

INVITATION TO BID
FOR
EXTERIOR WALL REMOVAL AND REPLACEMENT
1218 CENTER STREET

REDEVELOPMENT AUTHORITY
Of
CITY OF BETHLEHEM

BID # 6-2022

ENGINEER JOB # 2022-034

NOTE: *IF YOU DID NOT RECEIVE THIS BID PACKET DIRECTLY FROM EITHER THE REDEVELOPMENT OF THE CITY OF BETHLEHEM OR BASE ENGINEERING INC. YOU DO NOT HAVE AN OFFICIAL COPY. SEE SECTION 00 10 00 – INSTRUCTIONS TO BIDDERS, ITEMS 1.02(A) AND 1.03(A), (B) AND (C) FOR FURTHER DIRECTION.*

Mandatory Pre-Bid Meeting: 5/20/2022 at 2:00 PM

Due Date/Time: 6/3/2022 at 4:00 PM

Opening Date/Time: 6/6/2022 at 10:00 AM

Redevelopment Authority of The City of Bethlehem
Exterior Wall Removal and Replacement
1218 Center Street
Bethlehem PA

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SECTION 00 10 00 –INSTRUCTIONS TO BIDDER

PART 1: GENERAL

1.01 DEFINITIONS:

- A. Bidding Documents include the Notice to Bidders, Instructions to Bidders, Bid Form, Bid Bond, Agreement of Surety, Non-Collusion Affidavit, and other sample bidding and contract forms. The Contract Documents consist of the Bidding Documents, Agreement Between City and Contractor (hereinafter “Agreement”), Performance Bond, Payment Bond, Conditions of the Contract, specifications, Drawings, and all Addenda issued prior to the execution of the Agreement.
- B. Addenda are written or graphic instruments issued by the Consultant prior to the execution of the Agreement, which modify or interpret the Contract Documents by additions, deletions, clarifications or corrections.
- C. A Bid or Proposal is a complete and properly signed proposal to do the Work for the sum stipulated therein, submitted in accordance with the bidding Documents.
- D. The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Contract Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids.
- E. An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.
- F. A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.
- G. A Bidder is a person or entity that submits a bid or proposal.

1.02 OBTAINING BIDDING DOCUMENTS:

- A. Bid packets can be procured from the office of the Engineer – BASE Engineering Inc., 1010 N. Quebec Street, Allentown, PA, 18109.
- B. Upon payment of the fee indicated in the Invitation to Bidders, each Bidder will be supplied with one (1) Set of Bidding Documents. Additional Bidding Document Sets can be obtained from the Engineer for the Cost of printing. Individual drawing sheets or project manual sections will not be issued.
- C. The fee for sets of Bidding Documents shall not be refundable.
- D. Bidders shall use complete sets of Bidding Documents in preparing the Bids;

neither the City or Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets.

- E. In making copies of the Bidding Documents available on the above terms, the RDA and the Engineer do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use of the Bidding Documents.

1.03 BIDDING DOCUMENTS

- A. Authority to Distribute Bid Packages: Base Engineering Inc is the sole entity authorized to provide this ITB package to interested companies or individuals. Firms who are working from an ITB package obtained from any other source may have an incomplete set of documents. Both Base Engineering Inc. and the City assume no responsibility for any error, omission, or misinterpretation resulting from a company's use of an incomplete ITB package.
- B. Firms who have received the ITB package from other sources are advised to contact Base Engineering Inc. to provide their company name, mailing address, telephone number, fax number, contact name and contact e-mail address. This will ensure that the company receives all ITB related communications and documents, including addenda.

1.04 REVIEW OF DRAWINGS AND SPECIFICATIONS:

- A. Bidders shall thoroughly examine and be familiar with the Specifications and Drawings. The failure or omission of any Bidder to receive or examine any form, instrument, document, or visit the site and acquaint himself with conditions there existing, shall in no way relieve any Bidder from obligation with respect to his Bid. By submitting a Bid, the Bidder agrees and warrants that he has examined the site and the Specifications and Drawings and, where Specifications and/or Drawings require in any part of the Work a given result to be produced, that the Specifications and Drawings are adequate and the required result can be produced under the Specifications and Drawings. No claim for any extra will be allowed because of alleged impossibilities in the production of the results specified or because of inadequate or improper plans and specifications and wherever a result is required, the successful Bidder shall furnish any and all extras and make any changes needed to produce the required result for the sum stated in the form of proposal.
- B. Should any Bidder find discrepancies, duplications or omissions in the documents or have doubt as to the meaning expressed by the Contract Documents, he shall make inquiry at once in writing to the Engineer. Where the Engineer deems changes, corrections or clarifications to Contract Documents necessary, he will issue written Addenda accordingly. Addenda thus issued shall be a part of the contract Documents. No oral, telephone or letter instructions will be considered as having effect upon the contract

Documents; Addenda only shall constitute change to them. Bidders and Sub-bidders are urged to make early examination of Contract Documents and make inquires about them if necessary, even though prices may not be determined until late in the bidding period.

1.05 STANDARD OF QUALITY/ALTERNATIVES/SUBSTITUTIONS:

- A. The various materials and products specified in the Specifications by name or description are given to establish a standard of the quality and of cost for Bid purposes. It is not the intent to limit the Bidder, the Bid or the evaluation of the bid to any one material or product specified but rather to describe the minimum standard. When proprietary names are used, they shall be deemed to be followed by the words “or alternatives of the quality necessary to meet the specifications.” A Bid containing an alternative, which does not meet the Specifications, may be declared non-responsive. A Bid containing an alternative may be accepted but, if an award is made to that Bidder, the Bidder will be required to replace any alternatives, which do not meet the Specifications.
- B. No substitution (alternative) will be considered prior to receipt of Bids unless a written request for approval has been received by the Engineer only from prime Contract Bidders at least ten days prior to the date for receipt of Bids. Such request shall be in accordance with substitution request procedure specified in Division 1 and shall include, but not be limited to, the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. In addition, a statement setting forth changes in other materials, equipment or other portions of the Work including changes in the work of other contracts that incorporation of the proposed substitution (alternative) would required shall be included. The burden of proof of the merit of the proposed substitution (alternative) is upon the proposer.
- C. If the Engineer approves a proposed substitution (alternative) prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals in any other manner.
- D.
 - 1. In accordance with the “Standard of Quality” provisions, substitutions (alternatives) may be submitted as part of a Bid only if the bidder includes all information required for substitutions (as defined herein and in Division 1) for each substitution (alternative) submitted as part of the Bid and clearly indicates the request for substitution (alternative) on the form of proposal. Bidder must submit evidence that the substitution (alternative) does not require extensive revision to the Contract Documents, that it is consistent with the Contract Documents and will produce indicated results, that it will not adversely affect the

construction schedule, that it has received necessary approval of authorities having jurisdiction that it is compatible with other portions of the Work and that it provides the specified warranty, or if no warranty is specified, a warranty comparable to that of the material or product named in the Specifications. In addition to the aforesaid requirements, Bidder must provide a detailed comparison of the significant qualities of the proposed substitution (alternative) with those named in the Specifications. Significant qualities include attributes such as performance, weight, size, durability, visual effect, and specific features and requirements indicated. Bidder shall provide a list of similar installations for completed projects with project names, addresses and contact persons, if requested. Bidder shall provide samples if requested. A proposed substitution (alternative) will not be considered to meet the Specifications unless all of the aforesaid requirements have been determined satisfied by the Engineer. Failure of Bidder to supply the requested information will result in non-approval of any proposed substitution (alternative).

2. Non-approval of any proposed substitution (alternative) shall not entitle the successful Bidder to any additional compensation or an extension of time to complete the Work.
3. City shall not be required to consider or accept any substitution (alternative) that is not specifically identified in a written request for substitution included with the Bid submittal. Failure of the successful Bidder to specifically identify a substitution (alternative) in a request for substitution included with its Bid submittal shall result in the successful Bidder being required to complete the Work using materials and products named in the Specifications.
4. Bidders are cautioned that substitutions (alternatives) submitted as part of the Bid may render that Bid non-responsive, and that bidder may be required to provide the materials or products specified without change in cost to Bid submitted, if the substitution (alternative) information is incomplete or the substitution (alternative) is judged to be inferior to the standard of quality specified.

- E. No substitutions (alternatives) will otherwise be considered after the Contract award unless specifically provided in the Contract Documents.
- F. No substitutions (alternatives) will be considered for pre-bid approval later than ten (10) days before bids are due.

1.06 ADDENDA:

- A. Addenda, if any, will be mailed, transmitted or delivered to all whom are known by the issuing office to have received a set of Bid Documents. Addendum will be issued before the deadline for receipt of Bids as deemed advisable by The RDA or Engineer. Bidders are responsible to make sure

all addenda are received and are complete. Bidders shall acknowledge receipt of Addenda on the bid Form.

1.07 PREPARATION OF BID:

- A. Any contract will be entered into by the RDA (Redevelopment Authority of the City of Bethlehem) with the understanding that the Bidder, prior to submission of his Bid, acquainted himself with the requirements of the Drawings and Specifications, conditions of the site, and all other matters pertinent to the Work contemplated. It will be assumed that the Bidder has satisfied himself as to the conditions to be encountered overhead, on the surface and concealed, the character, quality and quantities of Work to be done and materials to be furnished, and the requirements of the Contract and Specifications. No allowance or concession will be made for the lack of such information on the part of the Bidder. The Bidder shall not at any time after execution of the Agreement make any claims whatsoever based upon insufficient data or incorrectly assumed conditions, nor shall he claim any misunderstanding in regard to the nature, conditions or character of the Work to be done under the contract, and he assumes all risk resulting from any changes in the conditions which may occur during the progress of the Work.
- B. Each proposal must be delivered by the Bidder to person at the location and time, all of which is stated in the Invitation to Bidders.
- C. Bids shall be enclosed in a sealed envelope, which shall be marked with the name of the Bidder and the contract which is being bid. Envelopes shall be addressed to person receiving bid as indicated in the Invitation to Bidders.
- D. If a Bidder elects to submit a Bid by mailing rather than hand delivery, the sealed Bid envelope described above shall be enclosed in a mailing envelope addressed as set forth above, and must be received prior to the Bid deadline.
- E. Bids received after the time and date for receipt of Bids will be returned unopened.
- F. Bids shall be submitted on forms identical to the form of Proposal included in the Bidding Documents. All blanks on the Form of Proposal shall be filled in using a non-erasable medium. If there is no change in the contract amount for any alternate write NO CHANGE in the blank.
- G. Oral, telephonic or telegraphic Bids are invalid and will not receive consideration.
- H. Where so indicated by the make-up of the Form of Proposal, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern.
- I. Interlineations, alterations and erasures must be initialed by the Signer of the Bid. Each Bid must contain the full business address of the Bidder and must

be signed by him correctly. If the proposal is made by an individual, in addition to his signature, his post office address should be shown. If the proposal is made by a partnership, the name and post office of each partner of the partnership must be shown and the proposal must be signed in the partnership name by at least one (1) of the general partners. If the Bid is made by a corporation, the proposal should be signed by the president or Vice president and attested by the Secretary or Assistant Secretary, and identify the name, business address and state of incorporation for the corporation, and have the corporate seal affixed.

- J. All Bids must include the bid Security and Non-Collusion Affidavit as set forth herein. If Bid Security is provided in a form other than Bid Bond, the bid must include an Agreement of Surety as described herein.

1.08 BID SECURITY:

- A. A proposal shall be rejected unless accompanied by a Bid Security in an amount not less than ten percent (10%) of the total Base Bid. Bid Security shall be in the form of a Bid Bond in the form set forth herein, naming as Obligee, the Redevelopment Authority of the City of Bethlehem. In addition to Bid Bonds, the RDA will also accept a Bank Cashier's Check, Certified Check or Irrevocable Letter of Credit.
- B. The RDA may declare the bid Security forfeited to the City if, following the issuance of a Notice of Intent to Award to the apparent lowest responsive Bidder, such Bidder fails to deliver the items required under Section 1.18 of these Instructions to Bidder within ten (10) days thereafter.
- C. The Bid Bond shall be submitted on the form included in the Bidding Documents, and the Attorney-in-Fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of its Power of Attorney, authorizing said Attorney-in-Fact to act on behalf of the surety. The Power of Attorney must be dated the same date as the Bid Bond and both the bid Bond and Power of Attorney shall have affixed the raised corporate seal of the surety. The Bid bond form must be executed by a surety licensed and authorized to conduct business within the Commonwealth of Pennsylvania and named in the current list of companies holding Certificates of Authority as acceptable sureties on federal bonds and/or as acceptable reinsuring companies as published in Circular 570 (as amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, and the amount of the bond shall not exceed the underwriting risk of such surety set forth in said circular or revision thereof.
- D. The Bid Security of Bidders will be returned (unless forfeited as stated above) at the bidder's request, upon (1) the execution of the Agreement Between The City and contractor by The City, or (2) the rejection of all bids by the RDA, or (3) the expiration of the firm bid period set forth in Section 12 of these Instructions to Bidder. The RDA shall not be liable for any interest on bid security, which is held in accordance with these Bidding Instructions.

- E. Submit (1) one original of the Bid Bond.

1.09 NON-COLLUSION AFFIDAVIT:

- A. More than one proposal for the contract from an individual, partnership, corporation, or an association under the same or different name will be grounds for the rejection of all proposals in which such Bidder is interested. Any or all proposals will be rejected if there is reason for believing that collusion exists among any of the Bidders. Participants in such collusion will not be considered in future proposals. A Non-Collusion Affidavit shall be executed and submitted with the Bidder's proposal using the form set forth herein.

1.10 ALTERNATES:

- A. All requested alternates as defined in Division 1 or the bid documents shall be bid. Provide prices for those alternates indicated on the Form of Proposal. Include changes to Contract Sum. Methods for bidding Alternates are as specified in Division 1. Alternate prices shall be held for a period beyond date of agreement, see Supplementary General Conditions. If there is no change in Contract Sum or time, enter "No Change" in the appropriate fields as appropriate. If there is no bid on any alternate enter "No Bid", such action could result in Bidder not being awarded contract if the RDA selects alternate.

1.11 UNIT PRICES:

- A. Provide unit prices, filled-in on the form of proposal in accordance with requirements specified in Division 1. No unit costs (other than those required by Allowances) shall be included in the Base Bid. Unit costs will be used for adjustment of the contract Sum if any are required. The RDA reserves the right to reject any unit price bid.

1.12 WITHDRAWAL OF PROPOSALS:

- A. Bidders will be given permission to withdraw any proposal after it has been received by the RDA, provided the Bidder or his agent duly authorized to act for him, personally appears at the City of Bethlehem Municipal Building – 10 Church Street, Bethlehem with a written request signed by the Bidder prior to the time set forth for the opening of the Bids. At the time set for the opening of Bids, the withdrawn proposal will be returned to the Bidder. Such withdrawn proposals will not be opened or read at the Bid opening. Bids may not be modified after submittal.
- B. Bids shall be irrevocable for sixty (60) days after the actual day of opening thereof unless delayed by the required approval of another governmental

agency, the sale of bonds or the award of a grant, in which case, Bids shall be irrevocable for 120 days after Bid opening. Extensions of the date for the award of contract may be made by the mutual written consent of the RDA and the lowest responsible and responsive Bidder.

- C. Neither the designation of the apparent lowest responsive Bidder, nor the issuance of a Notice of Intent to Award to the Bidder so designated shall operate to release any other Bidder from its Bid. Each such other Bidder, unless earlier released from its Bid by specific action of the RDA, shall remain bound by its Bid until the earlier of (1) the date of actual execution by RDA of the Agreement Between City and Contractor with the Bidder to whom the Award of Contract has been made, or (2) the expiration of the firm Bid period stipulated above.

1.13 PROPOSAL MISTAKE CLAIMS:

- A. Negligence by the Bidder in preparing his proposal confers no right of withdrawal or modification of his proposal after such proposal has been opened. No claims on account of mistakes or omissions of any proposal will be considered. Notwithstanding the above, a Bidder may withdraw his proposal within two (2) business days after the bid opening time in accordance with the Public Contracts – Withdrawal of Bids Law, Act of January 23, 1974, P.L. 9, No. 4, 73 P.S. §1601 et seq., as amended. A Bid, which has been opened, may be withdrawn only in accordance with the causes set forth in said Act and for no other reasons. Strict compliance with said Act is required to withdraw a Bid after opening.

1.14 OPENING OF PROPOSALS:

- A. Proposals will be opened and read at 10:00 AM the day after the bid due date. Bidders or their authorized agents may be present.
- B. Tabulation of Responses: A draft tabulation sheet of responses received to this Invitation to Bid will be available for review (in Adobe's Portable Document Format) on the RDA's Website within approximately 24 hours of the bid opening. This information is provided to give participating forms a preliminary understanding of the responses received. These sheets will remain listed until an award decision is made. To access these draft tabulations: proceed to www.bethlehemrda.com, click on "current project – bid results.
- C. The RDA shall have the right, without invalidating the contract, to make additions to or deductions from the work covered by this bid package, and in case such deductions or additions are made, an equitable adjustment of the addition to or deduction in cost shall be made between the RDA and the Bidder, as shown in a written amendment to the Contract.

1.15 AWARD OF CONTRACT:

- A. The RDA reserves the right to reject any or all proposals, or any part thereof or items therein, and to waive technicalities, as it may deem best to protect the interests of the RDA. If the RDA makes any award, it will be to the party declared by the RDA to be the lowest responsive and responsible Bidder.
- B. In awarding Bids, the City shall have sole discretion in determining the lowest responsive and responsible Bidder and shall have the right to take into consideration the following factors, in addition to price:
 - 1. The character, integrity, reputation and judgment of the Bidder.
 - 2. The previous and existing compliance of the Bidder with the requirements of similar installations.
 - 3. The ability, capacity, experience and skill of the Bidder to perform the Contract.
- C. The RDA shall have the right to accept Alternates in any order or combination, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

1.16 IRREGULAR PROPOSALS:

- A. Proposals indicating a qualification of the Bid, conditions or uninvited alternate Bids or which contain alteration of the form request for a proposal, or additions or deductions not called for may be rejected. Bids containing minor irregularities or informalities, not relating to price, time, or changes affecting the quality of work, may be rejected at RDA's sole discretion. The RDA reserves the right to waive any such informalities or irregularities.

1.17 QUALIFICATIONS OF BIDDERS:

- A. If any award is made by the RDA, it will be to the party declared by the RDA to be the lowest responsible Bidder by notice of intent to award. Award of Contract will be based upon the base bid and any of the accepted alternates prices. In determining the lowest responsible Bidder, the RDA will consider the Bidder's integrity, efficiency, experience, promptness, current work load, financial capability, performance on recent projects, references from RDA's and Engineers, potential list of subcontractors, project superintendent, itemized and detailed list of project schedule of values and any other information that the RDAy deems necessary and ability to successfully and timely complete the project. The RDA will scrutinize the Bidder's information for full disclosure before a bid is awarded. The Bidder must demonstrate competency and provide any or all of the above information requested within 5 days of request. If the Bidder does not submit all of the information requested and or in the format requested within 5 days, the bid will be determined to be non-responsive and invalid.
- B. The RDA may make such investigation as is deemed necessary to determine

the ability of the Bidder to perform the work according to the requirements of the contract Documents. The Bidder shall furnish to the RDA all such information and data for this purpose as the RDA may request. The RDA reserves the right to reject any Bid if by the evidence submitted, or as the result of investigation, such Bidder fails to satisfy the City that the Bidder is properly qualified to carry out the obligations of the Contract.

- C. This project has a critical project schedule, therefore in addition to all of the above requirements, the RDA will specifically be looking at Bidder's ability to meet, staff and manage the entire project including project schedules and their track record in making claims for additional compensation regarding project schedules and completion. Any Bidder determined to have construction projects where they have not properly managed or staffed the project and/or made claims regarding project schedule and staffing issues will result in the RDA's ability to reject such bid.

1.18 EXECUTION OF CONTRACTS AND BONDS:

- A. The RDA will notify the lowest responsive and responsible Bidder of the RDA's intent to accept his proposal and to make a formal award of contract to him by the Notice of Intent to Award. After receipt of the Notice of Award from the RDA, the Engineer will provide the Agreement to be signed by the successful Bidder. Within ten (10) days of receipt of the Notice of Intent to Award, the successful Bidder shall furnish (1) a Performance Bond and a Payment Bond in the forms provided in the Bidding Documents, each in the amount of one hundred percent (100%) of the contract sum; (2) Certificates of Insurance as required pursuant to Article 5 of the General Conditions of Contract; and (3) the signed Agreement. The Bonds, Insurance Certificates and Agreement shall be submitted to the Engineer's office within the required time period.
- B. The Attorney-in-Fact who executes the Payment and Performance Bonds on behalf of the surety shall affix to the bonds a certified and current copy of its Power of Attorney, authorizing said Attorney-in-Fact to act on behalf of the surety. The Power of Attorney must be dated the same day as the bonds and both the bonds and Power of Attorney shall have affixed the raised corporate seal of the surety.
- C. After approval of bonds and insurance, the RDA will sign and date the Agreement. The RDA shall return to the successful Bidder one (1) copy of the dated, executed Agreement within thirty (30) days of the Notice of Intent To Award, unless the time of issuance of such Agreement shall be extended by mutual written agreement of the RDA and successful Bidder or pursuant to Subparagraph 18 below.

1.19 FAILURE TO EXECUTE CONTRACT:

- A. Failure of the Bidder to whom Notice of Intent to Award has been given to deliver appropriate Payment and Performance Bonds, Certificates of Insurance, or execute the Agreement within the time specified, shall

constitute a default by such Bidder and the RDA may, at its sole discretion, award the contract to the next lowest responsive and responsible Bidder or re-advertise for Bids, and the defaulting Bidder shall pay to the RDA the difference between the amounts of his Bid and any higher amount for which the RDA may contract for the required work plus any advertising, consulting legal or other expenses incurred by reason of the default. The bid Security of such defaulting Bidder shall be applied on account of said damages, and if the amount of said damages exceeds the amount of the bid Security, the defaulting Bidder shall pay to the RDA the full amount of the excess. The RDA may, in its sole discretion, extend the time period for submission of the above items, upon request of Bidder. Such request of Bidder, if accepted by RDA in writing, shall constitute a mutual agreement to extend the date for issuance of the Agreement to the date stipulated in such written agreement, or if no date is stipulated, until twenty (20) business days after the submission to the RDA of the properly executed Agreement and all required documents in proper form as required by the Contract Documents.

1.20 PROJECT COMPLETION:

- A. Each proposal shall be based on project completion within time limits indicated on the Phasing Drawing, Specifications or Form of Proposal.
- B. Bidder must agree to commence work on or before a date to be specified in a written “Notice To Proceed” written by the RDA or contained within the Agreement and to fully complete the Project within the time specified.

1.21 LIQUIDATED DAMAGES:

- A. Completion of work and punchlist is subject to liquidated damages as specified in General Conditions. Changes to the Standard Form, and Supplementary General Conditions.

1.22 GOVERNMENT REQUIREMENTS:

- A. Bids shall be submitted on the basis of full and total compliance with all Federal and State laws, regulations, statutes and requirements pertaining to this Project. Bidder shall refer to the General Conditions, Changes to Standard Form, and Supplementary General Conditions for additional requirements.
- B. Bidder shall contact prior to bidding, the local municipality having jurisdiction and ascertain the building codes, permits, fees, and regulations pertaining to this Project. It is the responsibility of the Bidder to determine what local ordinances, if any, will affect his work. He should check for any county, RDA, borough, or township rules and regulations applicable to the area in which the project is being constructed and, in addition, for any rules or regulations of other organizations having jurisdiction such as planning commissions industries or utility companies. Any costs of compliance with local controls shall be included in the prices bid, even though requirements

of such local controlling agencies are not listed herein.

1.23 CASH ALLOWANCES:

- A. Case allowances are prohibited and are not included in the Bidding Documents.

1.24 TAXES:

- A. Contractor shall be responsible for and shall pay all applicable sales, use, excise or other taxes required by law on all materials, tools, apparatus, equipment, fixtures, services, incidentals or otherwise which may be purchased or used in connection with the Work or portions thereof. The Bid shall be made in accordance with such laws and shall include all applicable taxes in the Bid amount.
- B. Notwithstanding the foregoing, however, RDA is exempt (excluded) from sales and/or tax in Pennsylvania on certain transactions. Contractor and all subcontractors shall comply with the requirements in the General Conditions pertaining to accounting records and assignment.

1.25 PRE-BID MEETING:

- A. For the benefit of all Contractors, a pre-bid meeting will be held on date indicated in the Invitation to Bidders. Attendance by all interested Bidders is required. The meeting will be held at the location indicated in the Invitation to Bidders. Non attendees will not be permitted to bid.
- B. Questions from this meeting requiring modifications of Bidding Documents will be issued in the form of an addendum. Bidders may rely only on written answers to questions raised at pre-bid meeting as included in an Addendum.

1.26 SITE INSPECTION:

- A. Site visit will occur after the mandatory pre-bid meeting.

1.27 HUMAN RELATIONS ACT

- A. The provisions of the Pennsylvania Human Relations Act 222 of October 27, 1955 (P.L. 744 (43 P.S. Section 951, et. Seq.) of the Commonwealth of Pennsylvania, prohibit discrimination because of race, color, religions creed, ancestry, age, sex national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The Contractor and subcontractors shall agree to comply with the provisions of this Act as amended and that is made part of this Project Manual. Your attention is directed to the language of the Commonwealth's nondiscrimination clause, in 16 PA Code 549.101.

1.28 PENNSYLVANIA PREVAILING WAGE RATES

- A. Act No. 442 of 1961, P.L. 987, amended by Act 342 of 1963, P.L. 653: This regulation and the general prevailing minimum wage rates, as determined by the Secretary of Labor and Industry which shall be paid for each craft or classification of all workers needed to perform the contract during the anticipated term therefore in the locality in which public work is performed, are made part of this Project Manual.
- B. The Contract with the Contractor is subject to the provisions, duties, obligations, remedies, and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. § 165-1 et seq., which is incorporated herein by reference as if fully set forth herein. The general prevailing minimum wage rates, as determined by the Secretary of Labor and Industry, shall be paid for each craft or classification of all workers needed to perform this Contract during the term hereof for the locality in which the work is to be performed.

1.29 PERMITS:

- A. Contractor is responsible for obtaining and paying for all necessary permits and licenses for execution and completion.

1.30 PROJECT QUESTIONS:

- A. Any questions shall be directed to:

Barry A. Cohen, P.E.
Base Engineering Inc.
1010 North Quebec Street
Allentown, PA 18109
(P) 610-437-0978
(F) 610-432-3800

- END OF SECTION 00 10 00 -

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

Section 00 11 16 - Invitation to Bid

PROJECT

Exterior Bearing Wall Removal and Replacement
1218 Center St – Bethlehem PA

CLIENT

Redevelopment Authority of
The City of Bethlehem
10 E Church St
Bethlehem PA 18018

ENGINEER

BASE Engineering Inc.
1010 N. Quebec Street
Allentown, Pa. 18109-1607
Phone: (610) 437-0978

The Redevelopment Authority of the City of Bethlehem will receive bids up to and including Friday, June 3, 2022, at 2:00 PM at the RDA office, Bethlehem City Hall., 10 East Church Street Bethlehem, PA 18018, regarding Exterior Wall Removal and Replacement at 1218 Center Street, Bethlehem, PA. The Bidding Documents must be obtained from the Bethlehem Redevelopment Authority, at Bethlehem City Hall (610-865-7055).

One Bid shall be received for the General Contractor, who shall coordinate all of the work as detailed in the specifications. Unit price bids are also required.

A mandatory pre-bid meeting will be held on Friday, May 20, 2022, at 2:00 PM, at the property at 1218 Center Street, Bethlehem, PA. All bidders must attend the scheduled pre-bid meeting, which is a prerequisite to bidding. Copies of the documents may be obtained on-line at the RDA web site www.bethlehemrda.com. Documents **MUST** be secured directly from the RDA for the Bidder to be considered as a qualified bidder.

The complete Bid Package must be submitted in triplicate on the prescribed forms provided and in accordance with the Instructions to Bidders. No Bidder may withdraw his Bid within sixty (60) days after the actual date of the opening thereof.

Sealed bids, bearing the name of the bidder and category of the bid clearly noted on the envelope shall include a certified check, bank cashier's check, or a Bid Bond payable to, or shall name the obligee, "The City of Bethlehem" in the amount of ten percent (10%) of the Bid.

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The RDA will receive Bids until 4:00 PM PREVAILING TIME on Friday, June 3, 2022, at City of Bethlehem Administration Building. Bids received after this time will not be accepted. Bids will be opened publicly at 10:00 AM, Monday June 6, 2022, in the RDA Administration Office.

Notice is given that the project for which these construction bids are being solicited is a project constituting a "public work" under the Pennsylvania Wage Act of August 15, 1961, P.L. 987, as found at 43 P.S. Sect. 165-1 et seq., as amended, and is subject to the requirements of the Pennsylvania Prevailing Wage Act, and any rules and regulations promulgated thereunder. All contractors and subcontractors performing work on this public work project must comply with the Pennsylvania Prevailing Wage Act, and any and all other statutes and regulations whether federal, state or local, applicable to this project. The appropriate prevailing minimum wage rates as promulgated under provisions of said Act and as determined by the Secretary of the Department of Labor and Industry and is attached hereto and made a part hereof.

The RDA reserve the right to reject any and all Bids, to select any item from any Bid, to reserve a period of sixty (60) days from the date of opening of Bids to award contract and to waive any technicalities in the best interest of the School District.

- END OF SECTION 00 11 16 -

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1218 Center Street – Exterior Wall Repairs

SECTION 00 41 00 - BID FORM

PROJECT: Exterior Wall Repair/Reconstruction
1218 Center St – Bethlehem PA
Engineer's Job Number 2022-034

BID TO: Redevelopment Authority of The City of Bethlehem
10 E Church St
Bethlehem, Pennsylvania, 18018

BID FROM: General Contractor:

_____ **DATE:** _____

1. **The undersigned BIDDER** proposes and agrees, if this Bid is accepted, to enter into an agreement with RDA in the form included in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. **BIDDER** accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) days after the day of Bid opening.
3. **In submitting this Bid, BIDDER** represents, as more fully set forth in the Agreement, that:
 - a) **BIDDER** has examined copies of all the Bidding Documents and the following Addenda (receipt of all which is hereby acknowledged):

Addendum No. 1 dated _____

Addendum No. 2 dated _____
 - b) **BIDDER** has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
 - c) **BIDDER** has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all examinations, investigations, explorations, tests, and studies which pertain to the subsurface or physical conditions at the site or

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otherwise may affect the cost, progress, performance or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examination, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.

- d) **BIDDER** has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data with respect of said Underground Facilities are or will be required by BIDDER in order to furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.
- e) **BIDDER** has given ENGINEER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by the ENGINEER is acceptable to BIDDER.

BASE BID

BIDDER WILL COMPLETE ALL WORK LISTED IN THE PROJECT BID DOCUMENTS.
THE BASE BID WORK INCLUDES THE FOLLOWING:

- Removal of the existing exterior multi-wythe brick wall on the south façade of the home, and its replacement with a new wood stud wall with vinyl siding. Replace all existing windows and utilities in kind.
 - Remove/dispose of existing debris from previous wall collapse.
4. **BIDDER** agrees to furnish all labor, materials, tools, equipment, transportation, all applicable taxes, things, and other facilities, and to perform all Work, for the said construction at the **LUMP SUM PRICE** of: (Fill in the appropriate spaces.)

_____ DOLLARS
(words)

AND _____ CENTS \$ _____
(figures)

NOTE: The total lump sum price includes Bonds in Item 10 of this Bid Form.

Notes
(Qualify Bid here if necessary)

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6. **BIDDER** agrees that the Work:
 - a) Will be substantially completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before _____.
7. **BIDDER** accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.
8. **BIDDER** agrees that within ten (10) days upon receipt of written notice of the acceptance of this bid, to execute the Agreement, in accordance with the bid as accepted, and to give the insurance documentation required.
9. **BIDDER** agrees that payment for all work called for in the Drawings and Specifications or required for proper completion of the work under this Contract and not specifically mentioned in the Drawings and Specifications will be considered as covered by the Lump Sum payments and no extra payments will be allowed thereafter.
10. **BIDDER** agrees to provide the following bonds:
 - a) A Performance Bond in the amount of one hundred percent (100%) of the contract amount for the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract.

Amount (\$_____).
 - b) A Payment Bond in the amount of one hundred percent (100%) of the contract amount for the protection of claimants supplying labor and materials in the prosecution of Work for this project.

Amount (\$_____).
 - c) A Maintenance Bond in the amount of fifteen percent (15%) of the contract amount guaranteeing against defective workmanship and materials for a period of one (1) year from the date of substantial completion.

Amount (\$_____).

Each bond shall be executed by one or more reputable surety companies legally authorized to do business within the Commonwealth of Pennsylvania. Individual sureties are not acceptable.

11. **BIDDER** agrees to pay without reimbursement all Federal, State and Local Taxes including sales, consumer and use tax.
13. All extra Work must be approved, in writing, by the RDA and compensation agreed upon,

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in writing by the RDA before any Work is undertaken or any supplies or materials are purchased.

14. **BIDDER** represents that Minority Business Enterprises have been given maximum opportunity to participate in this contract and is prepared to document these efforts.
12. **BIDDER** must comply with the Pennsylvania Prevailing Wage Act, of August 15, 1961, P.L. 987, as amended, and shall provide with this Bid an executed affidavit.
13. **INDEMNITY AND HOLD HARMLESS:** The Contractor and all subcontractors shall indemnify and hold harmless the RDA and its employees to the fullest extent allowable by law from and against any loss, damage, claim, demand, cause of action, liability or expense including legal fees on account of damage to or loss of property and or injuries including death to all persons arising directly or indirectly out of the acts or omissions of the contractor in the performance of this contract regardless of whether the indemnified party was concurrently negligent.
14. **Communications** concerning this Bid shall be addressed to:

Name _____

Address _____

Phone Number _____ Fax Number _____

SUBMITTED ON _____, 2001.

If BIDDER is:

An Individual

By _____ (SEAL)
(Individual's Name)

doing business as _____

Business Address: _____

Phone No.: _____ Fax No.: _____

Federal Tax I.D. No.: _____

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A Joint Venture

By _____
(Name)

(Address)

Phone Number _____ Fax Number _____

Federal Tax I.D. No.: _____

By _____
(Name)

(Address)

Phone Number _____ Fax Number _____

Federal Tax I.D. No.: _____

- END OF SECTION 00 41 00 -

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Section 00 43 19 - EXPERIENCE RECORD

Complete the following experience record and attach same to the Bid covering Work performed during the past five years.

<u>Name of Project</u>	<u>Date Started</u>	<u>Date Finished</u>	<u>Amount of Contract</u>

(We are) (I am) presently working on the following projects:

Have you ever defaulted on a construction project? Yes _____
No _____

If yes, give Name of Owner, Name of Bonding Company, and circumstances:

Contractor

By _____

Title _____

Date _____

NOTE: Failure to submit this Experience Record will be considered justification for rejection of the Bid.

- END OF SECTION 00 43 19 -

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Section 00 45 00 – PROJECT REFERENCES OF BIDDER

Bidder's Name _____

Bidder must submit a minimum of three (3) project references including contact person and phone number, as well as a brief project description.

Reference #1

Reference #2

Reference #3

Sign _____

Title _____

Date _____

- END OF SECTION 00 45 00 -

Section 00 45 19 - NON-COLLUSION AFFIDAVIT

State of _____ :
:SS.

County of _____ :

I, being _____ of _____, and being duly sworn according to law, depose and state that:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation or agreement with any other contractor, bidder, or potential bidder.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) _____, its affiliates, subsidiaries, officers, directors, and
[Name of My Firm]
employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ understands and acknowledges that the above
[Name of My Firm]
representations are material and important, and will be relied on by The RDA in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent, misrepresentation or non-disclosure, of the true facts relating to the submission of bids for this contract.

_____ By _____
[Name] [Title]

Sworn to and subscribed before me this ____ day of _____, 20____

_____ My Commission Expires _____

- END OF SECTION 00 45 19 -

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**Section 00 45 26 – AFFIDAVIT ACCEPTING PROVISIONS
OF THE WORKMEN’S COMPENSATION ACT**

State of _____ :
:ss.
County of _____ :

_____, being duly sworn according to law, deposes and says that he/she is authorized to execute this affidavit on behalf of the below designated contractor, that said contractor is familiar with and has accepted the provisions of the Workmen’s Compensation Act of 1915 of the Commonwealth of Pennsylvania with its supplements and amendments, including the amendments set forth in Act 44 of 1993, and that said contractor has insured its liability thereunder, in accordance with the terms of said act, with _____ under Policy # _____.
(insurance company)

The undersigned further acknowledges that said contractor is aware of its obligation not to subcontract all or any part of the work, if awarded, unless each subcontractor has presented proof of Workmen’s Compensation Insurance and that the contractor and all subcontractors must provide proof of Workmen’s Compensation Insurance to the Owner, which insurance shall be effective for the duration of the work. In the event that the Owner shall receive notice that any such insurance has been canceled or terminated, Owner shall issue a stop work order as required by law.

(Name of Contractor)

By _____

Sworn to and subscribed before me
this ____ day of _____, 20____

(Notary Public)

My Commission Expires _____

- END OF SECTION 00 45 26 -

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Section 00 45 53 - Information To Be Furnished By The Bidder

(NOTICE: This Form must be executed in ink or by typed entries.

(Bidder's Name)

Job Title: Exterior Wall Repair/Reconstruction
1218 Center St – Bethlehem PA
Engineer's Job Number 2022-034

PART A - LIST OF INTENDED SUBCONTRACTORS

<u>Subcontractor (Name and Address)</u>	<u>Work To Be Performed</u>
_____	_____
_____	_____
_____	_____
_____	_____

(Attach separate sheet if necessary)

NOTE:

1. RDA in no way implies acceptance of the intended Subcontractor(s) by acceptance of bids.
2. The Contractor will not be permitted to substitute Subcontractors not listed on this form without written acceptance of the RDA.

(We) (I), the undersigned agreed that the Subcontractors listed above will perform the noted work subject to acceptance by RDA.

Date _____

(Sign)
(Type)

Title

- END OF SECTION 00 45 53 -

Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER two hundred and fifty dollars \$250.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work noted as Base Bid and Alternate 1, other than Unit Price Work, a Lump Sum of:

_____ (\$)
 (words) (numerals)

B. 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 that item as indicated in this paragraph 5.01.B:

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

UNIT PRICE WORK

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Estimated</u>
1		Ea.	1	\$	\$/ea.

TOTAL OF ALL ESTIMATED PRICES By Change Order Add/Deduct during construction \$_____
 (words) (numerals)

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

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

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the last day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of 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 in the General Requirements:

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 ENGINEER may determine or OWNER may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

a. 90% of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

b. 90% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% percent of the Work completed, less such amounts as ENGINEER shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 5% percent of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

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

ARTICLE 7 - INTEREST

7.01 Not Applicable.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

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

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

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

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has obtained and carefully studied (or assumes responsibility for doing so) all 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 Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

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

F. CONTRACTOR is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 00 52 00-1 to 00 52 00-6 inclusive).
2. Performance bond (pages 00 61 00-4 to 00 61 00-6 inclusive).
3. Payment bond (pages 00 61 00-7 to 00 61 00-10, inclusive).
4. Other bonds:
 - a. Maintenance Bond (pages 00 61 00-11 to 00 61 00-12, inclusive).
 - b. Bid Bond (pages 00 61 00-2 to 00 61 00-3, inclusive).
5. General Conditions (pages 00 70 00-1 to 00 70 00-40, inclusive).
6. Supplementary Conditions (pages 00 70 50-1 to 00 70 50-10, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings consisting of _ sheets with each sheet bearing the following general title:
.
9. Addenda (numbers 1 to 3, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 00 41 00-1 to 00 41 00-7, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages 00 43 00-1; 00 43 19-1 (A); 00 45 00-1(A); 00 45 19-1; 00 45 53-1).
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages _____ to _____, inclusive).
 - b. Work Change Directives.
 - c. Change Order(s).

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

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

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

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 Other Provisions

A. None

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

NOTES TO USER

1. See I-21 and correlate procedures for format and signing between the two documents.

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

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

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 Owner-Contractor Agreement.)

License No.: _____
(Where applicable)

Agent for service or process: _____

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

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1218 Center Street – Exterior Wall Repairs

Section 00 52 00 - Agreement Forms

The Agreement form to be used for this project is The Engineers Joint Contract Documents Committee (EJCDC) Document 1910-8A1 - Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price 1990 Edition as incorporated herein.

- END OF SECTION 00 52 00 -

Section 00 61 00 - Bonds, Certificates, & Retention

NOTE: Bidder or Contractor (as applicable) for Contract must obtain all of the following Bonds and/or Certificates, and shall be subject to the Retainage as outlined below:

1. Bid Bond - A certified check, cashier's check or Bid Bond in the amount of 10% of the Bid price shall be submitted along with the Bid in accordance with the Instructions to Bidders. See pages 00600-2 thru 00600-3 for the prescribed Bid Bond Form.

2. Performance Bond - The Bidder designated by the RDA as the apparent successful Bidder must deposit with the RDA prior to the award of the Contract within five (5) days of the receipt of written notice that the Bidder is the apparent successful Bidder, a performance bond in the amount of one hundred percent (100%) of the amount on which the award of the Contract is to be based, and guaranteeing the faithful performance of the Contract in accordance with the plans, specifications and conditions of the Contract. The bond shall be in the form of a surety company acceptable to the RDA and licensed to do business in the Commonwealth of Pennsylvania. The bidder shall be responsible for obtaining and maintaining the bond in force from the date of execution until the date of completion of the Contract.

3. Payment Bond - The Bidder designated by the RDA as the apparent successful Bidder must deposit with the RDA prior to the award of the Contract and within five (5) days of receipt of written notice that the Bidder is the apparent successful Bidder, a payment bond in the amount of one hundred percent (100%) of the amount on which the award of the Contract is to be based, and guaranteeing the payment of all labor, materials, and rental costs in the prosecution of the Work provided for in this Contract and shall be conditioned for the prompt payment of all such materials furnished or labor supplied or performed in the prosecution of the Work. The bond shall be in the form of embodied in the Contract Documents and shall be that of a surety company acceptable to the RDA and Bidder shall be responsible for obtaining and maintaining the bond in force from the date of the execution until the expiration of the one year maintenance period.

4. Maintenance Bond - The Bidder to whom the Contract is awarded must deposit with the RDA at the date of substantial completion of the Contract a maintenance bond in a sum equal to fifteen percent (15%) of the amount of the adjusted Contract, guaranteeing against defective workmanship and materials for a period of one (1) year from the date of substantial completion. The bond shall be in a form embodied in the Contract Documents and shall be that of a surety company acceptable to the RDA and licensed to do business in the Commonwealth of Pennsylvania. The Bidder shall be responsible for obtaining and maintaining the bond in force from the date of substantial completion until the expiration of the one (1) year maintenance period.

5. Retainage - The RDA shall retain ten percent (10%) of the amount due to the Contractor to insure proper performance of the Contract until fifty percent (50%) of the Contract is completed. When the contract is 50% completed, one-half of the amount retained by the RDA shall be returned to the Contractor, provided that the Engineer approves the application for payment and provided further that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. The provisions for retainage specified in these Bid Specifications, and in any contract awarding the bid, shall be in compliance with and administered in accordance with the Act of November 26, 1978, P.L. 1309, No. 317, as amended.

BID BOND

(THIS FORM MUST BE USED. NO BOND FORM SUBSTITUTIONS ALLOWED)

KNOW ALL MEN BY THESE PRESENTS, that we,

_____ hereinafter called the
"Principal") as Principal, and
a _____ corporation authorized to transact business in Pennsylvania, and having its
principal office at _____ (hereinafter called the
"Surety") as surety, are held and firmly bound unto _____ (hereinafter
called the "Obligee") as Obligee, in the sum of _____ DOLLARS
(\$ _____), lawful money of the United States of America; for payment of which we bind
ourselves, and each of our respective heirs, legal representatives, successors and assigns, jointly and
severally, by these presents, on this ____ day of _____, 20 ____.

WITNESSETH THAT:

WHEREAS, said principal is herewith submitting to the Obligee a proposal to perform the
_____ contract Work for the
Obligee's proposed _____ pursuant to plans,
specifications and other Contract Documents incorporated into said proposal by reference; and it is
a condition of the Obligee's receipt and consideration of said proposal that the proposal be
accompanied by bid security to be held by the Obligee on the terms embodied herein.

THEREFORE, the condition of this obligation is that if said principal shall furnish a
performance bond and a payment bond to the Obligee upon the Obligee's delivery to the principal
of five days notice of intention to accept his proposal and to make a formal award of contract to
him, and shall enter into such contract and shall furnish insurance certificated in all respects as
required by said Contract Documents within ten days after notice to him of such formal award then
this obligation shall be void; but otherwise it shall remain in full force, and the principal and surety
will pay to the Obligee the difference between the amount of the Principal's accepted bid(s) and any
higher amount for which the Obligee may contract for the required Work, plus any advertising,
architect's, legal and other expenses incurred by the Obligee by reason of default; provided,
however, that the obligations of the Surety hereunder shall not exceed the amount of this bond
together with the interest.

IN WITNESS WHEREOF the Principal and Surety, intending to be legally bound, have executed
this bond the day and year aforementioned.

(Individual Principal)

Witness:

_____(SEAL)
(Signature of Individual)

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

Trading and doing business as _____
(Partnership Principal)

Witness: _____
(Name of Partnership)

By: _____ (SEAL)
(Partner)

By: _____ (SEAL)
(Partner)

By: _____ (SEAL)
(Partner)

By: _____ (SEAL)
(Partner)

(Corporation Principal)

ATTEST: _____
(Name of Corporation)

By: _____
(Title)
or, (if appropriate)

Witness or Attest: _____
(Name of Corporation)

*By: _____
(Authorized Representative)

*Authorized appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the Corporation.

(Corporation Surety)

Witness or Attest: _____
(Name of Corporation)

**By: _____
(Title)

(CORPORATE SEAL)

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

**Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-In-Fact to act in behalf of the Corporation.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal (the "Principal"), and _____, a corporation organized and existing under the laws of the _____ of _____, as Surety (the "Surety"), are held and firmly bound unto _____, as Obligee (the "Obligee"), as hereinafter set forth, in the full and just sum of _____ Dollars (\$ _____), lawful money of the United States of America; for payment of which we bind ourselves, and each of our respective heirs, legal representatives, successors and assigns, jointly and severally, by these presents.

WITNESSETH THAT:

WHEREAS, The Principal hereto has submitted to the Obligee a certain Proposal, dated _____, 20____ (the "Proposal"), to perform certain Work for the Obligee, in connection with the construction of _____ pursuant to plans, specifications and other related documents constituting the Contract Documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by Base Engineering Inc, Registered Engineers; and

WHEREAS, Before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, It also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, Under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Proposal, then the Principal and the Obligee shall enter into an agreement with respect to performance of such Work (the "Contract"), and the form of Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal well, truly and faithfully shall comply with and shall perform the Contract in accordance with the Contract Documents, at the time and in the manner provided in the Agreement and in the Contract Documents, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Contract by the Principal or growing out of performance of the Contract by the Principal, and if the Principal shall indemnify completely and shall save harmless the Obligee and all of its officers, agents and employees including its Engineer from any and all costs and damages which the Obligee and all of its officers, agents and employees including its Engineer

Redevelopment Authority of the City of Bethlehem
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may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligee any and all costs and expenses which the Obligee and all of its officers, agents and employees including its Engineer may incur by reason of any such default or failure of the Principal, then this Bond shall be void; otherwise this Bond shall be and shall remain in force and effect.

This Bond is executed and delivered under and subject to the Act to which reference hereby is made.

The principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the Work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or, any giving by the Obligee of any extensions of time for the performance of the Contract in accordance with the Contract Documents, and/or an act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

If the Principal is a foreign corporation (Incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployment compensation, contributions, penalties and interest due the Commonwealth from said Principal, or any foreign corporation, sub-contractor thereunder or for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this _____ day of _____, 20 _____.

(Individual Principal)

_____(SEAL)
(Signature of Individual)

WITNESS:

Trading and doing business as

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

**Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-In-Fact to act in behalf of the Corporation.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal (the "Principal"), and _____, a corporation organized and existing under the laws of the _____ of _____, as Surety (the "Surety"), are held and firmly bound unto _____, as Obligee (the "Obligee"), as hereinafter set forth, in the full and just sum of _____ Dollars (\$ _____), lawful money of the United States of America; for payment of which we bind ourselves, and each of our respective heirs, legal representatives, successors and assigns, jointly and severally, by these presents.

WITNESSETH THAT:

WHEREAS, The Principal hereto has submitted to the Obligee a certain Proposal, dated _____, 20__ (the "Proposal"), to perform certain Work for the Obligee, in connection with the construction of _____ pursuant to plans, specification and other related documents constituting the Contract Documents, which are incorporated into the Proposal by reference (the "Contract Documents"), as prepared by Base Engineering Inc, Registered Engineers; and

WHEREAS, Before an award shall be made to the Principal by the Obligee in accordance with the Proposal, the Principal shall furnish this Bond to the Obligee, with this Bond to become binding upon the award of a Contract to the Principal by the Obligee in accordance with the Proposal; and

WHEREAS, It also is a condition of the Contract Documents that this Bond shall be furnished by the Principal to the Obligee; and

WHEREAS, Under the Contract Documents, it is provided, inter alia, that if the Principal shall furnish this Bond to the Obligee, and if the Obligee shall make an award to the Principal in accordance with the Proposal, then the Principal and the Obligee shall enter into an agreement with respect to performance of such Work (the "Contract"), and the form of Agreement is set forth in the Contract Documents.

NOW, THEREFORE, the terms and conditions of this Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the Work under the Contract shall be subcontracted, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the Work in accordance with the Contract Documents, including any amendment, extension or addition to the Contract and/or to the Contract Documents, for materials furnished or labor supplied or labor performed, then this Bond shall be void; otherwise this Bond shall be and shall remain in force and effect.

This Bond shall be solely for the protection of claimants supplying labor or materials to the Principal or to any subcontractor of the Principal in the prosecution of the Work covered by the Contract, including any amendment, extension or addition to the Contract. The term "Claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association or corporation. The phrase "labor or materials", when used herein and as required by the Act, shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the Work covered by the Contract. As required by the Act, the provisions of this Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public Work or public improvement contemplated by the Contract Documents and the Contract.

The Principal and the Surety agree that any claimant, who has performed labor or furnished materials in the prosecution of the Work in accordance with the Contract Documents, including an amendment, extension or addition to the Contract and/or to the Contract Documents, and who has not been paid therefore, in full, before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which payment is claimed, may institute an action upon this Bond, in the name of the claimant, in assumpsit, to recover any amount due to claimant for such labor or materials, and may prosecute such action to final judgement and may have execution upon the judgement; Provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal, but has no contractual relationship with, express or implied, with the Principal, may institute an action upon this Bond only if such a claimant first shall have given written notice, served in the manner provided in the Act, to the Principal, within ninety (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, stating, with substantial accuracy, the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished; and (b) no action upon this Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the Claimant; and (c) every action upon this Bond shall be instituted either in the appropriate court of the RDA where the Contract is to be performed or of such other County of Pennsylvania statutes shall provide, or in the United States district court for the district in which the project, to which the Contract related, is situated, and not elsewhere.

The principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the Work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or, any giving by the Obligee of any extensions of time for the performance of the Contract in accordance with the Contract Documents, and/or an act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

If the Principal is a foreign corporation (incorporated under any laws other than those of the Commonwealth of Pennsylvania) then further terms and conditions of this Bond are and shall be that the Principal or the Surety shall not be discharged from liability on this Bond, nor this Bond surrendered until such Principal files with the Obligee a certificate from the Pennsylvania Department of Revenue, evidencing the payment in full of all bonus taxes, penalties and interest, and a certificate from the Bureau of Employment and Unemployment Compensation of the Pennsylvania Department of Labor and Industry, evidencing the payment of all unemployed compensation, contributions, penalties, and interest due the Commonwealth of Pennsylvania from said Principal or any foreign corporation, subcontractor thereunder of for which liability has accrued but the time for payment has not arrived, all in accordance with provisions of the Act of June 10, 1947, P.L. 493, of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Principal and the Surety cause this Bond to be signed, sealed and delivered this _____ day of _____, 20 _____.

(Individual Principal)

_____(SEAL)
(Signature of Individual)

WITNESS:

Trading and doing business as

(Partnership Principal)

Witness:

(Name of Partnership)

By: _____(SEAL)
(Partner)

By: _____(SEAL)
(Partner)

By: _____(SEAL)
(Partner)

By: _____(SEAL)
(Partner)

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

(Corporation Principal)

ATTEST:

(Name of Corporation)

(Assistant Secretary)

By: _____
(Vice) President

(CORPORATE SEAL)

or, (if appropriate)

Witness or Attest:

(Name of Corporation)

*By: _____
(Authorized Representative)

CORPORATE SEAL

*Authorized appropriate proof, dated as of the same date as the Bond, evidencing authority to execute in behalf of the Corporation.

(Corporation Surety)

Witness or Attest:

(Name of Corporation)

**By: _____
(Attorney-In-Fact)

(CORPORATE SEAL)

**Attach an appropriate power of attorney, dated as of the same date as the Bond, evidencing the authority of the Attorney-In-Fact to act in behalf of the Corporation.

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we, _____
as Principal and _____ as Surety are
held and firmly bound unto _____ hereinafter called
the RDA, in the penal sum of _____ DOLLARS
(\$_____) for the payment of which sum well and truly to be made, we bind ourselves,
our heirs, executors, administrators, and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered
into a certain contract, hereto attached, with the RDA, dated _____, 20__, for

_____.

NOW, THEREFORE, if the Principal shall remedy without cost to the RDA any defects
which may develop during a period of one (1) year from the date of completion and acceptance of
the Work performed under said contract, provided such defects, in the judgement of the Contracting
officer or his successor having jurisdiction in the premises, are caused by defective or inferior
materials or workmanship, then this obligation shall be void; otherwise to remain in full force or
virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under
their several seals this _____ day of _____, 20__, the name and corporate seal of each
corporate party being hereto affixed and these presents duly signed by its undersigned
representative, pursuant to authority of its governing body.

In presence of

(Address) _____ (SEAL)
(Individual Principal)

(Address) _____ (Business Address)

(Address) _____ (SEAL)
(Individual Principal)

(Address) _____ (Business Address)

(Address) _____ (SEAL)
(Individual Principal)

(Address) _____ (Business Address)

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

(Address) _____(SEAL)
(Individual Surety)

(Address) _____
(Business Address)

(Address) _____(SEAL)
(Individual Surety)

(Address) _____
(Business Address)

ATTEST:

(Corporate Principal)

(Business Address)

_____ By _____(AFFIX CORPORATE SEAL)

(Corporate Surety)

(Business Address)

_____ By _____(AFFIX CORPORATE SEAL)

The rate of premium of this bond is _____ per thousand.
Total amount of premium charged \$ _____.

(The above must be filled in by corporate surety.)

- END OF SECTION 00 61 00 -

Redevelopment Authority of the City of Bethlehem
1218 Center Street – Exterior Wall Repairs

Section 00 72 00 - General Conditions

The General Conditions of the Contract used for this project is The Engineers Joint Contract Documents Committee (EJCDC) Document 1910-8 - Standard General Conditions of the Construction Contract, 1990 Edition. Copies of this document are available for review or purchase at the office of the Engineer, BASE Engineering Inc., 1010 N. Quebec Street, Allentown, PA 18109-1607, (610) 437-0978.

- END OF SECTION 00 72 00 -

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



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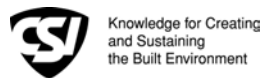
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Construction Specifications Institute

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1420 King Street, Alexandria, VA 22314

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

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

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

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

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

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

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

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

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

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

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

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

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other

Subcontractor for the performance of a part of the Work at the Site.

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

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

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

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

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

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

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

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

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

D. *Defective*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide*

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

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

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

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

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

2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

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

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance

will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

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

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any

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

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the

party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

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

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

4.01 *Availability of Lands*

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

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

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

4.02 *Subsurface and Physical Conditions*

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

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

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

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

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

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor’s making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

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

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

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and

that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

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

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

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

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in

Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

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

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous

Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where

any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

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

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

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

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

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

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

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

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees,

agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order .

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full

responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "*Or-Equal*" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will

be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

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

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

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

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

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected

Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents,

consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be

responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

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

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements,

roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give

Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

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

1. Shop Drawings

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

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

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

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

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

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

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

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

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

approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

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

6.18 Continuing the Work

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

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

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

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by

utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or

both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but

during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

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

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For

purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field

services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or

for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be

liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

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

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis

of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by

Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all

costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the

amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

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

1. repair such defective land or areas; or
2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs

after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on

Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

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

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay

Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

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

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

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

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

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

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work,

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

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete,

Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

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

Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

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

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

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of

this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

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

17.06 *Headings*

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

SECTION 00 70 50 – SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS

The following supplemental conditions modify, change, add to or overrule The Engineers Joint Contract Documents Committee (EJCDC) Document 1910-8 - Standard General Conditions of the Construction Contract, 1996 Edition. Copy of this document is attached herewith.

1.0 INSURANCE:

1.1 The selected firm shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this agreement, insurance in the types and limits specified below. In addition to the insurance coverage and limits listed herein, the selected firm shall obtain any other insurance coverage as may be required by law.

1.1.1 General Liability Insurance:

1.1.1.1 Limits of Liability: \$1,000,000 in the aggregate and per occurrence.

1.1.1.2 Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insureds, joint liability, and broad form property damage (including completed operations).

1.1.2 Workers' Compensation and Employers' Liability Insurance:

1.1.2.1 Limits of Liability: Statutory Limits.

1.1.2.2 Other States' coverage and Pennsylvania endorsement.

1.1.3 Automobile Liability:

1.1.3.1 Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

1.1.3.2 Coverage: Owner, non-owned and hired vehicles.

1.1.3.3 The selected firm shall ensure that all staff operating said vehicles are licensed drivers and properly insured.

- 1.1.4 Umbrella Excess Liability:
 - 1.1.4.1 Limit of Liability: \$5,000,000 in the aggregate and per occurrence.
 - 1.1.4.2 Coverage provided shall be over auto liability, general liability, and professional liability.
- 1.2 All insurance provided for in this section shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the Commonwealth of Pennsylvania. Certificates of Insurance evidencing the existence of such insurance shall be submitted to the RDA upon execution of the contract by the selected firm. If the term of this contract coincides with the term of the selected firm's insurance coverage, a Certificate from the expiring policy will be accepted, but a Certificate evidencing renewed coverage of a new policy must be presented to the RDA no later than 30 days after the effective date of the policy.
- 1.3 Each policy and Certificate of Insurance shall contain: an endorsement naming the RDA as an Additional Insured party thereunder; and a provision that at least 30 calendar days prior written notice be given to the City in the event coverage is canceled or non-renewed or coverage reduced.
- 1.4 If the selected firm desires to self insure any or all of the coverages listed in this section, it shall provide to the RDA documentation that such self insurance has received all the approvals required by law or regulations, as well as the most recent audited financial statement of the selected firm's insurance. Any coverage which is self insured shall provide the same coverage limits and benefits as the coverages listed in this section.
- 1.5 If the selected firm fails to obtain or maintain the required insurance, the RDA shall have the right to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.
- 1.6 The selected firm shall include all subcontractors as insureds under its policies or shall furnish separate Certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this agreement.

2.0 EXCLUSIVE JURISDICTION:

2.1 The parties agree that any dispute, controversy or claim arising under or in connection with the resulting Agreement or its performance by either party shall be decided exclusively by and in the Court of Common Pleas of Bethlehem City, Pennsylvania. For such purpose, each party hereby submits to the personal jurisdiction of the Bethlehem City Court sitting in Allentown, Pennsylvania, and agrees that service of process may be completed and shall be effective and binding upon the party served if mailed by certified mail, return receipt requested, postage prepaid and properly addressed to the party as set forth elsewhere in the resulting Agreement. Each party waives any objection to the personal jurisdiction of such court and agrees that it shall be barred from asserting any such objection, as long as any process is served in accordance with the foregoing. In the event that a party refuses to accept delivery of such process, then process may be served upon the Secretary of the Commonwealth of Pennsylvania in the same fashion, whereupon such service shall be deemed to have been made upon the refusing party as fully as if process had been accepted. Each party hereby agrees to and does hereby waive any right to assert or move for transfer of venue to any court outside the Commonwealth of Pennsylvania, based upon the doctrine of forum nonconveniens or otherwise. Each party may assert its customary appeal rights in the appellate courts of the Commonwealth of Pennsylvania from a final determination of the Bethlehem City Court of Common Pleas. Each party further acknowledges and agrees that this paragraph has been negotiated at arms' length with the assistance of counsel and the legal effect fully explained, and that it is a knowing and voluntary agreement.

3.0 FEDERAL EXCISE AND PA SALES TAX:

3.1 The RDA (City of Bethlehem) is exempt from Federal Excise Taxes and Pennsylvania Sales Taxes, as a political subdivision of the Commonwealth of Pennsylvania. Net prices as shown in the bid shall exclude such Federal and State Tax amounts.

3.2 This provision shall not apply to construction, repair and/or maintenance contracts where the bidder purchases supplies, materials and/or equipment for the performance of the contract and includes the costs thereof in computation of the bid.

4.0 AVAILABILITY OF APPROPRIATED FUNDS:

4.1 The Offeror hereto agrees that any and all payments due from the City, as required under the terms of this agreement, are contingent upon the availability of Appropriated Funds.

5.0 TAX DELINQUENCY:

5.1 Offeror hereby certifies, as a condition precedent to the execution of this Contract, and as an inducement for the RDA to execute same, that it is not "delinquent" on any taxes owed to the RDA. "Delinquent" is hereby defined as the point in time at which the collection of the tax becomes the responsibility of the Bethlehem City Tax Claim Bureau.

5.2 Offeror further Agrees, as a specific condition of this Contract, that it shall remain current on all of the taxes it owes to the RDA. Should Offeror become delinquent on any taxes it owes to the City during the term of this Agreement, Offeror may be deemed to be in breach of this agreement by RDA and, in addition to any other remedies at law for such breach, Offeror hereby specifically agrees and authorizes the RDA to apply all funds when due to Offeror directly to the taxes owed to the RDA until said taxes are paid in full.

5.3 In the event the Offeror becomes delinquent, it hereby authorizes the RDA to make direct payments to the taxing authority for the RDA to bring Offeror's City taxes current.

6.0 UNDUE INFLUENCE:

6.1 Offeror agrees not to hire any RDA Personnel who may exercise or has exercised discretion in the awarding, administration or continuance of this agreement for up to and including one (1) year following the termination of the employee from RDA service. Failure to abide by this provision shall constitute a breach of this agreement.

7.0 STEEL PRODUCTS PROCUREMENT ACT:

7.1 Pursuant to the "Steel Products Procurement Act: 73 P.S. §1881 et. seq., if any steel products are to be used or supplied in the performance of the Contract, only steel products as defined in the Act shall be used or supplied in the performance of the Contract, or any Subcontracts thereunder.

8.0 ACCESS TO ACCOUNTING RECORDS:

8.1 The Contractor shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement, and the system shall be reasonably satisfactory to the RDA. The RDA, or its representative, shall be afforded access to all the Contractor's records,

books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Contract, and the Contractor shall preserve all such records for a period of three (3) years, or for such longer period as may be required by law, after the final payment. (AIA Document A111-1978, Article 12)

9.0 ASSIGNMENT OF REFUND RIGHTS:

9.1 The Contractor hereby assigns and transfers to the RDA all its rights to sales and use tax which may be refunded as a result of a claim for refund for materials purchased in connection with this Contract. The Contractor further agrees that it will not file a claim for refund for any sales or use tax which is the subject of this assignment.

10.0 CONTRACTS WITH SUBCONTRACTORS:

10.1 The Contractor agrees to include the “Access to Accounting Records” and “Assignment of Refund Rights” paragraphs, in full, in any contracts with subcontractors.

11.0 BETHLEHEM VALLEY LABOR:

11.1 The Contractor shall adhere to the following as it pertains to construction projects funded by the RDA of Bethlehem:

11.1.1 Every contract over \$25,000 pertaining to construction projects funded by the RDA of Bethlehem shall specifically state that the developer / construction manager / contractor / subcontractor shall, in hiring, make every effort to employ persons residing within the Bethlehem Valley, and in no event, shall less than 80 percent of the labor force of the developer / construction manager/contractor / subcontractor on a RDA-funded project be residents of the Bethlehem Valley. The Bethlehem Valley is defined as Bethlehem and Northampton Counties and all surrounding communities within (10) miles of said RDA borders in the State of Pennsylvania. For ease of interpretation persons living within the following municipalities are considered residents of the Bethlehem Valley as defined herein.

<u>MUNICIPALITY</u>	<u>CLASS</u>	<u>RDA</u>	<u>STATE</u>
Albany	Township	Berks	PA
Alburtis	Borough	Bethlehem	PA
Allen	Township	Northampton	PA
Allentown	RDA	Bethlehem	PA
Bangor	Borough	Northampton	PA
Bath	Borough	Northampton	PA

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Bethlehem	Township	Northampton	PA
Bethlehem	RDA	Bethlehem	PA
Bethlehem	RDA	Northampton	PA
Bushkill	Township	Northampton	PA
Catasauqua	Borough	Bethlehem	PA
Chapman	Borough	Northampton	PA
Coopersburg	Borough	Bethlehem	PA
Coplay	Borough	Bethlehem	PA
Delaware Water Gap	Borough	Monroe	PA
Durham	Township	Bucks	PA
East Allen	Township	Northampton	PA
East Bangor	Borough	Northampton	PA
East Brunswick	Township	Schuylkill	PA
East Greenville	Borough	Montgomery	PA
East Penn	Township	Carbon	PA
Easton	RDA	Northampton	PA
Eldred	Township	Monroe	PA
Emmaus	Borough	Bethlehem	PA
Forks	Township	Northampton	PA
Fountain Hill	Borough	Bethlehem	PA
Freemansburg	Borough	Northampton	PA
Glendon	Borough	Northampton	PA
Greenwich	Township	Berks	PA
Hamilton	Township	Monroe	PA
Hanover	Township	Bethlehem	PA
Hanover	Township	Northampton	PA
Heidelberg	Township	Bethlehem	PA
Hellertown	Borough	Northampton	PA
Hereford	Township	Berks	PA
Bethlehem	Township	Northampton	PA
Longswamp	Township	Berks	PA
Lower Macungie	Township	Bethlehem	PA
Lower Milford	Township	Bethlehem	PA
Lower Mt Bethel	Township	Northampton	PA
Lower Nazareth	Township	Northampton	PA
Lower Saucon	Township	Northampton	PA
Lower Towamensing	Township	Carbon	PA
Lowhill	Township	Bethlehem	PA
Lynn	Township	Bethlehem	PA
Macungie	Borough	Bethlehem	PA
Maxatawny	Township	Berks	PA
Milford	Township	Bucks	PA
Moore	Township	Northampton	PA
Nazareth	Borough	Northampton	PA
North Catasauqua	Borough	Northampton	PA
North Whitehall	Township	Bethlehem	PA

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Northampton	Borough	Northampton	PA
Palmer	Township	Northampton	PA
Palmerton	Borough	Carbon	PA
Pen Argyl	Borough	Northampton	PA
Plainfield	Township	Northampton	PA
Portland	Borough	Northampton	PA
Riegelsville	Borough	Bucks	PA
Roseto	Borough	Northampton	PA
Ross	Township	Monroe	PA
Salisbury	Township	Bethlehem	PA
Slatington	Borough	Bethlehem	PA
Smithfield	Township	Monroe	PA
South Whitehall	Township	Bethlehem	PA
Springfield	Township	Bucks	PA
Stockertown	Borough	Northampton	PA
Stroud	Township	Monroe	PA
Tatamy	Borough	Northampton	PA
Upper Hanover	Township	Montgomery	PA
Upper Macungie	Township	Bethlehem	PA
Upper Milford	Township	Bethlehem	PA
Upper Mt Bethel	Township	Northampton	PA
Upper Nazareth	Township	Northampton	PA
Upper Saucon	Township	Bethlehem	PA
Walnutport	Borough	Northampton	PA
Washington	Township	Northampton	PA
Washington	Township	Bethlehem	PA
Weisenberg	Township	Bethlehem	PA
West Easton	Borough	Northampton	PA
West Penn	Township	Schuylkill	PA
Whitehall	Township	Bethlehem	PA
Williams	Township	Northampton	PA
Wilson	Borough	Northampton	PA
Wind Gap	Borough	Northampton	PA

11.1.2 The requirement in Section *11.1.1* shall not apply to executives, engineers, technicians, supervisors, timekeepers, messengers, office workers, or employees above the classification of general foreman of the developer / construction manager / contractor / subcontractor, or to employees of a materials supplier.

11.1.3 Every contract over \$25,000 pertaining to construction projects funded by the RDA of Bethlehem shall specifically state that developers / construction managers / contractors shall be obligated to make sure that subcontractors adhere to the requirements stated in Section *11.1.1* and *11.1.2* above.

- 11.1.4 The requirements stated in Section *11.1.1* thru *11.1.3* above shall also apply to contracts pertaining to construction projects carried out by an authority and for which RDA of Bethlehem is a third party beneficiary.
 - 11.1.4.1 The local labor requirements stated in Section *11.1.1* thru *11.1.4* above can only be waived for a construction project or for a specific developer / construction manager / contractor / subcontractor by a resolution of the Board of Commissioners.
 - 11.1.4.2 A resolution to waive a construction project from the requirement would specify in detail why federal and /or state funding of the project does not permit the local labor requirement.
 - 11.1.4.3 A resolution to waive a specific developer / construction manager / contractor / subcontractor from the requirement shall state that the following procedure has been complied with:
 - 11.1.4.3.1 Notice shall be given by the developer / construction manager / contractor / subcontractor to the RDA of Bethlehem upon the awarding of the contract that their specialty is unique.
 - 11.1.4.3.2 The number of persons needed to perform the job shall be stated.
 - 11.1.4.3.3 There must be submission of actual proof that there are not a sufficient number of persons in the Bethlehem Valley that have the knowledge and experience to perform the specialty.
 - 11.1.4.3.4 The resolution shall specify the percentage of local labor can be used.
- 11.2 In the event that application of the requirements of this section would violate state or federal law, or would render the RDA of Bethlehem ineligible for the receipt of funds from outside sources, the provisions of this section shall not control.
- 11.3 The term “construction project” as used in Section *11.1* is defined as “construction, renovation, rehabilitation or demolition project”.

12.0 PUBLIC RECORDS REQUESTS:

- 12.1 Under Pennsylvania’s “Right to Know” law, Act 3 of 2008, 65 P.S. §67.101 et seq., all documents created or received by the RDA are presumed to be public and available for inspection and duplication.
- 12.2 A record in the possession of a party with whom the RDA contracts to perform a governmental function for the RDA, and which directly relates to the governmental function and is not exempt under the Act, is a public record.
- 12.3 If there is a request for a record submitted to the RDA by a third party with that party’s written and signed statement that the record contains a trade secret or confidential proprietary information, the party has five (5) business days from receiving notice from the RDA to provide input on the release of the record. The third party shall then be notified whether the RDA released the record.
- 12.4 All requests for public records must be made in writing to the RDA Open-Records Officer during regular business hours. The party requesting copy shall pay \$0.25 per page.

13.0 FUTURE “INVITATIONS TO BID” / “REQUESTS FOR PROPOSAL”:

- 13.1 Publicly offered RDA of Bethlehem “Invitations to Bid” and “Requests for Proposal” being coordinated by the Office of Purchasing, are **only advertised on the RDA’s Website**. To access these projects:

13.1.1 Proceed to “www.BethlehemRDA.org”.

13.1.2 Click on Departments in the upper banner and then select Purchasing.

13.1.3 Click on Bid Advertisements in the “gutter” on the left side of the page.

- 13.2 Depending on the project, you will be able to view the advertisement, electronically request that a copy of the specification be mailed and/or download the specification directly from the site.

14.0 TABULATION OF RESPONSES:

- 14.1 A **draft** tabulation sheet of responses received to this Invitation to Bid will be available for review (in Adobe’s Portable Document Format) on the RDA’s Website within approximately 24 hours of the bid opening. This

information is provided to give participating firms a preliminary understanding of the responses received. These sheets will remain listed until an award decision is made. To access these draft tabulations:

14.1.1 Proceed to “www.BethlehemRDA.org”.

14.1.2 Click on Departments in the upper banner and then select Purchasing.

14.1.3 Click on Bid Tabulations in the “gutter” on the left side of the page.

14.2 Once the bid is awarded, the **final** tabulation sheet of responses will be available under the “Bid Awards” section on the RDA’s Website, with the successful bid highlighted.

15.0 **AUTHORITY TO DISTRIBUTE BID PACKAGES:**

15.1 Base Engineering, Inc., the Bethlehem RDA Purchasing Office (and website, if applicable) and their designees (if any) are the sole entities authorized to provide this ITB package to interested companies or individuals. Firms who are working from an ITB package obtained from any other source may have an incomplete set of documents. Both Base Engineering, Inc. and the RDA assume no responsibility for any error, omission, or misinterpretation resulting from a company’s use of an incomplete ITB package.

15.2 Firms who have received the ITB package from other sources are advised to contact the office to provide their company name, mailing address, telephone number, fax number, contact name and contact e-mail address. This will ensure that the company receives all ITB related communications and documents, including addenda.

- END OF SECTION 00 70 50 -

Section 00 73 00 - General Requirements & Conditions

1. Covenants Against Contingent Fees - The Contractor warrants that he has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Pocono Mountain School District the right to annul the Contract, or, at its discretion, to deduct from the contract price or consideration, the amount of such commission, percentage, brokerage, or contingent fee. This shall not apply to commissions payable by the Contractor upon contracts of sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.
2. Stipulation Against Liens - Prior to the actual commencement of construction the Bidder to whom the Contract is awarded must execute a Stipulation Against Liens.
3. Disqualification of Bidders - Any one or more of the following causes may be considered as sufficient grounds for disqualification of a Bidder and the rejection of his bid or bids:
 - a. More than one proposal for the same Work from an individual firm, partnership, or corporation under the same or different names.
 - b. Evidence of collusion among Bidders. Participants in such collusion may receive no recognition as Bidders for any future Work.
 - c. Unbalanced Proposals, in which the prices for some items are out of proportion to the prices for other items.
 - d. Failure to submit a unit price for each item of Work for which a bid price is required by the Proposal.
 - e. Lack of competency as revealed by the financial statement, experience record, or personnel and equipment statement submitted.
 - f. Lack of responsibility as shown by past Work judged from the standpoint of workmanship and progress.
 - g. Uncompleted Work which in the judgment of the Pocono Mountain School District might hinder or prevent the prompt completion of additional Work if awarded.
 - h. Being in arrears on existing contracts, in litigation with the Pocono Mountain School District, or having defaulted on a previous contract, whether or not said contract is with the Pocono Mountain School District.

4. Cityship of Drawings - All Drawings, Specifications and copies thereof furnished by the Engineer shall not be reused on other Work, and, with the exception of the signed Contract, sets are to be returned to him on request, at the completion of the Work. All models are the property of the Pocono Mountain School District.
5. Award of Contract - Prior to award of the Contract, the Pocono Mountain School District reserves the right to make investigations as to the responsibility of each of the three lowest bidders for each prime Contract. Award of the Contract will be made by the Pocono Mountain School District, upon the recommendation of the Engineer, within sixty (60) days after the opening of the Proposals unless the Pocono Mountain School District is delayed in obtaining the required approval of a governing agency, the sale of bonds, or the award of a grant or grants. In that case award will be made within 120 days after the opening of the Proposals. Thereafter 30 day extensions of the date of award may be made with the mutual written consent of the Pocono Mountain School District and the lowest responsible Bidder.
6. Rejection of Bid - The Pocono Mountain School District may refuse to consider any Bid which is not based upon these instructions, which contains any change in phraseology of the Bid Specifications which contains any letter or written memorandum qualifying same, which is not properly signed, or which is not accompanied by the proper Bid Bond.

MISCELLANEOUS PROVISIONS

1. Contractor, herein, its subcontractors, suppliers and any other contracting party thru Contractor is aware of the terms, conditions , requirements and obligations of this Agreement and the Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund, 2021 Grant Agreement (20021-PHARE/RTT-119 dated August 16, 2021) and they will comply with and be bound by these terms, conditions, requirements and obligation therein and a paragraph indicating such compliance shall be included in each and every of their contracts.
2. **Non-Recourse Payments:** Contractors, herein, only recourse for payment under this agreement shall be funds actually paid to the Redevelopment Authority under 2021 Grant Agreement (20021-PHARE/RTT-119) referred to in paragraph 1 above and funds actually paid to the Redevelopment Authority by the City of Bethlehem under its Block Grants Program which is specifically allocated to this project. The Redevelopment Authority, its directors, officers, members and/or employee shall have no personal liability under this Agreement for payment nor shall any of their assets be subject to claims for payment.

- END OF SECTION 00 73 00 -

Section 00 73 16 – Insurance Requirements

- 1) The selected firm shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this agreement, insurance in the types and limits specified below. In addition to the insurance coverage and limits listed herein, the selected firm shall obtain any other insurance coverage as may be required by applicable statutes.
 - a. Commercial General Liability Insurance
 - i. Limits of Liability
 - \$2,000,000 General Aggregate
 - \$1,000,000 Products Completed Operations Aggregate
 - \$1,000,000 Personal/Advertising Injury
 - \$1,000,000 Each Occurrence Bodily Injury and Property Damage
 - ii. Coverage Form (ISO Commercial General Liability Form including, but not limited to the following extensions of coverage: Premises Operations, blanket contractual, personal injury (employee exclusion deleted) products and completed operations, independent contractors, cross suits endorsement, broad form property damage. Policy shall be endorsed to provide the following:
 1. Aggregate Limits apply to each location/job sit
 2. Policy is primary for all named insureds and additional named insureds over any other valid and collectible insurance.
 3. Waiver of Subrogation in favor of RDA, its Directors, Officers, Administrators, Board of Education Members and employees.
 - iii. Completed Operations must be maintained for three years after completion of the project.
 - iv. RDA shall be named as an additional insured.
 - b. Workers' Compensation and Employer's Liability Insurance
 - i. Limits of Liability
 - Coverage A: Statutory
 - Coverage B: \$500,000 each person
 - \$500,000 each person by disease
 - \$500,000 policy limit by disease

- ii. Coverage shall apply in the jurisdiction in which the work is being performed as required by applicable statutes.
 - c. Automobile Liability
 - i. Limits of Liability
\$1,000,000 per occurrence bodily injury and property damage
 - ii. Coverage: Symbol 1 any auto
 - iii. The RDA shall be named as additional insured.
 - d. Excess/Umbrella Liability
 - i. Limits of Liability
\$5,000,000 per occurrence
\$5,000,000 aggregate
 - ii. Coverage shall be follow form over underlying commercial general liability, employer’s liability and automobile liability.
 - e. RDA’s Protective Liability
 - i. Named Insured: Redevelopment Authority of the City of Bethlehem
 - ii. Limits of Liability
\$1,000,000 each occurrence
\$1,000,000 aggregate
 - f. Contractors Pollution Liability
 - i. Limits of Liability
\$1,000,000 per occurrence
\$1,000,000 aggregate
 - ii. Limits apply on a per project basis
 - iii. Maximum acceptable self-insured retention is \$25,000.
 - iv. Redevelopment Authority of the City of Bethlehem shall be named as additional insured.
- 2) All policies shall be issued by an insurer licensed to do business in the

- Commonwealth of Pennsylvania maintaining a minimum A.M. Best rating of A-IX. Certificates of Insurance evidencing the above requirements must be provided to the RDA prior to commencing work. Renewal certificates shall be provided prior to the expiration of all policies during the duration of the project.
- 3) RDA will be given 30 days notice of cancellation, non-renewal or change in terms and conditions of all policies.
 - 4) All deductibles and self-insured retentions must be disclosed on the certificate. If a qualified self-insured for workers' compensation a copy of the Certificate of Authority from the Department of Labor and Industry must be attached to the certificate evidencing the excess coverage. In the event of self-insurance or retentions in excess of \$25,000 for any line of coverage, the latest audited financial statement of the contractor must accompany the certificate for review and acceptance.
 - 5) All subcontractors are required to carry the coverages designated above.
 - 6) If the selected firm fails to obtain and maintain the required insurance, The RDA shall have the right to treat such failure as a material breach of contract and to exercise all appropriate rights and remedies.

- END OF SECTION 00 73 16 -

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Section 00 73 46 - Wage Determination Schedule

Wage Determination Schedule, in accordance with the Pennsylvania Wage Act of August 15, 1961, P.L. 987 as found at 43 P.S. Section 165-01 et seq., as amended, as determined by the Secretary of the Department of Labor and Industry, is attached herewith.

- END OF SECTION 00 73 46 -

DIVISION 1 - GENERAL REQUIREMENTS

SECTION 01 10 00 - SUMMARY OF WORK

PART 1: GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS:

A. Contractor's Duties:

1. Except as specifically noted, provide and pay for:
 - a. Labor, materials, and equipment.
 - b. Tools, construction equipment and machinery.
 - c. Water, heat and utilities required for construction.
 - d. Other facilities and services necessary for proper execution and completion of work.
2. Pay legally required sales, consumer and use taxes.
3. Secure and pay for, as necessary for proper execution and completion of Work, and as applicable at time of receipt of bids:
 - a. Permits (i.e., Site, Demolition) as required by the City, County or State where project is being constructed.
 - b. Government fees.
 - c. Licenses.
4. Give required notices.
5. Comply with codes, ordinances, rules, regulations, orders, and other legal requirements of public authorities which bear on performance of Work. If the Contractor observes that the Contract Documents are at variance therewith, he shall give the Redevelopment Authority of the City of Bethlehem and Engineer immediate notice and, within 72 hours, written notice of his observation. Any necessary changes shall be adjusted by an appropriate Change Order. If the Contractor performs any Work contrary to such laws, ordinances, rules and regulations, he shall bear all costs arising therefrom.
6. Promptly submit written notice to Engineer of observed variance of Contract Documents from legal requirements.

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7. Contractor is responsible for his knowledge of the existing conditions prior to starting work.
- B. The scope of work includes the
1. Removal of the existing exterior multi-wythe brick wall on the south façade of the home, and its replacement with a new wood stud wall with vinyl siding. Replace all existing windows and utilities in kind
 2. Remove/dispose of existing debris from previous wall collapse

1.02 CONTRACTS:

- A. Construct Work under a single lump-sum Contract, with provisions for unit prices and options for additional work.

1.03 CONTRACTOR USE OF PREMISES:

- A. Confine operations at site to areas permitted by:
1. Law
 2. Ordinances
 3. Permits
 4. Contract Documents
- B. Do not unreasonably encumber site with materials or equipment.
- C. Assume full responsibility for protection and safekeeping of products stored on premises through completion of construction.
- D. Move any stored products which interfere with operations of the RDA.
- E. The contractor is advised that if during construction he damages any facility outside the limits of construction even though he previously determined that he would not damage the facility, it shall be his responsibility to replace the item(s) to their original condition. No additional compensation shall be provided for replacing damaged areas outside the limits of construction.
- F. Any damages occurring to any property, as a result of construction for this Contract, shall be repaired to original condition by the Contractor, at the Contractor's expense.

1.04 MISCELLANEOUS REQUIREMENTS:

- A. Project Record Documents:

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1. Recording:
 - a. Contract Drawings for Project Record: blue line prints provided by Engineer.
 - b. Keep record documents current.
 - c. Do not permanently conceal any work until required information has been recorded.
 - d. Contract Drawings: Legibly mark to record actual construction:
 - i. Depths of various elements of foundation in relation to permanent benchmark.
 - ii. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.
 - iii. Field changes of dimension and detail.
 - iv. Changes made by Change Order or Field Order.
 - v. Details not on original Contract Drawings.
 - e. Specifications and Addenda: Legibly mark up each section to record:
 - i. Manufacturer, trade name, catalog number, and Supplier of each product and item of equipment actually installed.
 - ii. Changes made by Change Order or Field Order.
 - iii. Other material not originally specified.
2. Submittals
 - a. Within ten (10) days of completion of project, deliver record documents to Engineer.
 - b. Accompany submittal with transmittal letter containing:
 - i. Date.
 - ii. Project title and number.
 - iii. Contractor's name and address.

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- iv. Title and number of each record document.
- v. Certification that each document as submitted is complete and accurate.
- vi. Signature of Contractor, or his authorized representative.

- END OF SECTION 01 10 00 -

SECTION 01 25 00 – CONTRACT MODIFICATION PROCEDURES

PART 1: GENERAL

1.01 RELATED DOCUMENTS:

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

1.02 SUMMARY:

- A. This Section specifies administrative and procedural requirements for handling and processing contract modifications.
- B. Related Sections include the following:
 - 1. Division 1 Section "Product Requirements" for administrative procedures for handling requests for substitutions made after Contract award.

1.03 MINOR CHANGES IN THE WORK:

- C. Engineer will issue supplemental instructions authorizing minor changes in the Work, not involving adjustment to the Contract Sum or Contract Time.

1.04 PROPOSAL REQUESTS:

- A. Owner-Initiated Proposal Requests: The Engineer will issue a detailed description of proposed changes in the Work that will require adjustment to the Contract Sum or Contract Time. If necessary, the description will include supplemental or revised Drawings and Specifications.
 - 1. Proposal requests issued by the Engineer are for information only. Do not consider them as an instruction either to stop work in progress or to execute the proposed change.
 - 2. Within 10 days of receipt of a proposal request, submit an estimate of cost necessary to execute the change to the Engineer for the Owner's review.
 - a. Include a list of quantities of products required and unit costs, with the total amount of purchases to be made. Where requested, furnish survey data to substantiate quantities.
 - b. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

- c. Include a statement indicating the effect the proposed change in the Work will have on the Contract Time.
- B. Contractor-Initiated Proposals: When latent or unforeseen conditions require modifications to the Contract, the Contractor may propose changes by submitting a request for a change to the Engineer.
1. Include a statement outlining the reasons for the change and the effect of the change on the Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Sum and Contract Time.
 2. Include a list of quantities of products required and unit costs, with the total amount of purchases to be made. Where requested, furnish survey data to substantiate quantities.
 3. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
 4. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.
 5. Comply with requirements in Division 1 Section "Product Requirements" if the proposed change requires substitution of one product or system for product or system specified.
- C. Proposal Request Form: Use AIA Document G709 for Change Order Proposal Requests.

1.05 CHANGE ORDER PROCEDURES:

- A. On Owner's approval of a Proposal Request, Engineer will issue a Change Order for signatures of Owner and Contractor.

1.06 CONSTRUCTION CHANGE DIRECTIVE:

- A. Construction Change Directive: The Engineer may issue a Construction Change Directive on AIA Form G714. The Construction Change Directive instructs the Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order.
 1. The Construction Change Directive contains a complete description of the change in the Work. It also designates the method to be followed to determine change in the Contract Sum or Contract Time.

- B. Documentation: Maintain detailed records on a time and material basis of work required by the Construction Change Directive.
 - 1. After completion of the change, submit an itemized account and supporting data necessary to substantiate cost and time adjustments to the Contract.

PART 2: PRODUCTS (NOT USED)

PART 3: EXECUTION (NOT USED)

-END OF SECTION 01 25 00 -

SECTION 01 29 00 – APPLICATIONS FOR PAYMENT

PART 1: GENERAL

1.01 PAYMENT APPLICATION TIMES:

- A. The “date” for each progress payment is as indicated in Owner-Contractor Agreement. The period of construction Work covered by each payment request is the period indicated in Owner-Contractor Agreement.

1.02 PAYMENT APPLICATION FORMS:

- A. EJCDC Document 1910-8E (1990 Edition), available from The Engineers Joint Contract Documents Committee.

1.03 INITIAL PAYMENT APPLICATION:

- A. The principal administrative actions and submittals which must precede or coincide with submittal of first payment application can be summarized as follows, but not necessarily by way of limitation:
 - 1. Listing of subcontractors and principal suppliers and fabricators;
 - 2. Schedule of Values;
 - 3. Copies of acquired permits and similar authorizations and licenses from governing authorities for current performance of the Work;
 - 4. Performance and/or payment bonds (if required); and
 - 5. Evidence satisfactory to The City of Bethlehem that Contractor’s insurance coverages have been secured.

1.04 APPLICATION AT TIME OF SUBSTANTIAL COMPLETION:

- A. Following issuance of Engineer’s final “certificate of substantial completion”, and also in part as applicable to prior certificates on portions of completed Work as designated, a “special” payment application may be prepared and submitted by Contractor. The principal administrative actions and submittals which must precede or coincide with such special applications can be summarized as follows, but not necessarily by way of limitation:
 - 1. Permits and similar approvals or certifications by governing authorities and franchised services, assuring the RDA’s full access and use of completed Work;

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2. Final cleaning of construction area; and
3. Listing of Contractor's incomplete Work, recognized as exceptions to Pocono Mountain School District's Engineer's certificate of substantial completion.

1.05 FINAL PAYMENT APPLICATION:

- A. The administrative actions and submittals which must precede or coincide with submittal of final payment application can be summarized as follows, but not necessarily by way of limitation:
 1. Completion of project closeout requirements;
 2. Assurance, satisfactory to the RDA, that unsettled claims will be settled and that Work not actually completed and accepted will be completed without undue delay;
 3. Proof, satisfactory to the RDA, that taxes, fees, and similar obligations of Contractor have been paid;
 4. Removal of temporary facilities, services, surplus materials, rubbish, and similar elements;
 5. Consent of surety for final payment.
 6. Proof, satisfactory to RDA, that Contractor (and any subcontractor) has filed written certifications and statements with the Commonwealth of Pennsylvania, Department of Labor and Industry, in conformity with the requirements of Section 10 of the Pennsylvania Prevailing Wage Act, as found at 43 P.S. Section 165-10.

- END OF SECTION 01 29 00 -

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SECTION 01 33 00 – SUBMITTAL PROCEDURES

PART 1: GENERAL

1.01 GENERAL:

- A. Submit to the Engineer six (6) cut sheets, product data, and manufacturer's specifications required by specifications sections.

1.02 SHOP DRAWINGS:

- A. Original drawings, prepared by Contractor, subcontractor, supplier or distributor, which illustrates some portion of the work; showing fabrication, layout, setting or erection details.
- B. Prepared by a qualified detailer.
- C. Identify details by reference to sheet and detail numbers shown on Contract Drawings.

1.03 PRODUCT DATA:

- A. Manufacturer's standard schematic drawings:
 - 1. Modify drawings to delete information which is not applicable to project.
 - 2. Supplement standard information to provide additional information applicable to project.
- B. Manufacturer's catalog sheets, brochures, diagrams, schedules, performance charts, illustrations and other standard descriptive data.
 - 1. Clearly mark each copy to identify pertinent materials, products or models.
 - 2. Show dimensions and clearances required.
 - 3. Shop performance characteristics and capacities.
 - 4. Show writing diagrams and controls.

1.04 CONTRACTOR RESPONSIBILITIES:

- A. Review Shop Drawings and Product Data prior to submission.
- B. Verify:
 - 1. Field measurements.

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2. Field Construction criteria.
 3. Catalog numbers and similar data.
- C. Coordinate each submittal with requirements of Work and of Contract Documents.
 - D. Contractor's responsibility for errors and omissions in submittals is not relieved by Engineer's review of submittals.
 - E. Contractor's responsibility for deviations in submittals from requirements of Contract Documents is not relieved by Engineer's review of submittals, unless engineer gives written acceptance of specific deviations.
 - F. Notify Engineer, in writing, at time of submission, of deviations in submittals from requirements of Contract Documents.
 - G. Begin no work which requires submittals until return of submittals with Engineer's stamp and initials or signature indicating review.
 - H. After Engineer's review, distribute copies.

1.05 SUBMISSION REQUIREMENTS:

- A. Submittals must be delivered to the Engineer for approval within (15) days of execution of contract and receipt of Notice to Proceed from the Procurement Office.
- B. Identify project, Contractor, subcontractor or supplier, pertinent Drawing sheet and detail number(s), and specification Section number, as appropriate.
- C. Apply Contractor's stamp, signed or initialed certifying that review, verification of products required, field dimensions, adjacent construction Work, and coordination of information, is in accordance with the requirements of the Work and Contract Documents. Submittals not containing Contractor's stamp shall be returned.
- D. Schedule submittals to expedite project, and deliver to the Engineer at business address. Coordinate submission of related items.
- E. Identify variations from the Contract Documents and Product or system limitation which may be detrimental to successful performance of the completed Work.
- F. Provide space for Contractor and Engineer review stamps.
- G. Revise and resubmit submittals as required, clearly identifying all changes made since previous submittal.
- H. Distribute copies of reviewed submittals to concerned parties. Instruct parties to

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promptly report any inability to comply with provisions.

1.06 DISTRIBUTION OF SUBMITTALS AFTER REVIEW:

- A. Distribute copies of Shop Drawings and Product Data which carry Engineer's stamp, to:
 - 1. Contractor's file.
 - 2. Job-site file.
 - 3. Subcontractors.
 - 4. Supplier.
 - 5. Fabricator.
- B. Distribute samples as directed.

1.07 ENGINEER'S DUTIES:

- A. Review submittals with reasonable promptness.
- B. Review for:
 - 1. Design concept of project.
 - 2. Information given in Contract Documents.
- C. Affix stamp and initials or signature certifying to review of submittal.
- D. Return submittals to Contractor for distribution.

- END OF SECTION 01 33 00 -

SECTION 01 41 00 - REGULATORY REQUIREMENTS

PART 1: GENERAL

1.01 GENERAL:

- A. The Contract Documents and the construction hereby contemplated are to be governed, at all times, by applicable provisions of federal, state, and local law(s), rules, regulations, and codes, including but not limited to, those specified in this section.
- B. Nothing contained in the Contract Documents shall be construed as relieving the Contractor of the responsibility for strict compliance with any applicable federal, state, and local law(s), rules, regulations, and codes, including but not limited to, those specified in this section.
- C. All Work on this project shall, at a minimum, conform to the Tobyhanna Township Codes, and Pocono Mountain School District, including any addendums or changes which may be applicable to this project.

1.02 SPECIFIC REGULATIONS:

- A. Comply with law(s), rules, regulations, and codes dealing with occupational safety and health, including but not limited to, the latest amendments to the following:
 - 1. William-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596; and
 - 2. Part 1910-Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations.
- B. Comply with law(s), rules, regulations and codes dealing with the prevention of environmental pollution and the preservation of public natural resources, including but not limited to, the latest amendments to the following:
 - 1. Act No. 247 of the General Assembly of the Commonwealth of Pennsylvania, enacted 26 October 1972.
- C. Comply with law(s), rules, regulations, and codes dealing with prevailing wage, including but not limited to, the latest amendments to the following:
 - 1. Act No. 442 of the general Assembly of the Commonwealth of Pennsylvania, enacted August 15, 1961, as amended.

- END OF SECTION 01 41 00 -

SECTION 01 42 00 - REFERENCES

PART 1: GENERAL

1.01 DEFINITIONS:

- A. General Explanation: A substantial amount of specification language constitutes definitions for terms found in other Contract Documents, including Drawings which must be recognized as diagrammatic in nature and not completely descriptive in requirements indicated thereon. Certain terms used in Contract Documents are defined generally in this article. Definitions and explanations of this section are not necessarily either complete or exclusive, but are general for the Work to the extent not stated more explicitly in another provision of Contract Documents.
- B. Indicated: A cross-reference to graphics, notes, or schedules on Drawings, to other paragraphs or schedules in the Specifications, and to similar means of recording requirements in Contract Documents. Where terms such as "shown", "noted", "scheduled", and "specified" are used in lieu of "indicated", it is for purpose of helping reader locate cross-reference, and no limitation of location is intended except as specifically noted.
- C. Directed, Requested, Approved, Accepted, etc.: These terms imply "by the Engineer" unless otherwise indicated.
- D. Approved by Engineer: In no case releases Contractor from responsibility to fulfill requirements of Contract Documents.
- E. Approve: In no case will be interpreted as a release of Contractor from responsibility to fulfill requirements of Contract Documents.
- F. Project Site: Space available to Contractor at location of Project either exclusively or to be shared with separate contractors for performance of the Work.
- G. Furnish: Supply and deliver to Project Site, ready for unloading, unpacking, assembly, installation, etc., as applicable in each instance.
- H. Install: Operations at Project Site including unloading, unpacking, assembly, installation, etc., as applicable in each instance.
- I. Provide: Furnish and install, complete and ready for intended use, as applicable in each instance.
- J. Installer: Entity (firm or person) engaged to install Work by Contractor, Subcontractor, or Sub-subcontractor. Installers are required to be skilled experts in Work they are engaged to install.

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- K. Engineer: BASE Engineering Inc., 1044 N. Quebec St., Allentown, PA., 18109-1607.
- L. Substantial Completion: All storm sewer and roof leader connections installed, as well as all restoration work. Only punch list items to be completed.
- M. RDA: Redevelopment Authority of the City of Bethlehem

1.02 FORMAT AND SPECIFICATION EXPLANATIONS:

- A. Specification Text Format: Underscoring facilitates scan reading: no other meaning.
- B. Overlapping/Conflicting Requirements: Most stringent applies and will be enforced, unless more detailed language written directly into Contract Documents clearly indicates that a less stringent requirement is acceptable. Refer uncertainties to the Engineer for decision before proceeding.

1.03 INDUSTRY STANDARDS:

- A. General Applicability of Standards: Applicable published standards of construction industry have same force and effect as if copied directly into Contract Documents, or as if published copies were bound herewith.
- B. Referenced Standards: (Referenced directly in Contract Documents or by governing regulations). Have precedence over non-referenced standards which are recognized in industry for applicability to Work.
- C. Minimum Requirements: Indicated requirements are for a specific minimum acceptable level of quality/quantity, as recognized in the industry. Actual Work must comply (within specified tolerances), or may exceed minimum with reasonable limits. Refer uncertainties to Engineer before proceeding.
- D. Abbreviations & Plural Words: Abbreviations, where not defined in Contract Documents, will be interpreted to mean the normal construction industry terminology, determined by recognized grammatical rules, by the Engineer. Plural words will be interpreted as singular and singular words will be interpreted as plural words where applicable for context of Contract Documents.

- END OF SECTION 01 42 00 -

SECTION 01 50 00 - CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

PART 1: GENERAL

1.01 GENERAL:

- A. The Contractor shall provide, maintain, service, operate, and supervise the services and facilities he deems necessary for the carrying out of his Work.
- B. The services and facilities specified herein shall be for the benefit of all persons engaged in Work on the project and for the life of the Contract.
- C. Except as otherwise specified, the Contractor shall pay all expenses involved in connection with the temporary services and facilities, including removal of discontinued facilities.
- D. The responsibility of the Contractor in connection with the services and facilities specified herein shall be carried out at such time, and in such manner so as not to delay construction progress.

1.02 ELECTRICITY:

- A. The Contractor shall arrange for all power sources, including generators if necessary, and shall extend and provide approved distribution system of wiring and outlets, including lamps as required for the completion of the Project.

1.03 WATER AND SANITARY:

- A. Water and sanitary facilities at the job site shall be provided by the Contractor as required.

1.04 ACCESS AND PROTECTION OF TRAFFIC:

- A. Provide for safe passage of both pedestrian and vehicular traffic from, to, and around the construction site, including convenient access for police, fire, and other emergency equipment. Access to the main entrance is to be open at all times.
- B. Provide appurtenances associated with access and protection of traffic, such as fences, gates, bridges, sidewalk covers, barricades, lights, reflectors, danger signs and other devices required for the protection of life, limb, and property.

1.05 MATERIAL/EQUIPMENT STORAGE:

- A. Each separate Contractor shall provide weathertight storage for his construction materials which are subject to damage if exposed to the weather.

1.06 TELEPHONE:

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- A. The Contractor shall obtain and pay for any telephone service required at the site.

1.07 CONTRACTOR'S JOB SITE FACILITIES:

- A. Field Offices: The Contractor may supply his own temporary buildings or field trailers if he deems necessary, approved and located as designated by the County of Northampton.
- B. Flammable Storage
 - 1. Gasoline, oil and other flammable materials storage must be isolated from the general construction area.
 - 2. Only approved safety cans are permitted for the dispensing of flammable liquids.
 - 3. All flammable material spilled by the Contractor and any soil, stone, etc., which is contaminated as a result of the spill shall be removed and disposed of at the Contractor's expense.

1.08 CONTRACTOR'S EQUIPMENT:

- A. All scaffolding, ladders, staging, equipment and tools shall bear Contractor's identification mark before being brought to the job site. The Contractor shall keep a running inventory of his on-site equipment which shall be available for inspection by The RDA and the Engineer.

1.09 RESTRICTIONS:

- A. Burning or Welding - Permission must be obtained from Engineer prior to welding, burning, or starting any open fire or other hot work. Contractor's employees shall follow implicitly the limitations as to time, location and area covered thereon. The Contractor shall have on hand the necessary fire extinguishers and safety men.

1.10 SECURITY:

- A. There will be no watchmen service provided. The Contractor shall take his own precaution against the loss of his materials, tools, and equipment and be responsible for the safety thereof.

- END OF SECTION 01 50 00 -

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SECTION 01 74 00 - CLEANING

PART 1: GENERAL

1.01 DESCRIPTION:

- A. Related Requirements Specified Elsewhere in the Specifications:
 - 1. Cleaning for Specific Products or Work: Specification Section for that Work.
- B. Maintain premises and public properties free from accumulations of waste, debris, and rubbish, caused by operations.
- C. At completion of Work, remove waste materials, rubbish, tools, equipment, machinery and surplus materials, and clean all sight-exposed surfaces; leave project clean and ready for occupancy.

PART 2: PRODUCTS

2.01 MATERIALS:

- A. Use only cleaning materials recommended by manufacturer of surface to be cleaned.
- B. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

PART 3: EXECUTION

3.01 DURING CONSTRUCTION:

- A. Execute cleaning to ensure that building, grounds and public properties are maintained free from accumulations of waste materials and rubbish.
- B. Wet down dry materials and rubbish to lay dust and prevent blowing dust.
- C. Each week during progress of Work, clean site and public properties, and dispose of waste materials, debris and rubbish.
- D. Provide on-site dump container for collection of waste materials, debris and rubbish.
- E. Remove waste materials, debris and rubbish from site and legally dispose of at public or private dumping areas off the County's property.

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- F. Handle materials in a controlled manner with as few handlings as possible; do not drop or throw materials from heights.

3.02 FINAL CLEANING:

- A. Employ experienced workmen, or professional cleaners, for final cleaning.
- B. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials, from exterior finished surfaces.
- C. Repair, patch and touch up marred or damaged surfaces to specified finish, to match adjacent surfaces. Each contractor is responsible for repairing damaged surfaces found in his work area during final cleaning.
- D. Broom clean paved surfaces; rake clean other surfaces of grounds.

- END OF SECTION 01 74 00 -