DESIGN.

1 **SITE PLAN**
SCALE : N.T.S.

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE
READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

| REVISIONS | | | | | |
|-----------|----|-------------|------|----|-------------|
| Date | By | Description | Date | By | Description |
| | | | | | |
| | | | | | |
| | | | | | |

| Names | Dates |
|-------------|-------|
| Drawn by | |
| Checked by | |
| Designed by | |
| Checked by | |
| Approved by | |

ENGINEER OF RECORD

DAVID D. SKIPPER, P.E.
FLORIDA LICENSE NO. 58972



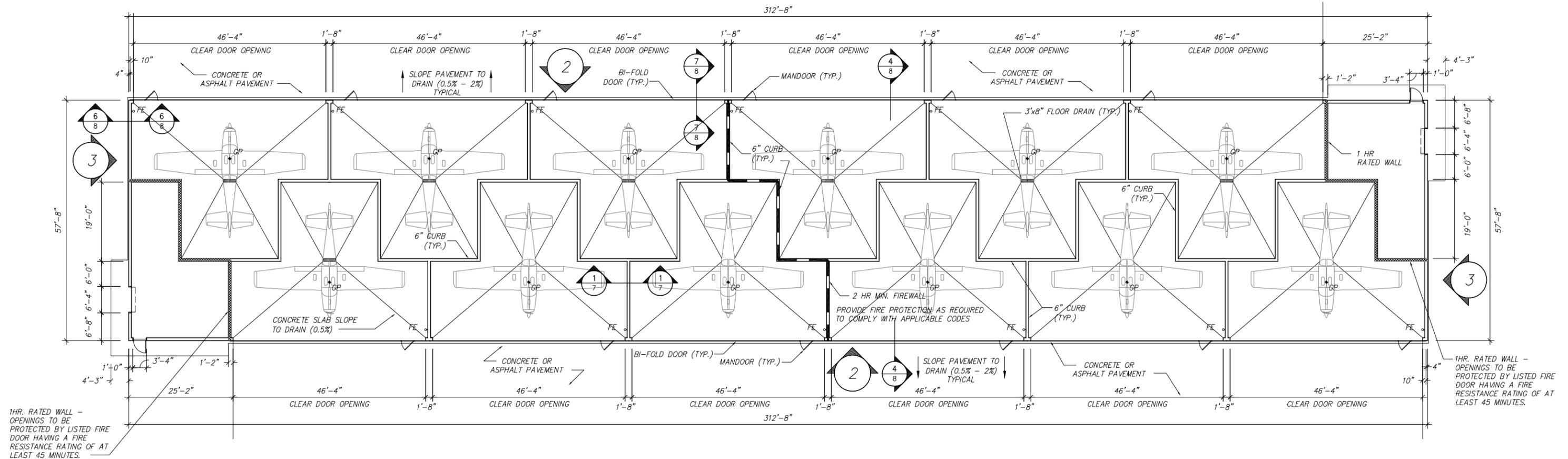
FLORIDA DEPARTMENT OF TRANSPORTATION
AVIATION OFFICE

| | | |
|---------|--------|----------------------|
| AIRPORT | COUNTY | FINANCIAL PROJECT ID |
|---------|--------|----------------------|

SHEET TITLE: **SIX T-HANGAR SITE LAYOUT**

PROJECT NAME: **T-HANGAR DESIGN GUIDELINES**

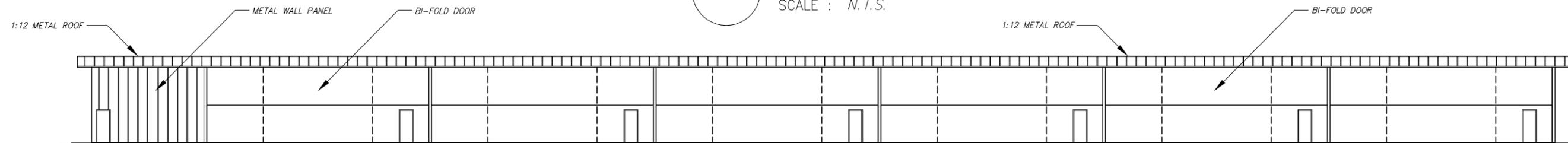
SHEET NO.
4 OF 9



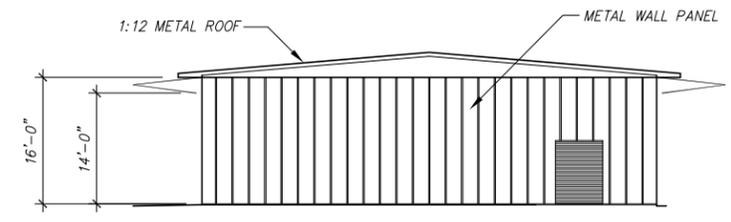
1HR. RATED WALL - OPENINGS TO BE PROTECTED BY LISTED FIRE DOOR HAVING A FIRE RESISTANCE RATING OF AT LEAST 45 MINUTES.

1HR. RATED WALL - OPENINGS TO BE PROTECTED BY LISTED FIRE DOOR HAVING A FIRE RESISTANCE RATING OF AT LEAST 45 MINUTES.

1 FLOOR PLAN
SCALE : N.T.S.



2 FRONT ELEVATION
SCALE : N.T.S.



3 SIDE ELEVATION
SCALE : N.T.S.

LEGEND:

- GP GROUND POINT
- FE FIRE EXTINGUISHER (10#, ABC MIN.)
- 2 DETAIL NUMBER
- 7 SHEET NUMBER WHERE DETAIL IS FOUND

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

| REVISIONS | | | | | |
|-----------|----|-------------|------|----|-------------|
| Date | By | Description | Date | By | Description |
| | | | | | |
| | | | | | |
| | | | | | |

| Names | Dates |
|-------|-------|
| | |
| | |
| | |
| | |

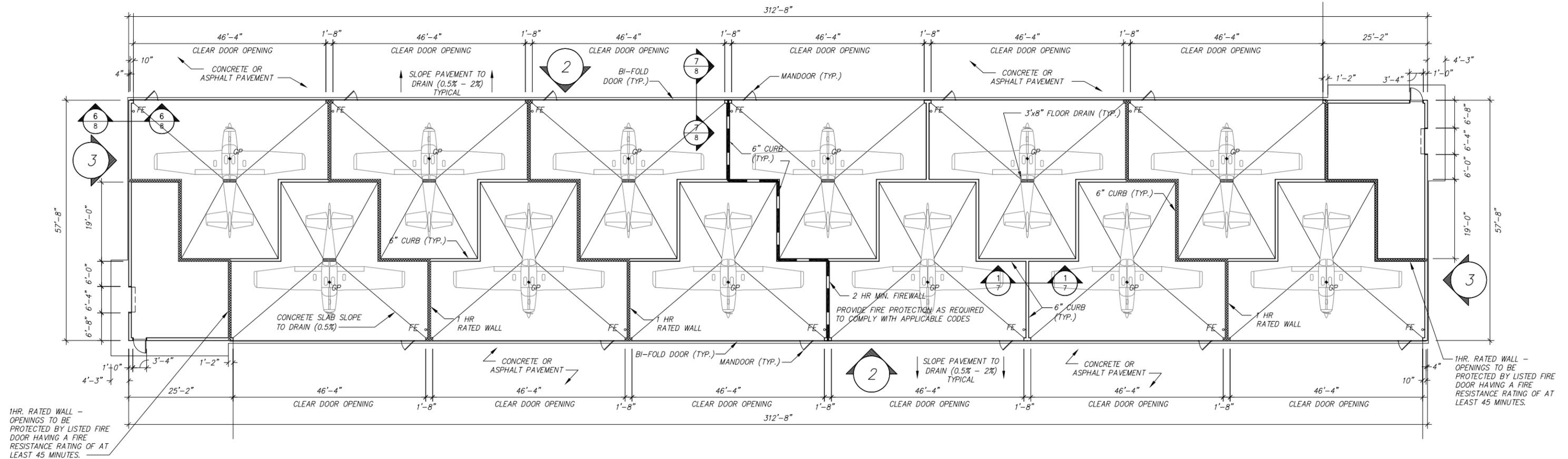
ENGINEER OF RECORD

DAVID D. SKIPPER, P.E.
FLORIDA LICENSE NO. 58972

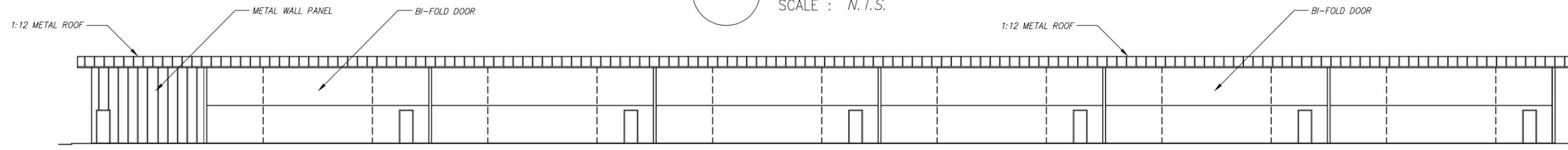


| | | |
|---|--------|----------------------|
| FLORIDA DEPARTMENT OF TRANSPORTATION AVIATION OFFICE | | |
| AIRPORT | COUNTY | FINANCIAL PROJECT ID |

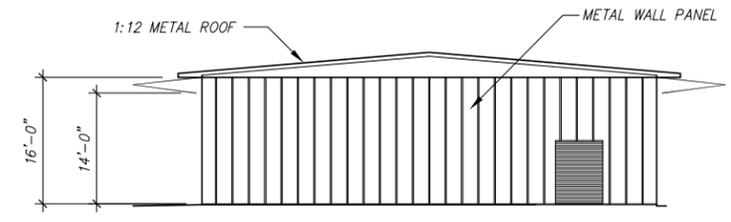
| | |
|--|----------------------------|
| SHEET TITLE: TWELVE T-HANGAR LAYOUT | |
| PROJECT NAME: T-HANGAR DESIGN GUIDELINES | SHEET NO. 5 OF 9 |



1 FLOOR PLAN
SCALE : N.T.S.



2 FRONT ELEVATION
SCALE : N.T.S.



3 SIDE ELEVATION
SCALE : N.T.S.

LEGEND:

- GP GROUND POINT
- FE FIRE EXTINGUISHER (10#, ABC MIN.)
- 2 DETAIL NUMBER
- 7 SHEET NUMBER WHERE DETAIL IS FOUND

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

| REVISIONS | | | | | |
|-----------|----|-------------|------|----|-------------|
| Date | By | Description | Date | By | Description |
| | | | | | |
| | | | | | |
| | | | | | |

| Names | Dates |
|-------|-------|
| | |
| | |
| | |
| | |

ENGINEER OF RECORD

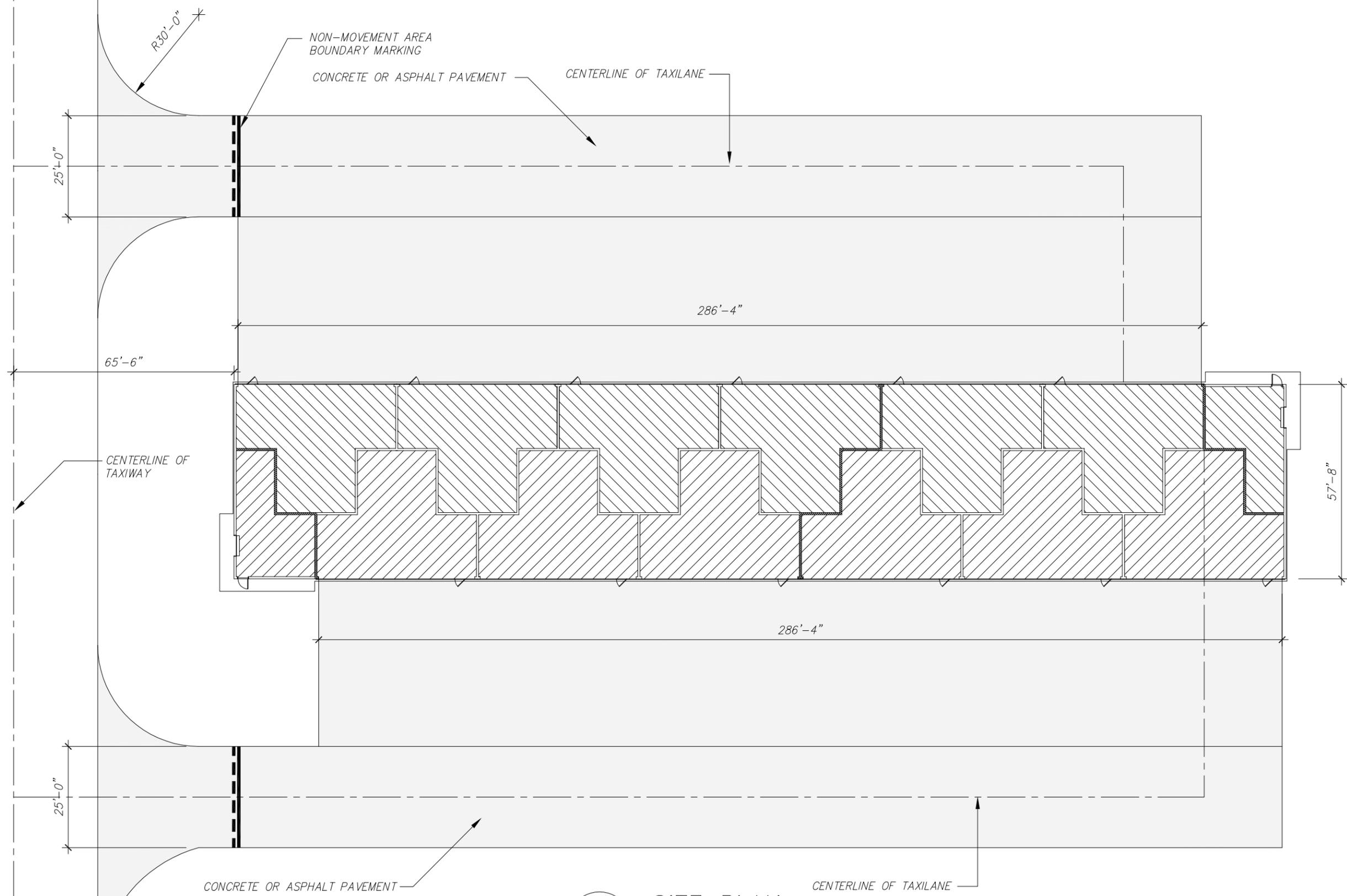
DAVID D. SKIPPER, P.E.
FLORIDA LICENSE NO. 58972



FLORIDA DEPARTMENT OF TRANSPORTATION
AVIATION OFFICE

| | | |
|---------|--------|----------------------|
| AIRPORT | COUNTY | FINANCIAL PROJECT ID |
| | | |

| | | |
|--|--|------------------------------|
| SHEET TITLE: TWELVE T-HANGAR LAYOUT | | SHEET NO. 5a of 10 |
| PROJECT NAME: T-HANGAR DESIGN GUIDELINES | | |



NOTE:
REFER TO LATEST EDITION OF FAA AC150/5300-13 AND
FDOT STANDARDS FOR TAXIWAY/TAXILANE DESIGN.

1 **SITE PLAN**
SCALE : N.T.S.

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE
READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

| REVISIONS | | Date | By | Description |
|-----------|--|------|----|-------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| Names | Dates |
|-------------|-------|
| Drawn by | |
| Checked by | |
| Designed by | |
| Checked by | |
| Approved by | |

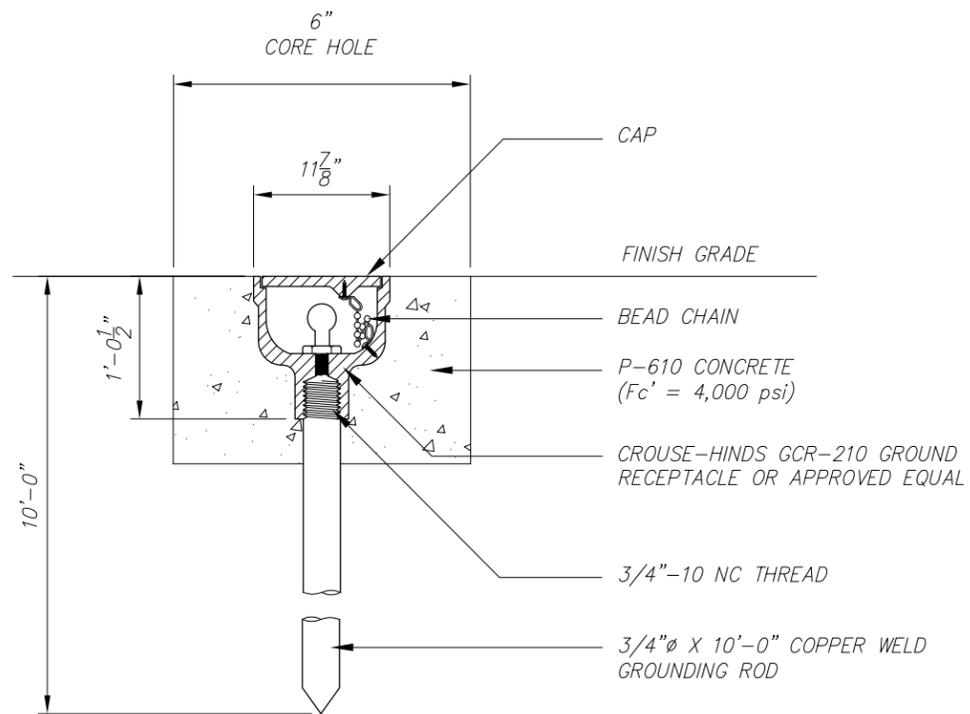
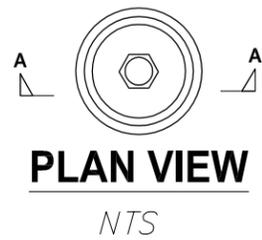
ENGINEER OF RECORD

DAVID D. SKIPPER, P.E.
FLORIDA LICENSE NO. 58972



| | | |
|---|--------|----------------------|
| FLORIDA DEPARTMENT OF TRANSPORTATION AVIATION OFFICE | | |
| AIRPORT | COUNTY | FINANCIAL PROJECT ID |
| | | |

| | | |
|--|--|----------------------------|
| SHEET TITLE: TWELVE T-HANGAR LAYOUT | | SHEET NO. 6 OF 9 |
| PROJECT NAME: T-HANGAR DESIGN GUIDELINES | | |



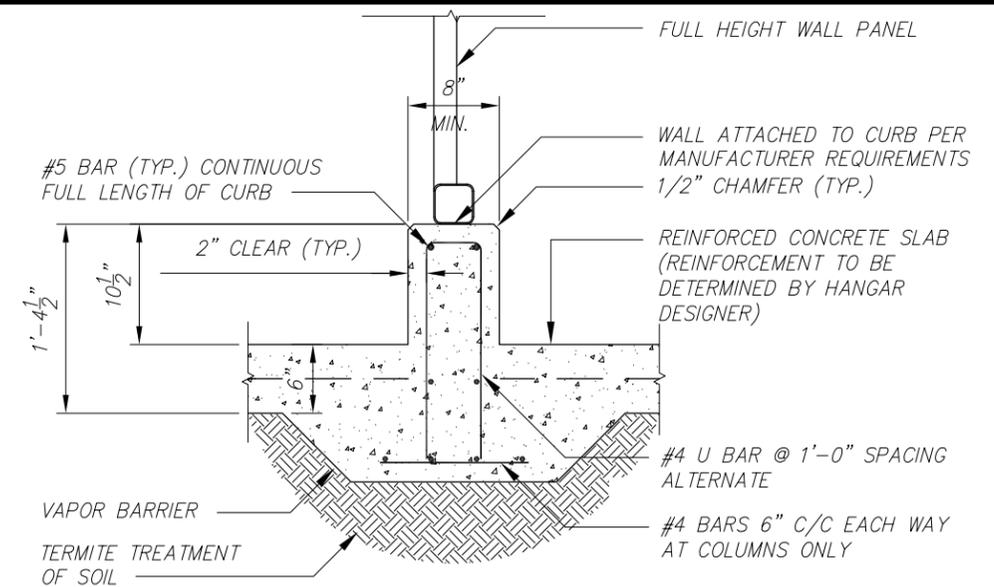
SECTION A-A
NTS

NOTES

1. GROUNDING SHALL BE HIGH RESISTANCE GROUNDING. DO NOT INTERCONNECT OR BOND TO OTHER GROUNDING RODS OR SYSTEMS.

AIRCRAFT GROUND POINT

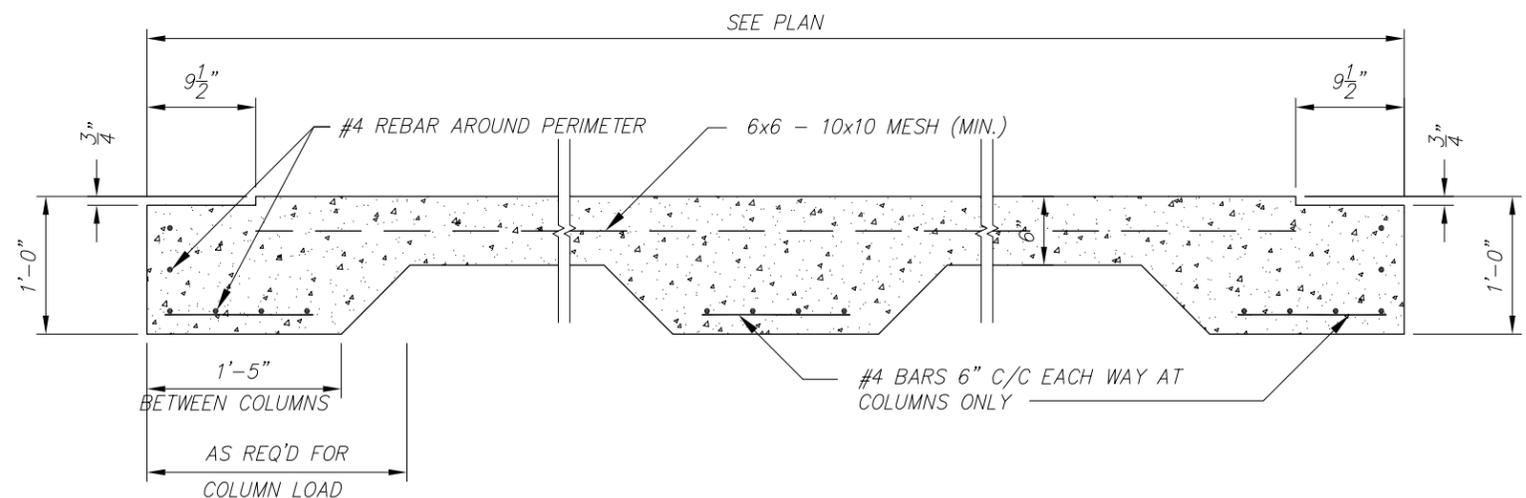
SCALE : N.T.S.



MINIMUM SLAB DESIGN IS SHOWN, CONTRACTOR SHALL PROVIDE ENGINEERED SLAB SHOP DRAWINGS. ADJUST SLAB DESIGN AS NECESSARY TO MATCH HANGAR DESIGN.

SLAB SECTION A-A

SCALE : N.T.S.



MINIMUM SLAB DESIGN IS SHOWN, CONTRACTOR SHALL PROVIDE ENGINEERED SLAB SHOP DRAWINGS. ADJUST SLAB DESIGN AS NECESSARY TO MATCH HANGAR DESIGN.

SLAB SECTION B-B

SCALE : N.T.S.

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

REVISIONS

| Date | By | Description | Date | By | Description |
|------|----|-------------|------|----|-------------|
| | | | | | |
| | | | | | |
| | | | | | |

| Names | Dates |
|-------------|-------|
| Drawn by | |
| Checked by | |
| Designed by | |
| Checked by | |
| Approved by | |

ENGINEER OF RECORD

DAVID D. SKIPPER, P.E.
FLORIDA LICENSE NO. 58972



FLORIDA DEPARTMENT OF TRANSPORTATION
AVIATION OFFICE

| AIRPORT | COUNTY | FINANCIAL PROJECT ID |
|---------|--------|----------------------|
| | | |

SHEET TITLE:

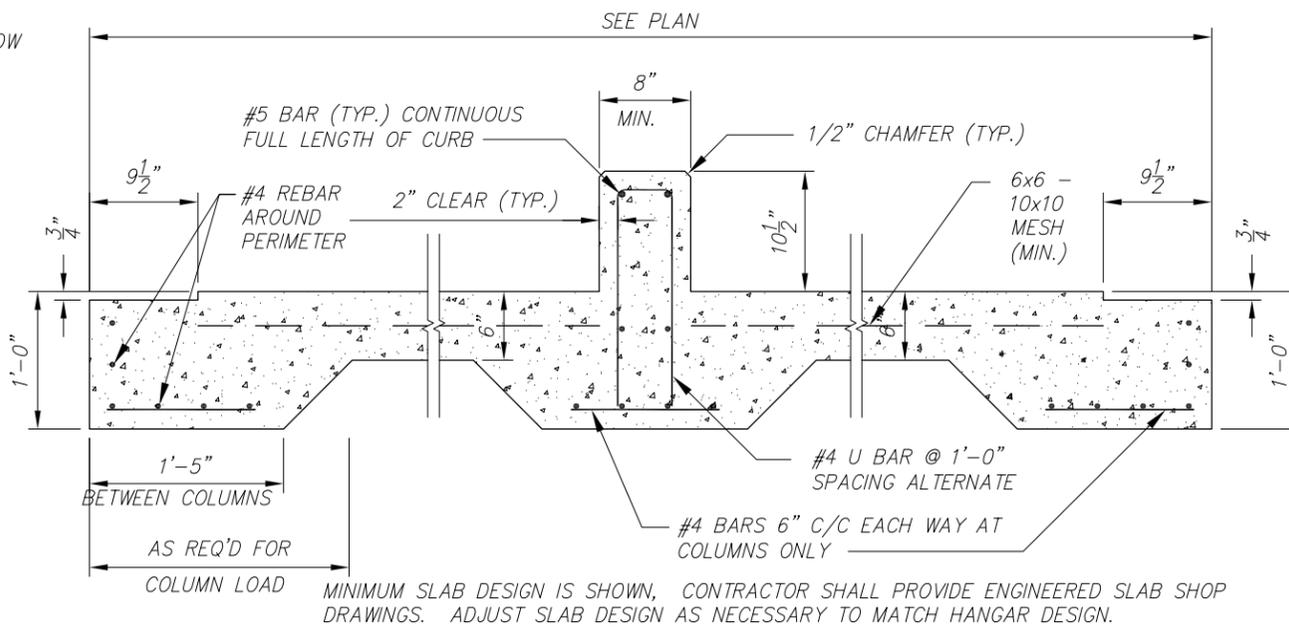
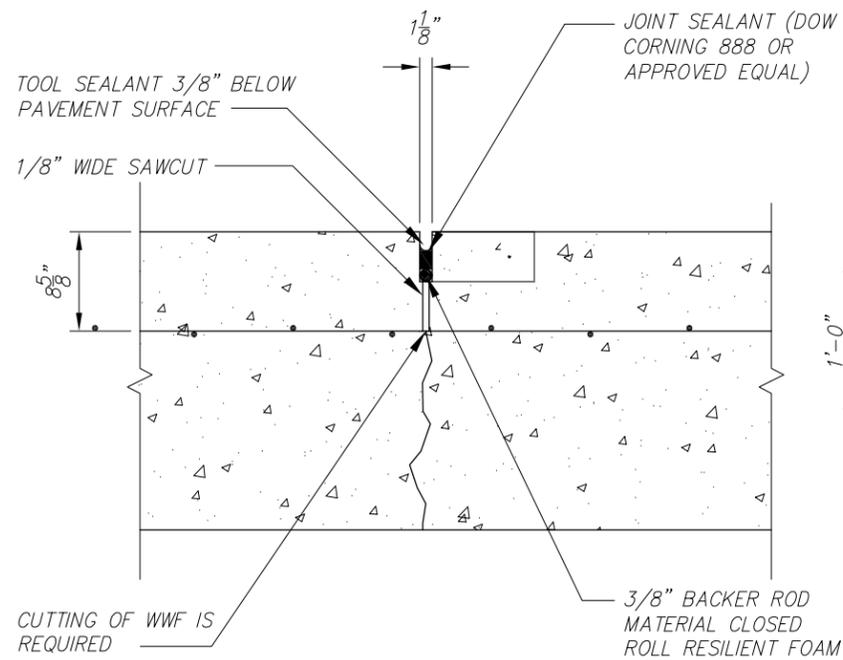
CONCRETE DETAILS

PROJECT NAME:

T-HANGAR DESIGN GUIDELINES

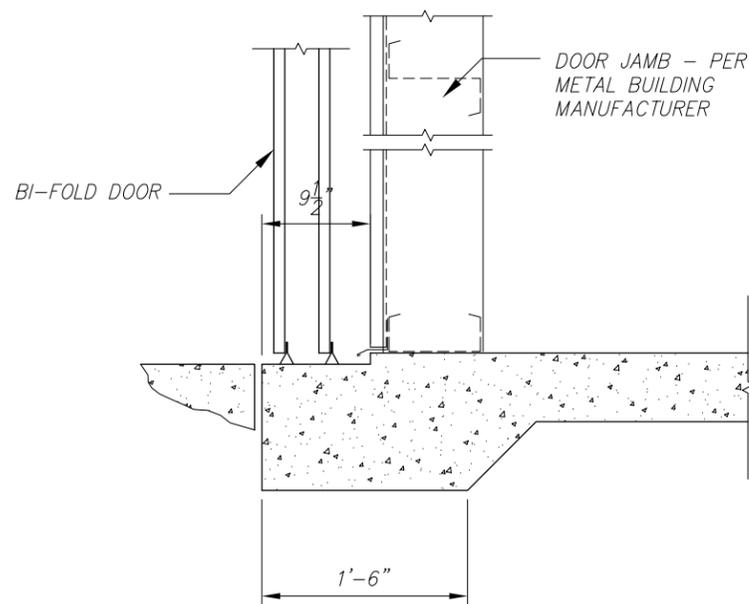
SHEET NO.

7 OF 9

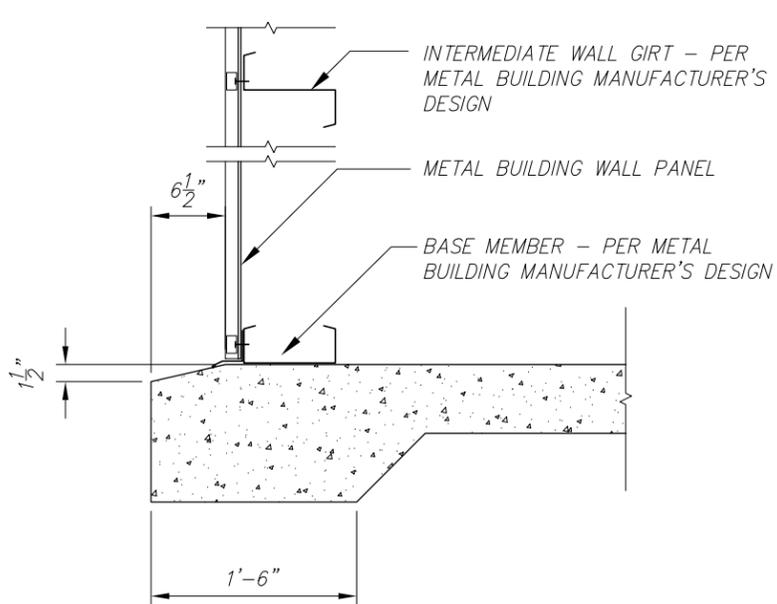


5 **CONTRACTION JOINT DETAIL**
SCALE : N.T.S.

4 **SLAB SECTION C-C**
SCALE : N.T.S.



7 **SLAB AT EXTERIOR WALL E-E**
SCALE : N.T.S.



6 **SLAB AT EXTERIOR WALL D-D**
SCALE : N.T.S.

BUILDING DESIGN INFORMATION

APPLICABLE CODE AND REGULATIONS:

FLORIDA FIRE PREVENTION CODE, CURRENT EDITION

FLORIDA BUILDING CODE, CURRENT EDITION

NFPA 70, NATIONAL ELECTRICAL CODE CURRENT EDITION

NFPA 10, PORTABLE FIRE EXTINGUISHERS, CURRENT EDITION

NFPA 101, LIFE SAFETY CODE, CURRENT EDITION

NFPA 409, AIRCRAFT HANGARS, CURRENT EDITION

ASCE-7 MINIMUM DESIGN LOADS FOR BUILDINGS AND OTHER STRUCTURES, CURRENT EDITION

FAA AC 150/5300-13 AIRPORT DESIGN, CURRENT EDITION

FAA AC 150/5340-1 STANDARDS FOR AIRPORT MARKINGS, CURRENT EDITION

FAA AC 150/5340-18 STANDARDS FOR AIRPORT SIGN SYSTEM, CURRENT EDITION

FAA AC 150/5370-10 STANDARDS FOR SPECIFYING CONSTRUCTION OF AIRPORT, CURRENT EDITION

FAA AC 150/5320-5 SURFACE DRAINAGE DESIGN, CURRENT EDITION

FAA AC 150/5320-6 AIRPORT PAVEMENT DESIGN & EVALUATION, CURRENT EDITION

FAA AC 150/5345-44 SPECIFICATIONS FOR RUNWAY & TAXIWAY SIGNS, CURRENT EDITION.

BUILDING HEIGHTS AND AREAS:

ONE STORY

BUILDING OCCUPANCY CLASSIFICATIONS:

SPECIAL STORAGE OCCUPANCY (AIRCRAFT HANGAR)

BUILDING CONSTRUCTION TYPES:

FBC - TYPE IV, UNPROTECTED, UNSPRINKLED

NFPA - GROUP III, TYPE II - 0,0,0 CONSTRUCTION

ROOF COVERINGS - NFPA CLASS C OR BETTER, WHERE TESTED IN ACCORDANCE WITH NFPA 256

DRAWINGS ARE SHOWN FOR SCHEMATIC PURPOSES ONLY, AND MUST BE READ IN CONJUNCTION WITH THE DESIGN GUIDELINES.

SAMPLE DRAWINGS - NOT FOR CONSTRUCTION

| REVISIONS | | | | | | Names | | ENGINEER OF RECORD | | | FLORIDA DEPARTMENT OF TRANSPORTATION AVIATION OFFICE | | | SHEET TITLE: | |
|-----------|----|-------------|------|----|-------------|----------|-------|---|--|--|--|--|--|--|--|
| Date | By | Description | Date | By | Description | Drawn by | Dates | DAVID D. SKIPPER, P.E. FLORIDA LICENSE NO. 58972 | | | AIRPORT COUNTY FINANCIAL PROJECT ID | | | CONCRETE DETAILS | |
| | | | | | | | | | | | | | | PROJECT NAME: T-HANGAR DESIGN GUIDELINES | |
| | | | | | | | | | | | | | | SHEET NO. 8 OF 9 | |



DECLARATORY STATEMENTS



Declaratory Statements

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. For example, a petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person (FAC 28-105.001).

For declaratory statements related to the construction of hangar facilities at Florida airports, the agency responsible for issuing declaratory statements is the Department of Financial Services, Division of the State Fire Marshal.

For hangar construction projects, declaratory statements are made when either the agency responsible for constructing the hangar or the airport authority needs clarification related to the Florida Fire Prevention Code and Life Safety Code.

There are two declaratory statements that have been issued by the State Fire Marshal related to the construction of hangars at general aviation airports in Florida. The first was filed on October 3, 2001, by the Hernando County Airport Authority, and the second was filed on November 9, 2007, by Eagle Aviation, LLC, in Jacksonville, Florida.

Hernando County Airport Authority Declaratory Statement

The questions posed in this declaratory statement were:

Question 1: Are two 2-hour fire rated walls needed every 12,000 square feet in row hangars, where each unit is divided by a partition having a fire resistance equivalent to that of the exterior walls or roof, whichever is greater?

Question 2: Are two egress doors required from each unit row hangars as described in National Fire Prevention Association 101, 42.6.2?

In response to these two questions, the State Fire Marshal concluded that:

Answer to Question 1: One 2-hour fire wall is needed if no area greater than 12,000 square feet for a total of 21,000 square feet building; therefore, in the situation described, only one 2-hour wall would be needed for spaces 12,000 feet or less.

Answer to Question 2: Yes, two mean of egress are required unless the 50-foot exception applies.

From the statement issued by the State Fire Marshal, it was determined that only one 2-hour fire rated wall is needed for spaces 12,000 feet or less, and two egress doors are needed for each unit row of hangars. If an airport has the same conditions that are described in the declaratory statement, then it should be assumed that these standards can be applied.

Eagle Aviation, LLC Declaratory Statement

The questions posed in this declaratory statement were:

Question 1: Are the definitions of building area and fire area the same?



Question 2: Can the building area of a Group III, Type II (000) aircraft hangar exceed the maximum single fire area indicated in Table 4.1.3?

Question 3: Can 2-hour fire walls be used to subdivide a Group III hangar building into fire areas?

In response to these three questions, the State Fire Marshal concluded that:

Answer to Question 1: No, the Department interprets its rule definition to be different from the definition of “building area” in chapter 5 of the Florida Building Code, as set forth in the Petitioner’s argument.

Answer to Question 2: Yes, no single fire area exceeds the maximum indicated in Table 4.1.3.

Answer to Question 3: Yes, if the fire walls meet the definition in National Fire Prevention Association 409-3.3.6., and the 2-hour rating required by National Fire Prevention Association 409-8.2.

From the statement issued by the State Fire Marshal, it was determined that the definition of building area and fire area are different. The building area of Group III, Type II (000) cannot exceed the fire area, and 2-hour fire walls can be used to subdivide a Group III hangar into fire areas. If an airport has the same conditions that are described in the declaratory statement, then it can be assumed that these standards can be applied.

If an airport or airport authority desires to have a declaratory statement issued for a question pertaining to their airport, a declaratory petition form is available from the Office of the State Fire Marshal. As stated previously, a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.

The process for requesting a declaratory statement, as specified by FS 120.565, is as follows:

1. Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.
2. The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.
3. The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or any petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

For any airport or airport authority that would like more information on declaratory statement, contact the Office of the State Fire Marshal at: <http://www.myfloridacfo.com/division/SFM/>.



Hernando County Airport Authority Declaratory Statement

A declaratory statement issued for the Hernando County Airport Authority is provided on the following pages. For more information visit: <http://www.myfloridacfo.com/division/sfm/>.



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Hernando County Airport Authority

Case No.:43365-01-SP

Petition for Declaratory Statement to
The Florida Department of Insurance

_____ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on October 3, 2001, by the Department of Insurance, hereinafter referred to as the Department, from the Hernando County Airport Authority, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The Insurance Commissioner, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.

2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition for Declaratory Statement. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's question is being answered purely as a hypothetical one. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. The Petition for Declaratory Statement contains various legal assertions, conclusions, and arguments. Those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. The legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

4. Petitioner asserts that:

FACTS:

- A. The petitioner is designing row hangars ("T-Hangars") for construction at the Hernando County Airport.
- B. The largest building currently under design has a total of 21,840 sq. ft. divided into 15 aircraft storage units and 2 small storage areas.
- C. The buildings are Group III, Type II (000) construction.
- D. Each aircraft storage unit will have 1365 sq. ft. and will be separated by a wall that is of the same fire rating as the exterior walls or roof, whichever is greater.
- E. Each unit will have a minimum of 48 sq. ft. of translucent roof panels for light and be limited to two overhead lights and two outlets per unit.
- F. The entire front of each unit will be either manual rolling doors or an electric, vertical bifold door.
- G. These units will be leased only for the storage of one aircraft per unit.
- H. Only unit lessees and their guests will be allowed access to the hangar areas.
- I. The hangar area will be separated from the general public by a 6' security fence and controlled gates.

- J. The lessee upon arriving to fly will enter the hangar through an egress door and will unlock and open the entire front of the leased unit, either rolling or bifold doors, to remove their aircraft.
- K. These hangars are not climate controlled nor insulated; hence, no one will be using the inside for any activity unless the aircraft door comprising the entire front of the unit is open.
- L. Local plans examiners have determined that we will need (i) 2 ea. – 2 hour fire rated walls every 12,000 sq. ft. of total hangar area per NFPA 409, 5-2.1, and (ii) that we will need 2 ea. egress doors from each unit per NFPA 101, 42.6.2.

ARGUMENT

- M. According to NFPA 409 1-3, Definitions, a fire area is defined as: “an area within an aircraft hangar subject to loss by a single fire because of lack of internal subdivisions as specified in Section 2-2 or Section 5-2 of this standard as appropriate.”
- N. Section 2-2 is for the construction of Group I and Group II hangars.
- O. We are building Group III, so Section 5 is appropriate.
- P. Section 5-2.1 does not apply because it is for the construction of single hangar buildings which are defined in 1-3 as: “a building with one area for the storage and servicing of aircraft and any attached, adjoining, or contiguous structure, such as a lean-to, shop area, or parts storage area not separated as specified in 2-3.2 or 5-2.1 of this standard as appropriate.”
- Q. Section 5-2.2 deals with the internal subdivisions/partitions of row hangars, typical configurations which are shown in figure A-1-3(b) of the standard.
- R. This section states that “row hangars shall be divided by solid partitions having a fire resistance equivalent to the exterior walls or roof whichever is greater so that no more than three aircraft spaces shall be within an enclosed area.”
- S. According to these definitions our fire areas are 1365 sq. ft.
- T. NFPA 101, Section 42.6.2, Requirements for Aircraft Storage Hangars, are interpreted as requirements for single hangar buildings.

- U. The reason is because the interval distance stated along exterior walls far exceed that which will be found in row hangars, and any exit through the common tenant walls in nested T hangars would be locked by the tenant on the opposite side.
 - V. In a row hangar used for storage only, the lessee will be opening the rolling or bifold door to facilitate removal of their aircraft or placement of their aircraft in the hangar.
 - W. Since these buildings are not open to the general public, anyone in the hangar will be intimately familiar with a single egress door.
5. Petitioner requests the Department to render a Declaratory Statement on

the following questions:

QUESTIONS:

- A. Are 2-ea. – 2 hour fire rated walls needed every 12,000 sq. ft. in row hangars, where each unit is divided by a partition having a fire resistance equivalent to that of the exterior walls or roof, whichever is greater?
- B. Are two egress doors required from each unit in row hangars as described in NFPA 101, 42.6.2?

RESPONSE:

6. The requirement for the two-hour wall is based on the maximum allowable fire area which is tied to the type of construction.

7. The type of construction is identified as Type II (000). Section 1-3.2.3 describes the typical configurations acceptable for a Group III hangar and require that such hangar meet the following two conditions:

- A. An aircraft access door height of 28 ft. or less, and
- B. A single fire area that measures up to the maximum square footage permitted for specific types of construction in accordance with Table 1-3.2.3.

8. The applicable section for maximum fire areas by construction type is Table 1-3.2.3.

9. The maximum area permitted for Type II (000) construction is 12,000 square feet.

10. While Section 5-2.2 does only require a fire resistance equivalent to that of the walls and roofs, its limitations on the number of aircraft is within an “enclosed area.”

11. An “enclosed area” is not defined and, therefore, it must be given its ordinary or common definition;¹ “fire area” is defined and the definition is different than the ordinary or common definition of “enclosed area.”

12. A “fire area” must be separated by a defined barrier with some degree of fire resistance.

13. An “enclosed area” may be separated by a fire resistive barrier or a smoke resistive barrier.

14. On the question in 5.B., above, there is no specific edition identified in the request and therefore this response is based on the 1994 edition of NFPA 101 as adopted by the Division of State Fire Marshal.

15. The appropriate section of NFPA 101 is Section 29-6.2, which contains language similar to the 2000 edition language apparently cited.

16. While the requirements of NFPA 101 do apply to this occupancy, they do not supersede the specific requirements of the design standard, which in this case is NFPA 409. The answer to the question is within NFPA 409, Section 5-1.8 which states

¹ *Powell v. State*, 508 So.2d 1307 (Fla. 1 DCA. 1987): “Although the critical words are not statutorily defined, they can be readily understood by reference to commonly accepted dictionary definitions. See *Gardner v. Johnson*, 451 So.2d 477 (Fla.1984); Miller, *The Medium is the Message: Standards of Review in Criminal Constitutional Cases in Florida*, 11 Nova Law Review 97, 124 (1986) (standard dictionary definitions are reliable sources for plain and ordinary language definitions).”

“Egress doors for personnel that do not require the opening of doors accommodating aircraft shall be provided in each partitioned space....”

17. The next issue to be determined is the classification of the content of the storage area.

18. The life safety requirements of NFPA 101, Chapter 29-1.5, requires the hazard class to be in accordance with Section 4-2.2.

19. The description of ordinary class per Section 4-2.2.3 are contents that are likely to burn with moderate rapidity or to give off a considerable volume of smoke.

20. Therefore, classed as an ordinary hazard, life safety requirements of NFPA 101, Section 29-2.4.1, Exception #2, permits a single means of egress if the travel distance thereto is within the limits of the common path of travel.

21. NFPA 101, Section, 29-2.5.3 establishes the common path of travel limit at 50 feet.

22. In conclusion, the arrangement of each aircraft storage area must provide for access to the means of egress within the travel limit of 50 linear feet determined in accordance with NFPA 101.

The conclusion is that no fire area of a Group III hangar building of Type II (000) construction may be larger than 12,000 square feet.

NOW, THEREFORE, in specific response to your questions, it is the position of the Division of State Fire Marshal that:

- A. Are 2-ea. – 2 hour fire rated walls needed every 12,000 sq. ft. in row hangars, where each unit is divided by a partition having a fire resistance equivalent to that of the exterior walls or roof, whichever is greater?

Response: One 2-hour wall is needed if no area is greater than 12,000 square feet for a total 21,000 square foot building; therefore, in the situation you describe, only one 2-hour wall would be needed for spaces 12,000 feet or less, for the reasons stated in Paragraphs 6 through 13.

B. Are two egress doors required from each unit in row hangars as described in NFPA 101, 42.6.2?

Response: Yes. Two means of egress are required unless the 50-foot exception applies, as indicated in Paragraphs 14 through 22.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Section 120.565, Florida Statutes, and rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED at Tallahassee, Leon County, Florida, this ____ day of _____, 2001.

GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

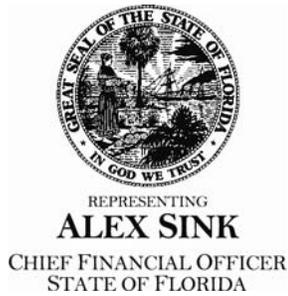
Hernando County Airport Authority
16110 Aviation Loop Drive
Brooksville, Florida 34604

Gabriel Mazzeo, Attorney
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340



Eagle Aviation, LLC Declaratory Statement

A declaratory statement issued for Eagle Aviation, LLC is provided on the following pages. For more information visit: <http://www.myfloridacfo.com/division/sfm/>.



In The Matter Of:

EAGLE AVIATION, LLC.

Case No.: 92999-07-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter “Petition”) filed by Eagle Aviation, LLC., (hereinafter “Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the “Department”), on November 9, 2007. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition, and the statements and assurances made at the public hearing. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner’s questions are being answered as purely hypothetical. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

2. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions,

conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

3. Petitioner is constructing four buildings to be used as hangars, located on the east side of Westside Road (a/k/a Hangar Road), Craig Air Field, Jacksonville, Florida.

4. The Petition was filed pursuant to the authority of Section 120.565, *Florida Statutes*, and Rules 28.105 and 69A-69.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision to the Petitioner's particular set of circumstances.

5. The subject of the Petition is National Fire Prevention Association (hereinafter "NFPA") 409, Chapters 3 and 8, adopted by reference in Rule 69A-60.005, *Florida Administrative Code*. The issue was the subject of a decision by the authority having jurisdiction; the resulting appeal was denied.

6. Petitioner alleges as fact that:

A. The project consists of four aircraft hangars to be constructed as Craig Airfield. Three of the aircraft hangars are row hangars: Building 1 has ten – 40' x 40' hangars totaling 16, 040 S.F. Building 2 has eight – 40' x 40' hangars totaling 36,000 S.F., and Building 3 has seven – 60' x 60' hangars totaling 25,758 S.F. The fourth hangar is 100' x 150' (15,000 S.F.) to house multiple aircraft.

B. All of the above-referenced hangars will be used for aircraft storage only; there will be no hazardous operations conducted in the hangars.

C. The largest building (Building 2) is 36,000 S.F. of building area and is divided into sixteen aircraft storage units.

D. Buildings 1, 2, and 3 are Group III, Type II (000) construction.

E. Aircraft storage units in Building 2 are either 2,000 S.F. or 2,500 S.F. and are separated by a wall that is the same fire rating as the exterior walls or roof, whichever is greater.

F. The entire front of each unit will be an electric vertical bifold door.

G. Two-hour fire rated walls will be constructed between selected aircraft storage units as necessary to sub-divide the hangar building into fire areas smaller than the maximum fire areas of 12,000 S.F. allowed for Group III, Type II (000) construction in Table 4.1.3.

H. The local Fire Marshal interprets the allowable building area and fire area to be one and the same.

7. Petitioner argues that:

A. Aircraft hangars are low-hazard storage, Group S-2 occupancies according to The Florida Building Code (Section 311.3).

B. Building area is defined in Chapter 5 of The Florida Building Code as “[t]he area included within surrounding exterior walls or exterior walls and fire walls. (Section 502-“Definitions”).

C. According to Table 503 in The Florida Building Code the allowable area for Construction Type II B is 26,000 S.F. and can be increased to 45,000 S.F. with area modifications appropriate to the site clearances.

D. NFPA 101 and NFPA 409 do not define the phrase “building area.”

E. NFPA 409 defines aircraft hangar as “a building or other structure inside any part of which aircraft are housed or stored, and in which aircraft might undergo service, repairs or alterations.”

F. NFPA 409 defines hangar fire area as “an area within an aircraft hangar subject to loss by a single fire because of lack of internal subdivisions as specified in Section 5.2 or 8.2 of this standard, as appropriate.”

G. Section 5.2 is not applicable because it concerns Group I and Group II aircraft hangars.

H. Buildings 1, 2, and 3 are Group III hangars, so Section 8.2 is applicable to this situation.

I. Group III aircraft hangars are defined in Section 4.1.3 as hangars with the following features:

(1) An aircraft access door height of 8.5 M. (28 ft.) or less.

(2) A single fire area that measures up to the maximum square footage permitted for specific types of construction in accordance with Table 4.1.3.

J. Table 4.1.3 allows a maximum of 12,000 S.F. for the fire areas of Group III, Type II (000) hangar construction.

K. Section 8.2.11 states that fire walls with a minimum 2-hour fire rating can be constructed to subdivide the hangar building into fire areas not exceeding the maximum areas specified in table 4.1.3 (12,000 S.F.)

L. The maximum fire area in Building 1 is 8,256 S.F., Building 2 is 9,105 S.F., and Building 3 is 11,040 S.F. All are under the allowable fire area limits of 12,000 S.F.

M. Section 8.2.2 states that “row hangars shall be divided by solid partitions of equivalent fire resistance to the exterior wall and roof or fire walls that define the fire areas.

N. Each aircraft storage space is subdivided by solid partitions of equivalent fire resistance to the exterior wall and roof or fire walls that define the fire areas.”

O. Response to elements of our argument is given in a 2001 Declaratory Statement (Case No. 43365-01-SP), In The Matter of Hernando County Airport Authority.

8. Notice of receipt of the Petition herein was published in Volume 33, Number 48 of the *Florida Administrative Weekly*, on November 30, 2007.

9. A public hearing was conducted on December 21, 2007 in Tampa, Florida. On the record of the public hearing, Petitioner withdrew questions A, E, and F., and modified and renumbers the remaining questions as follows:

QUESTIONS

10. The Petition poses the following questions related to NFPA 409:

A. Are the definitions of building area and fire area the same?

B. Can the building area of a Group III, Type II (000) aircraft hangar exceed the maximum single fire area indicated in Table 4.1.3?

C. Can two-hour fire walls be used to subdivide a Group III hangar building into fire areas?

DISCUSSION

11. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances. The State Fire Marshal is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code, and the Petition is filed by a substantially affected person, or a local enforcement agency.

12. The Department adopted by reference NFPA 409 (2001 edition) entitled, “Standard on Aircraft Hangars” (referred to hereinafter as “NFPA 409), in Rule 69A-60.005, *Florida Administrative Code*. The purpose of the standard is to provide a reasonable degree of protection from fire for life and property in aircraft hangars, based on sound engineering principles, test data, and field experience.¹ Petitioner contends that it need not install sprinklers in its structures, the local authority having jurisdiction has concluded that sprinklers must be installed. The answer to this issue is determined by the meaning of the phrase “fire area.”

13. The term “aircraft hanger” is defined at NFPA 409-3.3.2 as a “building or other structure inside any part of which aircraft are housed or stored, and in which aircraft might undergo service, repairs, or alterations.” Aircraft hangars are classified into four groups. A Group III aircraft hanger is defined in NFPA 409-4.1.3 as having both of the following features:

- (1) An aircraft access door height of 8.5 m (28 ft.) or less;
- (2) A single fire area that measures up to the maximum square footage permitted for specific types of construction in accordance with Table 4.1.3.

Table 4.1.3. sets forth the maximum separation requirements for different types of construction and states that the maximum single fire area for Type II (000) is 12,000 square feet. Each of the buildings in question measures a total square footage greater than 12,000. Therefore, the meaning of the term “fire area” must be determined. NFPA 409-3.3.9 defines the term “hanger fire area” as an “area **within** an aircraft hangar subject to loss by a single fire because of lack of internal subdivisions as specified in Section 5.2 or Section 8.2 of this standard.” (Emphasis added.) In other words, whether a space within a structure qualifies as a “fire area” depends upon the degree of fire resistance used to separate it from the rest of the structure.

¹ NFPA 409-1.2

14. Petitioner's assertion of fact in paragraph 6.G. above makes clear that Petitioner intends to achieve compliance by constructing a separation in accordance with NFPA 409-8.2 so that no fire area exceeds 12,000 square feet. NFPA 409-8.2 provides that:

Where single hangar buildings adjoin each other and each has fire walls with a minimum rating of at least 2 hours, located so that fire areas shall not exceed the maximum area specified in table 4.1.3, no minimum separation shall be required and these buildings shall not be considered a hanger building cluster.²

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. Questions and Answers.

Question A. Are the definitions of building area and fire area the same?

Answer: No, the Department interprets its rule definition to be different from the definition of "building area" in Chapter 5 of the Florida Building Code, as set forth in Petitioner's argument at paragraph 7.B. above.

Question B. Can the building area of a Group III, Type II (000) aircraft hangar exceed the maximum single fire area indicated in Table 4.1.3?

Answer: Yes, if no single fire area exceeds the maximum indicated in Table 4.1.3.

Question C. Can two-hour fire walls be used to subdivide a Group III hangar building into fire areas?

² NFPA 409-8.3.1 requires Group III hangars of Type II (000) construction within a hangar cluster to be separated by a minimum of 50 feet.

Answer: Yes, if the fire walls meet the definition in NFPA 409-3.3.6.,³ and the two-hour rating required by NFPA 409-8.2.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, *Florida Rules of Appellate Procedure*, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, *Florida Statutes*. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this _____ day of _____, 2008.

Eric W. Miller
Deputy Chief Financial Officer

³ A wall separating buildings or subdividing a building to prevent the spread of fire and having a fire resistance rating and structural stability .

Copies furnished to:

Eagle Aviation, LLC
c/o William Ebert, ENB Architects
1361 13th Avenue South, Suite 230
Jacksonville Beach, Florida 32250

Lesley Mendelson, Assistant General Counsel
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0340



SAMPLE RENTAL AGREEMENT/ STORAGE POLICY



Aircraft Storage Hangar Rental Agreement

This HANGAR RENTAL AGREEMENT (the "Agreement") entered into this _____ day of 20__ by _____ and between _____ ("Landlord") and _____ ("Tenant"). In consideration of the mutual covenants and agreements contained herein to be performed by the respective parties, and in consideration of the rental hereinafter designated to be paid, the Landlord hereby rents the described premises unto the Tenant, its successors, grantees and assigns, and the Tenant does hereby hire and rent the below described property:

1. Description of the Hangar and Aircraft:

The Landlord hereby rents to the Tenant Hangar number _____ (the "Hangar") located at _____ (the "Airport"). The Hangar shall be used and occupied by the Tenant for the storage/parking of the following _____ described _____ aircraft: _____ Make/Model/Color

_____ registration number _____ (the "Aircraft"), or any other similar aircraft owned or leased by the Tenant (the "Substitute Aircraft"), provided the Tenant has obtained the written consent of the Landlord to store the Substitute Aircraft in the Hangar, all provisions of this Agreement applicable to the Aircraft shall also be applicable to the Substitute Aircraft.

2. Term:

The term of this Agreement shall commence on _____, 20 __, and shall continue in effect from month to month, being automatically renewed each month, unless termination under the terms of this Agreement.

(Optional) However, the Landlord shall have the unilateral right to reevaluate the Agreement every ninety (90) days to assess the Tenant's compliance with the Agreement.

3. Rent:

For the use of the Hangar, the Tenant shall pay the Landlord the rental amount of _____ (\$_____) per month, payable in advance before the first day of each month. This rate shall be reviewed each year by the [Appropriate Authority] and rental rates shall be adjusted so as to maintain a fair rental rate based on change in the Consumer Price Index, all products as published by the United States Department of Commerce, an appraisal, or other means designated by the [Appropriate Authority]. Subsequent to such review, the monthly rental rate may be changed upon thirty (30) days notice to the Tenant.

If the Tenant makes any monthly payments more than ten (10) days after the payment is due and owing, the [Airport Sponsor/Authority/City/County] reserves the right to access one and one-half percent (1 ½%) charge per month (annualized rate of 18%) beginning with the eleventh (11th) day after payment is due. In the event that this agreement is terminated on any date other than the first day or last day of a



calendar month, the applicable rentals, fees, and charges for that month shall be paid for said month on a prorated basis according to the number of days in that month during which the premises were enjoyed by the Tenant. Monthly rental checks shall be made payable to the [Appropriate Authority] and mailed or delivered to [Designated Address]].

4. Obligations of the Landlord:

The Landlord will maintain the structural components of the Hangar, including doors and door mechanisms, and the Landlord will provide light, water, electricity, and normal building maintenance without additional cost to the Tenant provided, however, that the Landlord reserves the right to assess an additional fee for extra-ordinary consumption of utilities by the Tenant, as shall be determined by the Landlord.

The Tenant shall have at all times the right of ingress to and egress from the rented premises. To ensure this right, the Landlord shall make all reasonable efforts to keep adjacent areas to the rented premises free and clear of all hazards and obstructions, natural or manmade.

5. Obligations of the Tenant:

a. Storage: The Hangar shall be used only for storage/parking of the above identified Aircraft unless otherwise approved by the [Designated Authority] or their designated representative.

b. Building Maintenance and Repair: The Tenant shall maintain the hangar in a neat and orderly condition, and shall keep the hangar floor clean and clear of oil, grease, and or toxic chemicals. No hazardous or flammable materials will be stored within or about the hangar unless stored within an EPA or local fire marshal approved container/cabinet. No boxes, crates, rubbish, paper or other litter that could cause or support combustion shall be permitted to accumulate within or about the hangar.

The Tenant shall be responsible for all damage to the leased premises caused by the Tenant's negligence or abuse. The Tenant shall be responsible for all damage to property, real or personal, located on or about the leased premises damaged as a result of the Tenant's negligence or abuse. In the event the Tenant does not promptly repair any damaged premises, or property, for which the Tenant is responsible, the Landlord reserves the right to make such repairs, at the Tenant's expense, which shall become due and payable as part of the Tenant's next monthly rental payment.

Any and All repairs, maintenance, or improvements made by tenant shall be accomplished in accordance with the [City/County/Authority] Building/Fire Codes. The Tenant shall make no structural, electrical, or other modification to the premises without first obtaining the Landlord's written permission and obtaining permit(s), if required.

c. Use of Hangar: The hangar is for storage of the Tenant's aircraft, and is not to be used as commercial repair shop or maintenance shop. Painting, other than minor touch up of aircraft by the tenant, and major aircraft repairs are prohibited within the hangar unless otherwise approved by the Landlord and the local fire marshal. Storage of boats, campers, or other non-aviation items on the premises may be only allowed with the permission of the [Airport Manager/Executive Director/City Manager, etc.] or their designated representative except that the Tenant will be allowed to park his or her car in/on the rented premises during such time that the Tenant is using the aircraft. Maintenance activities, including those provided by



Federal Aviation Regulations, may be permitted subject to approval by the Landlord and the appropriate Fire Official.

d. Commercial Activity: The Tenant shall conduct no commercial activity of any kind whatsoever in, from, or around the hangar.

e. Compliance with Laws: The Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by Federal, State, or Local government agency or by the Landlord. The Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all Federal, State, and local laws, ordinances, rules, and regulations protecting the environment. Tenants agree to keep themselves informed of future changes in the existing environmental laws.

(Optional) The Tenant hereby expressly agrees to indemnify and hold the Landlord harmless from and against any and all liability for fines and physical damage to property or injury or deaths to persons, including reasonable expense and attorney's fees, arising from or resulting out of, or in any way caused by, the Tenant's failure to comply with any and all applicable Federal, State, and local laws, ordinances, regulations, rulings, orders and standards, now or hereafter, promulgated for the purpose of protecting the environment. the Tenant agrees to cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental law or regulation.

f. Fire Extinguisher: Other applicable guidance is contained in NFPA 409 and the Florida Building Codes which can be viewed in the office of the (*Airport Manager*) or their designated representative. The Tenant shall maintain at all times, in the Hangar, an approved twenty pound dry chemical fire extinguisher suitable for use on Type "A," "B," and "C" fires with current inspection certificate from an approved fire equipment company or the local Fire Inspector affixed.

g. Access: The Landlord will retain a key for access to the hangar. The Landlord, local fire official, or on-site airport manager, designated by the Landlord, reserves the right at any time to enter the hangar for security, fire, or other inspections. If any deficiency in compliance with this Agreement is found, including any fire or accident hazard, the Tenant shall be so informed, and shall within five (5) days of notice rectify the hazard. The Tenant will not change locks without prior notice and agreement of the Landlord.

h. Termination: On the termination of this Agreement, by expiration or otherwise, the Tenant shall immediately surrender possession of the Hangar and shall remove the Aircraft and all other property therein, leaving the Hangar in the same condition as when received, ordinary wear and tear expected. The Tenant shall be liable for any and all damage to the Hangar caused by the Tenant's use, including but not limited to, bent or broken interior walls, damage to unsealed floors due to fuel oil spillage, or doors damaged due to improper use or negligent by the Tenant.

i. Regulatory Review: Copies of airport rules and pertinent regulations can be viewed at (*Location*).

6. Sub-Agreement/ Assignments:

The Tenant agrees not to sub-agreement the Hangar or to assign this Agreement without prior written approval of the Landlord. The parking of aircraft not owned or leased by the Tenant in the Hangar shall constitute a sub-agreement.



7. Condition of Premises:

The Tenant shall accept the Hangar in its present condition without any liability or obligation on the part of the Landlord to make any alterations, improvements, or repairs of any kind on or about said Hangar.

8. Alterations:

The Tenant covenants and agrees not to install any fixtures or make any alterations, additions, or improvements to the Hangar without the prior written approval of the Landlord. All fixtures installed or additions and improvements made to the Hangar shall become the Landlord's property and shall remain in the Hangar at the termination of this Agreement without compensation or payment to the Tenant.

9. Insurance:

The Tenant agrees to maintain, at its own expense, for the benefit of itself and the Landlord, as additional insured, insuring against liability for damage or loss to the Aircraft or other property, and against liability for personal injury or death, arising from acts or omissions of the Tenant, its agents, and employees. Such policy or policies shall contain a provision whereby the Landlord must receive at least ten days' prior written notice of any cancellation of the Tenant's insurance coverage. Prior to the commencement of this Agreement, shall deliver to the Landlord certificates or binders evidencing the existence of the insurance required herein. Failure to provide proof of the insurance at any time, to the satisfaction of the Landlord, shall be grounds for termination of the Rental Agreement.

Every aircraft owned or operated by any Tenant and stored in the Hangar shall have insurance coverage in amounts not less than the following:

- a. Bodily Injury (to be determined by Local Authorities)
- b. Property Damage (To be determined by Local Authorities) per accident

10. Casualty:

In the event the Hangar or the means of access thereto, shall be damaged by fire or any other cause, the rent payable hereunder shall not abate provided that the Hangar is not rendered unusable by such damage. If the Hangar is rendered unusable and the Landlord elects to repair the Hangar, the rent shall abate for the period during which such repairs are being made, provided the damage was not caused by the acts or omissions of the Tenant, its employees, agents, or invitees. If such damage was caused by the Tenant, its employees, agents, or invitees, the rent shall not abate. If the Hangar is rendered unusable and the Landlord elects not to repair the Hangar, this Agreement shall terminate.

11. Default:

This Agreement shall be breached if:

- a. The Tenant shall default in the payment of any rental payment hereunder
- b. The Tenant shall default in the performance of any other covenant herein, such default shall continue for five days after receipt by the Landlord or notice thereof from the Landlord
- c. A petition is filed by or against the Tenant under the Bankruptcy Act or any amendment thereto (including a petition for reorganization or an agreement)
- d. The Tenant assigns his/her property for the benefit of creditors



- e. The Landlord determines after a reevaluation the Tenant is not in compliance with the terms of the Agreement on a routine/consistent basis

In the event of any breach of this Agreement by the Tenant, the Landlord shall, at their earliest option, and without further notice, have the right to terminate this Agreement and to remove the Aircraft and any other property of the Tenant from the Hangar using such force, as may be necessary, without being deemed guilty of trespass, breach of peace or forcible entry and detainer, and the Tenant expressly waives the service of any notice.

Exercise by the Landlord of either or both of the rights specified above shall not prejudice the Landlord's right to pursue any other legal remedy available to the Landlord in law or equity including but not limited to court costs and attorney's fees for bringing legal action against the tenant.

12. Thirty (30) Day Termination:

Either party to this Agreement shall have the right, with or without cause, to terminate this Agreement by giving 30 days' prior written notice.

13. Nonexclusive Rights (Optional):

Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the right granted under this Agreement are nonexclusive and the Landlord herein reserves the right to grant similar privileges to another Tenant or other Tenants on other parts of the airport.

14. Governing Law:

This Agreement shall be construed in accordance with the laws of the State of Florida.

15. Relationship of Parties:

The Tenant shall never, at any time during the term of this Agreement, become the agent of the Landlord, and the Landlord shall not be responsible for the acts or omissions of the Tenant or its agents.

16. Notice:

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested:

- a. If to Landlord, addressed to: Director of Aviation
- b. If to Tenant, address to:

Notices shall be deemed to have been received on the date of receipt as shown on the return receipt.



17. Integration:

This Agreement constitutes the entire Agreement between parties, as of its effective date, supersedes all prior independent agreements between parties related to the renting of the Hangar. Any change or modification hereof must be in writing signed by both parties.

18. Waiver:

The waiver by either party of any covenant or condition of this Agreement shall not thereafter preclude such party from demanding performance in accordance with the terms hereof.

19. Entire Agreement:

This agreement constitutes the entire understanding between the parties, and as of its effective date, supersedes all prior or independent agreements between parties covering the subject matter hereof. Any change or modification hereof must be in writing, signed by both parties.

20. Severability:

If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

21. Successors Bound:

This Agreement shall be binding on and shall insure to benefit of the heirs, legal representatives, and successors of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LANDLORD: _____

BY: _____

TITLE: _____

TENANT: _____

BY: _____

TITLE: _____



T-Hangar Waiting List Policy and Procedures

(Airport Name) intends to construct *(number)* T-hangars. The T-hangars will be located at *(Location)*. The T-hangars are owned and administered by *(Airport Authority Name)*.

The T-hangar Waiting List Policy and Procedures contain the policies for the establishment and administration of a waiting list to allocate the T-hangar licenses. T-hangars may only be occupied under license agreements entered into with the *(Airport Authority Name)*. This policy does not apply to T-hangars owned or operated by the airport's fixed base operators or others.

Waiting List Formation.

1. Lottery Application. A T-hangar waiting list will be established by selection of applications drawn by lot during a lottery conducted by the Chair of the Airport Authority or designee.
 - a. Applications. Each applicant for a T-hangar license shall submit one T-hangar Waiting List Application ("Application") per Aircraft. Application forms may be obtained from the Airport Administration. Applications must be received by Airport Administration, located at *(Airport Address)*, *(City)*, Florida within the advertised acceptance period. The application must identify a specific aircraft that is airworthy as defined in the T-hangar Rules and Regulations and that the applicant intends to hangar. The aircraft identified on the application must be owned by the applicant. Multiple applications for a specific aircraft, whether by a single individual, or multiple individuals, will not be accepted. An aircraft owner may submit a separate Application for each aircraft owned. Applicants may change the designated aircraft at any time, but the identity of the applicant may not change.
 - b. Administrative Fee. A non-refundable administrative fee in the amount of \$50 in the form of either personal check or money order shall be submitted with the Application. The non-refundable administrative fee shall not at any time be held in trust by *(City or County Name)*, shall not bear interest, and shall not be a prepayment of any monies to be paid by the Applicant under a subsequent license, if issued.
 - c. Initial Lottery Deposit. All Applications for the initial lottery (as defined below) shall, in addition to the non-refundable administrative fee, submit a refundable deposit of \$_____ ("Initial Lottery Deposit"). Should the applicant withdraw from the initial lottery or the waiting list prior to entering into a T-hangar license with the airport, the Initial Lottery Deposit shall be refunded in full.

Initial Lottery Deposits received from Applicants not selected for placement on the Waiting List during the Initial Lottery process will be refunded within fourteen days following the Initial Lottery.

Initial Lottery Deposits received from Applicants who are selected for the T-hangar Waiting List, but who do not receive an offer for a T-Hangar within 75 days of the Initial Lottery, will be refunded within 90 days after the Initial Lottery.

Initial Lottery Deposits received from Applicants whom successfully enter a T-hangar be applied towards the security deposit required by the License or refunded directly to any Applicant.



2. LOTTERY

- a. Initial Lottery. An initial lottery (“Initial Lottery”) will be held to create a limited Waiting List of those interested in occupying a T-hangar. In the Initial Lottery, a maximum of 49 Applicants will be selected for placement on the limited Waiting List. All Applications for the Initial Lottery must be submitted to (*Airport Name*) between the dates of (*Date to Date*).

Only those completed Applications received by (*Time*) on (*Date*), will be eligible to participate in the Initial Lottery to establish the T-hangar limited Waiting List.

The lottery is scheduled for (*Date*), at (*Airport Name*).

- b. Periodic Lottery. At such time as the Waiting List contains 10 Applicants or fewer, subsequent lotteries will be held to add Applicants to the T-hangar Waiting List. The number of Applicants selected at the Periodic Lottery for placement on the Waiting List shall be limited to the number needed to restore the Waiting List to (*Number of Applicants*) Applicants, or until all Lottery Applications submitted have been selected for placement on the Waiting List. As Applicants are selected in the Periodic Lotteries, those Applicants selected shall be placed at the end of the Waiting List behind the Applicants selected for the Waiting List from prior lotteries.
- c. General. All T-Hangar Waiting List lotteries will be conducted by the Airport Authority at a publicly noticed hearing. The Chair of the Airport Authority shall conduct all Lottery drawings. The Chair shall draw, by lot, the number of Applications needed to fill the Waiting List to the applicable number from the pool of all completed Applications received during the established acceptance period. Applicants are not required to be present at the lottery.

3. T-HANGAR WAITING LIST ADMINISTRATION.

All Applications selected in the lottery (Initial and Periodic) shall be placed on the Waiting List in the order of their selection by the (*Chair of the Airport Authority*) at the Lottery.

- a. Annual Renewal Fee. Applicants assigned to the T-Hangar Waiting List shall submit an annual non-refundable renewal fee of \$50 to verify continued interest in T-Hangar occupancy and to maintain placement on the T-Hangar Waiting List. The Airport Department will provide each Applicant on the Waiting List with a renewal notification. The notice shall be mailed by the Airport Department to the last known address of each Applicant on the T-Hangar Waiting List. Applicants who fail to submit the annual renewal fee within five (5) days following the due date established in the renewal notification will be removed from the T-Hangar Waiting List.
- b. T- Hangar License Offer. An offer of an available T-Hangar license will be made by the Airport Director to the Applicant on the Waiting List whose name is first on the Waiting List.

Notification of T-Hangar availability shall be mailed to the selected Applicant by the Airport Department by registered mail return receipt requested. The notification shall be mailed to the Applicant’s most current address on file with the Airport Director. It is the sole responsibility of the Applicant to keep a current address on file with the Airport Director.

- c. Qualifications for T-Hangar License. To qualify for issuance of a T- Hangar License, the Applicant must demonstrate, to the satisfaction of the Airport Director, the ability to comply with the terms and conditions of the T-Hangar License and T-Hangar Rules and Regulations. Qualification criterion includes demonstration that the Applicant is a Qualified Aircraft Owner (defined in the Rules and Regulations) of an airworthy aircraft (defined in the Rules and



- Regulations), financial ability to perform successfully under the terms of the License and acknowledgment and agreement to comply with the T-Hangar Rules and Regulations. The Airport Director's determination on an Applicant's qualifications is final.
- d. T-Hangar Acceptance. The Applicant must accept the T-Hangar License offer and execute a T-Hangar License Agreement within fifteen (15) days of the date of the notification of T-Hangar availability is mailed.
 - e. Declined T-Hangar Offer.
 - i) Declined Offer by Airport Director. If the Applicant does not meet the qualifications for a T-Hangar License as described herein, the T-Hangar License shall be deemed declined by the Airport Director and the Applicant's name shall be removed from the Waiting List. The Initial Lottery Deposit, if paid, shall be refunded in full.
 - ii) Declined by Applicant. If the T-Hangar License is not accepted by the Applicant or the T-Hangar License is not timely executed, the T-Hangar license shall be deemed declined and the Applicant's name shall be removed from the Waiting List. The Initial Lottery Deposit, if paid, shall be refunded in full. The T-Hangar shall be offered to the next Applicant on the Waiting List.
 - f. Withdrawal from Waiting List. An Applicant may withdraw its Application from the Waiting List at any time. The Initial Lottery Deposit, if paid, shall be refunded in full.
 - g. Waiting List Administration. The T-Hangar Waiting List shall be administered by the Airport Director in accordance with the procedures contained in this Policy. The Waiting List Policies may be amended from time-to-time by the Airport Authority.
 - h. Future Development. In the event that the Airport constructs, operates, and administers additional hangars of a similar size and type as those identified in this Policy, the Waiting List established under this Policy will be used to assign that hangar space. In the event that the Airport constructs hangars of a substantially different size or type, an alternate system to allocate those facilities will be developed at that time.



Group III Aircraft T-Hangars Limited Preventive Maintenance

In previous versions of NFPA 409, limited preventative maintenance measures were provided for Group III aircraft T-hangars. When an airport is leasing hangar facilities, these measures may want to be considered to be included in the lease. The following limited preventative maintenance measures were provided for Group III aircraft T-hangars in the January 2001 edition of NFPA 409:

- 1) Removal, installation, and repair of landing gear tires.
- 2) Replacing elastic shock absorber cords on landing gear.
- 3) Servicing landing gear shock struts by adding oil, air, or both.
- 4) Servicing landing gear wheel bearings, such as cleaning and greasing.
- 5) Replacing defective safety wiring or cotter keys.
- 6) Lubrication not requiring disassembly other than removal of nonstructural items such as cover plates, cowlings, and fairings.
- 7) Making simple fabric patches not requiring rib stitching or the removal of structural parts or control surfaces. In the case of balloons, the making of small fabric repairs to envelopes (as defined in, and in accordance with, the balloon manufacturers' instructions) not requiring load tape repair or replacement.
- 8) Replenishing hydraulic fluid in the hydraulic reservoir.
- 9) Repairing upholstery and decorative furnishings of the cabin, cockpit, or balloon basket interior when the repairing does not require disassembly of any primary structure or operating system or interfere with an operating system or affect the primary structure of the aircraft.
- 10) Making small simple repairs to fairings, nonstructural cover plates, cowlings, and small patches and reinforcements not changing the contour so as to interfere with proper air flow.
- 11) Replacing side windows where that work does not interfere with the structure or any operating system such as controls, electrical equipment, etc.
- 12) Replacing safety belts.
- 13) Replacing seats or seat parts with replacement parts approved for the aircraft, not involving disassembly of any primary structure or operating system.
- 14) Trouble shooting and repairing broken circuits in landing light wiring circuits.
- 15) Replacing bulbs, reflectors, and lenses of position and landing lights.
- 16) Replacing wheels and skis where no weight and balance computation is involved.
- 17) Replacing any cowling not requiring removal of the propeller or disconnection of flight controls.
- 18) Replacing or cleaning spark plugs and setting of spark plug gap clearance.
- 19) Replacing and servicing batteries.
- 20) Cleaning of balloon burner pilot and main nozzles in accordance with the balloon manufacturer's instructions.
- 21) Replacement or adjustment of nonstructural standard fasteners incidental to operations.
- 22) The interchange of balloon baskets and burners on envelopes when the basket or burner is designated as interchangeable in the balloon type certificate data and the baskets and burners are specifically designed for quick removal and installation.



- 23) The installations of anti-misfueling devices to reduce the diameter of fuel tank filler openings provided the specific device has been made a part of the aircraft type certificate data by the aircraft manufacturer, the aircraft manufacturer has provided FAA-approved instructions for installation of the specific device, and installation does not involve the disassembly of the existing tank filler opening.
- 24) Removing, checking, and replacing magnetic chip detectors.
- 25) The inspection and maintenance tasks prescribed and specifically identified as preventive maintenance in a primary category aircraft type certificate or supplemental type certificate holder's approved special inspection and preventive maintenance program when accomplished on a primary category aircraft provided:
 - i. They are performed by the holder of at least a private pilot certificate issued under part 61 who is the registered owner (including co-owners) of the affected aircraft and who holds a certificate of competency for the affected aircraft (1) issued by a school approved under Sec. 14 7.21 (e) of this chapter; (2) issued by the holder of the production certificate for that primary category aircraft that has a special training program approved under Sec. 21.24 of this subchapter; or (3) issued by another entity that has a course approved by the Administrator; and
 - ii. The inspections and maintenance tasks are performed in accordance with instructions contained by the special inspection and preventive maintenance program approved as part of the aircraft's type design or supplemental type design.
- 26) Removing and replacing self-contained, front instrument panel-mounted navigation and communication devices that employ tray-mounted connectors that connect the unit when the unit is installed into the instrument panel, (excluding automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)). The approved unit must be designed to be readily and repeatedly removed and replaced, and pertinent instructions must be provided. Prior to the unit's intended use, and operational check must be performed in accordance with the applicable sections of part 91 of this chapter.
- 27) Updating self-contained, front instrument panel-mounted Air Traffic Control (ATC) navigational software data bases (excluding those of automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)) provided no disassembly of the unit is required and pertinent instructions are provided. Prior to the unit's intended use, an operational check must be performed in accordance with applicable sections of part 91 of this chapter.



RESOURCES & REFERENCE MATERIALS



Resources and Reference Materials

The following resources provide information that may be beneficial during the development of T-hangar bid packages:

Advisory Circular 150/5370-2F - Operational Safety on Airports during Construction

http://www.faa.gov/airports/resources/advisory_circulars

The Florida Aviation Project Handbook

<http://www.dot.state.fl.us/aviation/flpub.shtm>

National Fire Prevention Association 409: Standard on Aircraft Hangars

<http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=409>

Standard Specifications for Construction of General Aviation Airports

<http://www.dot.state.fl.us/aviation/flpub.shtm>