



MARINA COAST WATER DISTRICT

Reservoir #2 Tank Coating

MW-0238

July 2018

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RESERVOIR #2 TANK COATING PROJECT
MW-0238

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INVITATION TO BIDDERS

FOR THE ATTACHED CONSTRUCTION PROJECT ENTITLED: **RESERVOIR #2 TANK COATING**

Pre-Bid Conference and Site Inspection

A mandatory pre-bid conference and site inspection will be held at 10:00 AM on July 10, 2018. Prospective bidders shall meet at the District's FORT ORD offices at 2840 4th Avenue, Marina, CA 93933.

Bid Opening

Bids will be received by the Marina Coast Water District (herein after referred to as "MCWD") at **11 Reservation Road, Marina CA 93933**, at 2:00 PM on July 31, 2018 for the performance of the work described in the Bid and Contract Documents on file. **Bid Opening location is: 11 Reservation Road, Marina, CA 93933.**

All Bid and Contract Documents, including the bid forms, shall be obtained from Marina Coast Water District.

The plans and specifications for this project are available from:

Marina Coast Water District
Engineering Department
2840 4th Avenue
Marina, CA 93933

Description of Work

The work as indicated in the project documents consist of all materials, labor, tools, equipment, apparatus, facilities, transportation and incidentals necessary to construct, furnish, deliver and install the following in general:

Marina Coast Water District is seeking bids for application of protective coatings and paints to the interior surfaces of a 2 MG steel potable storage tank, disinfection of interior surfaces, including surface preparation and other work necessary to accomplish the approved end result of a totally protected and usable tank and structure.

Payment will be made as described in the Instructions to Bidders, Section 2.01.

BONDS:

A Bid Bond is required.

A Payment Bond and a Performance Bond are required after the Notice of Award at the time of the delivery of executed counterparts of the Agreement to the Owner.

The right is reserved, as the interest of MCWD may require, to reject any or all bids, to waive any informality in bids, and to accept or reject any items of the bid. If the Contractor's bid is accepted, the Purchasing Agent will execute the Contract for and on behalf of the, as governed by Public Contract Code 22030 through 22045.

The bidder and any of his subcontractors must be licensed as a General Engineering Contractor with the Contractors State License Board of the State of California Department of Consumer Affairs. Bids will not

The right is reserved, as the interest of MCWD may require, to reject any or all bids, to waive any informality in bids, and to accept or reject any items of the bid. If the Contractor's bid is accepted, the Purchasing Agent will execute the Contract for and on behalf of the, as governed by Public Contract Code 22030 through 22045.

The bidder and any of his subcontractors must be licensed as a General Engineering Contractor with the Contractors State License Board of the State of California Department of Consumer Affairs. Bids will not be considered from contractors not licensed as a General Engineering Contractor unless they hold a specialty license for the specific classification(s) to be performed.

Public Works projects exceeding \$1,000.00 require the payment of the general prevailing rate of per diem wages, copies of which are on file at the State of California, Department of Consumer Affairs Office. (Labor Code 1770, et seq.).

The MCWD contact person assigned to this project is: Jaron Hollida, 831-883-5930

END OF DOCUMENT

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ARTICLE 1 - DEFINED TERMS

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

- A. *Issuing Office*—Marina Coast Water District, 11 Reservation Road, Marina, CA 93933
- B. *Marina Coast Water District Standard Plans and Specifications for Construction of Domestic Water, Sewer and Recycled Water Facilities*, revised August, 2005.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents stated in the Advertisement or Invitation to Bid may be obtained from Marina Coast Water District, 2840 4th Avenue Marina, CA 93933 All checks for Bidding Documents are to be made payable to Marina Coast Water District.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

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

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

A. The Bidder shall provide [3 projects that they have successfully completed in the last 5 years of like nature. The Bidder shall provide the project name, owner representative and phone number. The projects listed shall be of similar scope and type as the project identified in this document.

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

A. 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 Bidding Documents.

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

B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

4.03 *Hazardous Environmental Condition*

A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.

4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

4.06 Reference is made to SC-7.01 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;

B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work; and become familiar with the conditions of permits and waivers. Contractor is responsible for any penalties incurred for noncompliance with these conditions. Contractor to be aware of the utility agencies involved in the project and shall coordinate with said agencies as necessary.

C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;

D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions;

E. obtain and carefully study (or accept consequences of not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and

J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 - PRE-BID CONFERENCE

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

ARTICLE 6 - SITE AND OTHER AREAS

6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

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

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 10% (ten percent) of Bidder's maximum Bid price and in the form of a certified check or bank money order or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

9.01 The work shall be diligently prosecuted to substantial completion as defined in Section 14.04 of the General Conditions in this document before the expiration of 180 Calendar days beginning on the day after MCWD has provided the contractor with a formal notice-to-proceed and will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions within 30 calendar days after the date of Substantial Completion.

ARTICLE 10 - LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 - SUBSTITUTE AND “OR-EQUAL” ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or “or-equal” materials and equipment approved by Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or “or-equal” item. No item of material or equipment will be considered by Engineer as a substitute or “or-equal” unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute. Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 - PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from the Engineer.

13.02 All blanks on the Bid Form shall be completed by printing in ink or by typewriter and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item listed therein.

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

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

13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.

13.06 A Bid by an individual shall show the Bidder's name and official address.

13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown below the signature.

13.08 All names shall be typed or printed in ink below the signatures.

13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

13.10 The address and telephone number for communications regarding the Bid shall be shown.

13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 - BASIS OF BID; COMPARISON OF BIDS

14.01 *Unit Price*

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule as applicable. Each bid item will be a lump sum unit.

B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in Paragraph 11.02 of the General Conditions.

ARTICLE 15 - SUBMITTAL OF BID

15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the data as listed in Document 00435 – Bid Submittal Checklist.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation **“BID ENCLOSED.”** A mailed Bid shall be addressed to the following: **Marina Coast Water District, 11 Reservation Road, Marina, CA 93933, Attention: District Engineer.**

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

16.02 If within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 - OPENING OF BIDS

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

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

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

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 - SIGNING OF AGREEMENT

21.01 When Owner gives a Notice of Award to the Successful Bidder (Form C510-1), it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents, which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 - SALES AND USE TAXES – Not Used

ARTICLE 23 - RETAINAGE

23.01 Provisions concerning Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

ARTICLE 24 - CONTRACTS TO BE ASSIGNED – Not Used

ARTICLE 25 – PARTNERING – Not Used

END OF DOCUMENT

BID FORM

Reservoir #2 Tank Coating

TABLE OF ARTICLES and BID BOND

Article 1 – Bid Recipient

Article 2 – Bidder’s Acknowledgements

Article 3 – Bidder’s Representations

Article 4 – Further Representations

Article 5 – Basis of Bid

Article 6 – Time of Completion

Article 7 – Attachments To This Bid

Article 8 – Defined Terms

Article 9 – Bid Submittal

Designation of Subcontractors

Designation of Insurance Agent or Broker

List of Suppliers

List of Project References

Stop Notice Information

Non-Collusion Declaration

Prevailing Wage Statement

Bid Bond

Form of Proposal

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attention: District Engineer

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

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

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

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

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

Addendum No.

Addendum Date

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

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

D. Bidder has carefully studied, where available, all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02, and (2) reports and drawings of Hazardous Environmental Conditions that have been identified in SC-4.06.

E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data

concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 – BASIS OF BID

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

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

BASE BID PRICE

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
1	Preparation and Painting of Tank Interior including dehumidification equipment and Sound Blankets	Lump Sum	1		\$
2	Welding Repairs per pit	Each	35		\$
3	Welding Repairs per Linear Foot	Linear Foot	50		\$
4	Remove and Replace Ringwall Caulking	Lump Sum	1		\$
5	Mobilization/Demobilization	Lump Sum	1		\$
6	Safety Plan	Lump Sum	1		\$
7	18-Month Interior Inspection	Lump Sum	1		\$
	BASE BID TOTAL				\$

Total Base Bid Price:

Number: \$ _____

Base Bid Total in Words: _____

ALTERNATE BID PRICE

Item No.	Description	Unit	Quantity	Unit Price	Total Item Price
1	Preparation and Painting of Tank Exterior, with full containment and Hazardous Materials Removal	Lump Sum	1		\$
2	2 Year Inspection	Lump Sum	1		\$
	BASE BID PLUS ALTERNATE				

Number: \$ _____

Words: _____

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

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

If the District awards this contract, selection shall be based on the lowest total Bid Price and qualified contractor.

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

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

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

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

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

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest: _____
(Signature of Corporate Secretary)

Date of Qualification to do business in _____ *[State Where Project is Located]* is
____________.

A Joint Venture

Name of Joint Venturer: _____

First Joint Venturer Name: _____ (SEAL)

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

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

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

Name (typed or printed): _____

Title: _____

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

Bidder's Business address: _____

Phone: _____ Facsimile: _____

Submitted on _____, 20____.

State Contractor License No. _____. (If applicable)

END OF DOCUMENT

DESIGNATION OF SUBCONTRACTORS

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

In compliance with the provisions of Section 4100-4113 of the Public Contract Code of the State of California, and any amendments thereof, and, if applicable, with the requirements of County relating to projects for the construction, improvement or repair of Public Works, the undersigned bidder has set forth below the name and location of the place of business of each subcontractor who will perform work or labor or render service to the undersigned in or about the construction of the work, and each subcontractor who, under subcontract, will specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the plans and specifications, for such work to be performed under the Contract Documents to which the attached bid is responsive, and the portion of the work which will be done by each subcontractor and for each subcontract in excess of one half of one percent of the undersigned's total aggregate bid. Traffic signal equipment suppliers shall be listed at time of bidding on this form.

NAME OF SUBCONTRACTOR	LOCATION (address, city, zip, phone)	DIVISION OF WORK

COMPANY NAME: _____

By: _____
Bidder's Signature

Date: _____

END OF DOCUMENT

LIST OF SUPPLIERS

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

	Supplier	Product
1		
2		
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END OF DOCUMENT

DESIGNATION OF INSURANCE AGENT OR BROKER

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

It is proposed that the following insurance agent/broker and insurance company will provide policies of insurance or insurance certificates as required by the bid documents.

Insurance Agent or Broker: _____

Street: _____

City, State and Zip: _____

Telephone: _____

Name of Insurance Company
Providing Coverage _____

Best's Key Rating Guide of at least A VII? Yes _____ No _____

It is proposed that the following bonding agent or surety will provide payment and performance bonds as required by the bid documents.

Bonding Agent or Broker: _____

Street: _____

City, State and Zip: _____

Telephone: _____

Name of Surety Company
Providing Bonds: _____

- | | | |
|----|--|--------------------|
| 1. | Admitted in California? | Yes _____ NO _____ |
| | <i>OR</i> | |
| | Current Treasury Listed Surety (Federal Register)? | Yes _____ NO _____ |
| | <i>AND</i> | |
| | Current A.M. Best B or better rating? | Yes _____ NO _____ |
| | <i>OR</i> | |
| | Current Standard and Poors Rating of BB or better? | Yes _____ NO _____ |

2. (in lieu of 1)

An admitted surety insurer which complies with the provisions of the code of Civil Procedure, Section 995.660*.

California Code of Civil Procedure Section 995.660 in summary, states that an admitted surety must provide 1) the original, or a certified copy of instrument authorizing the person who executed the bond to do so; 2) a certified copy of the Certificate of Authority issued by the Insurance Commissioner, 3) a certificate from county Clerk of Monterey County that Certificate of Authority has not been surrendered, revoked, canceled, annulled or suspended; 4) a financial statement showing the assets and liabilities of the insurer at the end of the quarter calendar year, prior to 30 days next preceding the date of the execution of the bond.

OR

3. In lieu of 1 and 2, a company of equal financial size and stability that is approved by the MCWD Insurance/Risk Manager.

By signing below, the bidder certifies that:

The above comply with the MCWD standards for liability insurers and sureties pursuant to Section II, Part A, paragraph 14 of these bid documents: Yes _____ NO _____. If "No", your bid is subject to rejection.

COMPANY NAME: _____

BY: _____
(Bidder's signature)

DATE: _____

END OF DOCUMENT

LIST OF PROJECT REFERENCES

PROJECT NAME

SUBMIT WITH BID

The Bidder shall provide the project name, owner representative and phone number. The projects listed shall be of similar scope and type as the project identified in this document.

	Project Name	Owner Representative	Owner Phone #	Contract Amount
1				
2				
3				

END OF DOCUMENT

STOP NOTICE INFORMATION

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

PROJECT NAME: RESERVOIR #2 TANK COATING

CONTRACTOR'S NAME AND ADDRESS: _____

Reference: California Civil Code, Division 3, Part 4, Title 15, Chapter 4

The following is provided for the information of contractors, subcontractors and suppliers of labor, materials, equipment, and services under MCWD contracts, and is not intended as legal advice. Advice of legal counsel should be obtained to ensure compliance with legal requirements relating to public works stop notices.

WHERE TO FILE: All original stop notices and preliminary-20 day notices (if required by California Civil Code 53098) must be filed with the Marina Coast Water District, 11 Reservation Road, Marina, CA 93933.

STOP NOTICE CONTENTS: See California Civil Code 3103. written notice, signed and verified by the claimant and including information such as the kind of labor, equipment, materials or service furnished or agreed to be furnished by the claimant; the name of the person/entity to or for whom the same was done or furnished; the amount in value of that already done or furnished and/or agreed to be done or furnished. Blank stop Notice forms are commercially available.

WHO MAY SERVE STOP NOTICE: See California Code 53181. All persons furnishing labor, materials, equipment or services to the job (except the original contractor) and persons furnishing provisions, provender or other supplies.

HOW THE STOP NOTICE IS SERVED: See California Code S3103. Served by personal service, registered mail, or certified mail.

TIME FOR SERVICE: See California Civil Code 3184. Stop notices must be served before the expiration of 30 days after the recording of a Notice of Completion (sometimes referred to as a Notice of Acceptance) or Notice of Cessation, if such notice is recorded or if no Notice of Completion or Notice of Cessation is recorded, 90 days after actual completion or cessation.

NOTICE OF PUBLIC ENTITY (OWNER): See California Civil Code 3185. Provided that a stop notice claimant has paid to the Clerk of the Board of Supervisors the sum of \$2.00 at the time of filing a stop notice, the Clerk shall provide each stop notice claimant with notice of filing of a Notice of Completion or after the cessation of labor has been deemed a completion of a public work or after the acceptance of

completion, whichever is later, to each stop notice claimant, by personal service or registered or certified mail.

RELEASE OF STOP NOTICE: See California Civil Code 3196 and following. A stop notice can be released if the original contractor files a corporate surety bond with the Clerk of the Board of Supervisors, in the amount of 125% of the stop notice claim. Alternatively, the original contractor may file an affidavit pursuant to California Civil Code S3198, stating objections to the validity of the stop notice. A counter affidavit may be filed by the claimant pursuant to 53200 and a summary legal proceeding may be held pursuant to 3201 and following, to determine the validity of the stop notice. If no counter affidavit is filed, the stop notice funds shall be released. Alternatively, the Stop Notice claimant may file a Release in a form which substantially complies with California Civil Code 3262.

STOP NOTICE LAWSUIT: See California Civil Code 53210 through 3214. These sections provide that a stop notice is perfected only by the filing of a lawsuit. A lawsuit must be filed no sooner than 10 days after service of a stop notice and no later than 90 days after the expiration of the time for filing stop notices. Notice of suit must be given to the Clerk of the Board within 5 days after commencement. The Court has the discretionary right to dismiss the lawsuit if it is not brought to trial within two years.

I HEREBY ACKNOWLEDGE THAT I RECEIVED AND READ THE ABOVE STOP NOTICE INFORMATION AND IF I AM AWARDED THIS CONTRACT, I AGREE TO INCLUDE A COPY OF THIS PAGE IN ALL SUBCONTRACTS AND CONTRACTS FOR LABOR, MATERIALS, EQUIPMENT, AND SERVICES THAT I ENTER INTO FOR THIS PROJECT:

Bidder's Signature: _____ Date: _____

Bidder's Name and Title (Print): _____

END OF DOCUMENT

NON-COLLUSION DECLARATION TO BE EXECUTED BY BIDDER

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

I, _____, am the
(name)

_____ of _____,
(Position Title) (Company)

the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct:

Signature

Date

END OF DOCUMENT

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

RESERVOIR #2 TANK COATING PROJECT

SUBMIT WITH BID

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Bidder: _____

DIR Registration Number: _____

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Bidder's Signature: _____

Bidder's Name and Title: _____

Firm: _____

Date: _____

END OF DOCUMENT

PREVAILING WAGE STATEMENT

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

If awarded the contract, we and our subcontractors shall pay all the workers we assign to the project not less than the prevailing wage as determined by the state of California, Director of industrial Relations in compliance with Section IV, paragraph W of this Invitation to Bid. We are aware that the contractor shall be penalized for non-compliance by either the contractor or his subcontractor(s).

In addition, we are informed of the following:

Copies of the prevailing wage rates are on file at:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933

or

State of California Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 5th Floor, Room 5184
San Francisco, CA 94104
(415) 703-4281

The successful bidder shall be required to post the prevailing wage determinations at each job site.

Each contractor and subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per them wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection the public work.

Certified copies of such payroll records must be furnished to the State or Marina Coast Water District upon request.

By signing below, the bidder certifies that he shall comply with the prevailing wage laws.

Company Name: _____

Contractor's Signature: _____

Date: _____

END OF DOCUMENT

LOCAL HIRING FOR PUBLIC WORKS

RESERVOIR #2 TANK COATING

SUBMIT WITH BID

This contract is for a Marina Coast Water District public works project. All Contractors and Subcontractors are required to comply with all of the provisions of Ordinance 53 Local Hiring. Failure to comply with the local hiring ordinance may subject the Contractor herein with disqualification from any future Marina Coast Water District public works contracts.

The Bidder hereby certifies that (initial as applicable):

_____ Bidder has read Ordinance 53, Local Hiring for District Public Works, and

_____ Bidder can meet the local hiring requirements of Ordinance 53, or

_____ Bidder has made a good faith effort to meet the requirements of Ordinance 53 as documented on the attached pages, and anticipates a total of _____ percent of the workforce will be residents of the Monterey Bay Area, or

_____ Bidder requires an exception because a suitable pool of persons does not exist locally for the specialized skills listed below. These workers will constitute _____ percent of the workforce.

Specialized Skill	No. of Workers	County of Residence

Company Name: _____

Contractor's Signature: _____

Date: _____

Efforts to Hire Employees (submit only if needed)

Classification	Agency Contacted	Date	Results

Efforts to Hire Subcontractors (submit only if needed)

Work Item	Company Contacted	Date	Results*

* Standard codes: DNR-did not respond, NA-not available for job, NB-not bidding, USED-included in bid, HIGH-selected lower cost bid

END OF DOCUMENT

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

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

END OF DOCUMENT

BID SUBMITTAL CHECKLIST

All information required by the terms of the Bid Documents must be furnished. Important items to be submitted are including, but not limited to, those listed below;

ARTICLE 1 - SUBMIT WITH BID

	Form Number	Form Name
<input type="checkbox"/>	00410	Bid Form
<input type="checkbox"/>	00412	Designation of Subcontractors
<input type="checkbox"/>	00414	List of Suppliers
<input type="checkbox"/>	00416	Designation of Insurance Agent or Broker
<input type="checkbox"/>	00418	List of Project References
<input type="checkbox"/>	00420	Stop Notice Information
<input type="checkbox"/>	00422	Non-Collusion Statement
<input type="checkbox"/>	00424	Prevailing Wage Statement
<input type="checkbox"/>	00430	Bid Bond (Bid Security)
<input type="checkbox"/>	No form included	Certificate of Contractor's License

ARTICLE 2 – SUBMIT PRIOR TO OWNER'S EXECUTION OF CONTRACT (After Notice of Award)

<input type="checkbox"/>	00520	Agreement
<input type="checkbox"/>	00610	Performance Bond
<input type="checkbox"/>	00615	Payment Bond

END OF DOCUMENT

AGREEMENT

RESERVOIR #2 TANK COATING

TABLE OF ARTICLES

Article 1 – Work

Article 2 – The Project

Article 3 – Engineer

Article 4 – Contract Times

Article 5 – Contract Price

Article 6 – Payment Procedures

Article 7 – Interest

Article 8 – Contractor’s Representations

Article 9 – Contract Documents

Article 10 – Miscellaneous

**AGREEMENT
BETWEEN MARINA COAST WATER DISTRICT
AND [CONTRACTOR] FOR
RESERVOIR #2 TANK COATING**

CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between Marina Coast Water District (MCWD or Owner)

and _____ (Contractor).

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

ARTICLE 1 – WORK

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

General Work Description: Application of protective coatings and paints to the interior surfaces of a 2 MG steel potable storage tank, disinfection of interior surfaces, including surface preparation and other work necessary to accomplish the approved end result of a totally protected and usable tank and structure.

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: RESERVOIR #2 TANK COATING

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Jaron Hollida.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

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

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 180 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 210 calendar days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$800 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial 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 \$800 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 below:

A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

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 Construction Management as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th 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. 80 percent of Work installed but not accepted (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. 50 percent of cost of materials and equipment not incorporated in the Work that is on site. (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 50 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 Construction Management as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 5 percent per annum.

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 carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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
2. Performance bond as listed in this document.
3. Payment bond as listed in this document.
4. General Conditions as listed in this document
5. Supplementary Conditions as listed in this document
6. Technical Specifications
7. Drawings/Plans
8. All Addenda
9. BID FORM Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - b. Documentation submitted by Contractor prior to Notice of Award

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

- a. Notice to Proceed.
- b. Work Change 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 – Not Used

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

This Agreement will be effective on _____, 2018 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

Marina Coast Water District

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(Where applicable)

END OF DOCUMENT

PERFORMANCE BOND

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

CONTRACTOR (Name and Address):
Place of Business):

SURETY (Name and Address of Principal

OWNER (Name and Address): Marina Coast Water District, 11 Reservation Road, Marina, CA 93933

CONTRACT

Date:
Amount:
Description (Name and Location):

BOND

Bond Number:
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL
Company:

Signature: _____ (Seal)
Name and Title:

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

CONTRACTOR AS PRINCIPAL
Company:

Signature: _____ (Seal)
Name and Title:

SURETY

Surety's Name and Corporate Seal (Seal)

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

SURETY

Surety's Name and Corporate Seal (Seal)

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title:

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3. Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefore to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
- 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

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

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

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

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

12. Definitions.

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

- 12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 12.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

END OF DOCUMENT

PAYMENT BOND

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

CONTRACTOR (Name and Address):

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

OWNER: Marina Coast Water District, 11 Reservation Road, Marina, CA 93933

CONTRACT

Date:
Amount:
Description (Name and Location):

BOND

Bond Number:
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)
Name and Title:

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

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)
Name and Title:

SURETY

(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

SURETY

(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title:

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

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

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

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

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

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

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

15. DEFINITIONS

15.1.Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

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

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

FOR INFORMATION ONLY – Name, Address and Telephone Surety Agency or Broker:
--

PRECEDENCE

In event of conflict between various provisions of the plans and specifications, the provisions more restrictive of the Contractor shall apply. In event of conflict that cannot be resolved by restrictiveness, the document highest in precedence shall control. The precedence shall be:

1. Federal and State requirements (where applicable)
2. Permits from Agencies having jurisdiction
3. Agreement
4. Bidding Documents
5. Special Requirements
6. Basic Specifications
7. Plans (Drawings)
8. Standard Drawings
9. Reference Specifications

END OF DOCUMENT

**DOCUMENT 00 72 00
STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

Prepared by



Issued and Published Jointly by



Endorsed by



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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**1.01 Defined Terms**

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

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

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

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

1.02 *Terminology*

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

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

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

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

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

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**4.01** *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

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

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

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

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

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

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

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

5.03 *Subsurface and Physical Conditions*

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

5.04 *Differing Subsurface or Physical Conditions*

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

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

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

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

5.05 *Underground Facilities*

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

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

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

5.06 *Hazardous Environmental Conditions at Site*

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

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

ARTICLE 6 – BONDS AND INSURANCE**6.01 *Performance, Payment, and Other Bonds***

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

6.02 *Insurance—General Provisions*

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

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

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

6.03 Contractor's Insurance

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

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

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

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

6.04 Owner's Liability Insurance

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

6.05 Property Insurance

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

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

6.06 Waiver of Rights

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

6.07 Receipt and Application of Property Insurance Proceeds

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

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

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

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

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

7.03 *Services, Materials, and Equipment*

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

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

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

7.04 "Or Equals"

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

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

7.05 Substitutes

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

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

7.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

O. Nothing in the Contract Documents:

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

7.07 *Patent Fees and Royalties*

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

7.08 *Permits*

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

7.09 Taxes

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

7.10 Laws and Regulations

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

7.11 Record Documents

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

7.12 Safety and Protection

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

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

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

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

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

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

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

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

1. *Shop Drawings:*

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

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

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

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

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

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

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

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

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

7.18 *Indemnification*

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

7.19 *Delegation of Professional Design Services*

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

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

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

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

8.02 Coordination

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

8.03 Legal Relationships

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

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

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

9.05 *Lands and Easements; Reports, Tests, and Drawings*

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**10.01** *Owner's Representative*

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

10.02 *Visits to Site*

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

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

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

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

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

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

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

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

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

11.02 *Owner-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

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

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

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

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

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

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

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

11.07 Execution of Change Orders

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

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

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

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

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

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

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

13.01 *Cost of the Work*

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

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

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

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

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

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

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

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

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

13.02 Allowances

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

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

13.03 *Unit Price Work*

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

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**14.01 Access to Work**

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

14.02 Tests, Inspections, and Approvals

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

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

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

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

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

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

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

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

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

15.01 *Progress Payments*

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

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

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

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

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

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

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

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

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

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

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

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

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

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

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

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

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

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

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

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

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

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

16.03 *Owner May Terminate For Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

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

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

DOCUMENT 00800
SUPPLEMENTARY CONDITIONS
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SUPPLEMENTARY CONDITIONS

I. General

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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

II. Specific Items

SC-1.01.A.29 Add the following sentence at the end of Paragraph 1.01.A.29: The terms "Owner," "District" and "MCWD" shall be used interchangeably and shall all have the same meaning.

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

A. Owner shall furnish to Contractor up to 5 printed or hard copies of the Drawings and Project Manual and one set in electronic format. Additional copies will be furnished upon request at the cost of reproduction.

SC-4.02 Add the following new paragraph(s) immediately after Paragraph 4.02.B:

C. In the preparation of Drawings and Specifications, Engineer relied upon the following reports of explorations and tests of subsurface conditions at the Site:

1. Report dated October 26, 2005, prepared by Extech LLC, Deep River, CT, entitled: "Water Tank Inspection Report for Steel Reservoir #2", consisting of 22 pages. The "technical data" contained in such report upon which Contractor may rely is existing conditions and recommendations made for Reservoir #2.

2. Report dated July 22, 2015, prepared by Inland Potable Services, Inc., Centennial, CO., entitled: "Inspection Report for Marina Coast Water District 2MG Steel On-Grade, Reservoir #2", consisting of 13 pages. The "technical data" contained in such report upon which Contractor may rely is existing conditions and recommendations made for Reservoir #2.

D. In the preparation of Drawings and Specifications, Engineer relied upon the following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:

1. Drawings dated October 19, 1978, of 2MG Water Storage Reservoir, prepared by George S. Nolte and Associates, San Jose, California, consisting of 5 sheets numbered 1 to 5, inclusive. All of the information in such drawings constitutes "technical data" on which Contractor may rely on.

2. Drawings dated November 16, 1971, Marina County Water District 80' X 56' Shell Tank Shop Drawings, prepared by C.A. Betts, Fresno, California, consisting of 14 sheets numbered 1 to 14, inclusive. All of the information in such drawings constitutes "technical data" on which Contractor may rely on.

E. Copies of reports and drawings itemized in SC-4.02.C and SC-4.02.D that are not included with Bidding Documents may be examined at Marina Coast Water District, Engineering Office, 2840 4th Ave, Marina, CA 93933 during regular business hours. These reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely as identified and established above are incorporated therein by reference. Contractor is not entitled to rely upon other information and data utilized by Engineer in the preparation of Drawings and Specifications.

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

A. No reports on drawings related to Hazardous Environmental Conditions are known to Owner or Engineer.

B. Not Used.

SC-5.02 Add the following new paragraphs immediately after Paragraph 5.02.A:

B. All of the insurance shall be provided through companies acceptable to Owner.

C. All insurance shall be provided on policy forms acceptable to the owner (Accord Form 25-S or equivalent), signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative.

D. Insurance is to be placed with insurers having a current AM Best rating of no less than A- or equivalent, unless otherwise agreed to by the parties in writing.

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

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

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

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

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

1. Workers' Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

a. State: Statutory

b. Applicable Federal (e.g., Longshoreman's): Statutory

c. Employer's Liability: \$ 1,000,000

2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

a. General Aggregate \$ 2,000,000

b. Products - Completed Operations Aggregate \$ 1,000,000

c. Personal and Advertising Injury \$ 1,000,000

d. Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000

e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

f. Excess or Umbrella Liability

1) General Aggregate \$ 1,000,000

2) Each Occurrence \$ 1,000,000

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

a. Bodily Injury:
Each Person \$ 1,000,000
Each Accident \$ 1,000,000

b. Property Damage:
Each Accident \$ 1,000,000

c. Combined Single Limit of \$ 1,000,000

4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

a. Bodily Injury:
Each Accident \$ 1,000,000
Annual Aggregate \$ 1,000,000

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

5. Contractors Pollution Liability, which shall include pollution coverage for contractual liability, clean-up costs, abatement, transport and non-owned disposal sites, bodily injury liability, property damage liability and environmental damage arising from pollution conditions caused in performance of operations. Include Asbestos and Lead if part of operations.

a. General Aggregate \$ 2,000,000

b. Each Occurrence \$ 1,000,000

6. In addition to the individuals and entities specified, include as additional insureds, the following:

a. Owner's inspector-TBD

SC-5.06.A. Delete Paragraph 5.06.A in its entirety and insert the following in its place:

A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.

1. This insurance shall:

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

b. in addition to the individuals and entities specified, include as additional insureds, the following:

c. 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 and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

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

e. 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;

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

g. include testing and startup; and

h. 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.

2. Contractor shall be responsible for any deductible or self-insured retention.

3. The policies of insurance required to be purchased and maintained by Contractor in accordance with this Paragraph SC-5.06.A shall comply with the requirements of paragraph 5.06.C of the General Conditions.

SC-5.06.B. Delete Paragraph 5.06.B in its entirety and insert the following in its place:

B. Owner maintains property insurance upon the existing District Property at the Site. This insurance protects the interests of the Owner and its officers, directors, partners, employees, agents and authorized volunteers. Contractor is not a named additional insured and said policy is not subject to the requirements of GC-5.06.C.

SC-5.06.E. Delete Paragraph 5.06.E in its entirety.

SC-5.08 Delete paragraphs 5.08.A and 5.08.B and insert the following in their place:

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Contractor and Owner. Owner, Contractor and other parties of interest shall agree in writing as to the distribution of payments, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. 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. If the Owner, Contractor and other parties of interest cannot reach an agreement within 30-days from the time of commencing negotiations, the settlement shall be handled as a Claim per the Dispute Resolution procedures in SC-16.01.

SC-6.06 Add a new paragraph immediately after Paragraph 6.06.G:

H. Owner or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

SC-6.08 Add the following new paragraph immediately after Paragraph 6.08.A:

SC-6.09 Add the following new paragraphs immediately after Paragraph 6.09.D:

calendar days after completion of each payroll period at no cost to the District.

6.09.E. Public Contract Provisions

1. The Contractor is responsible for his own compliance, and is responsible for all Subcontractors' compliance, with all applicable sections of the California Labor Code regarding the payment of wages, the employment of apprentices, and hours of work, all as set forth in Section 1170 through Section 1815 of that Code. Those requirements are set forth below.

2. Payment of Prevailing Wages

a. Pursuant to Sections 1774 and 1775 of the Labor Code, unless the contract price is under \$1,000.00, the Contractor and any subcontractor under him, shall pay not less than the general prevailing rate of per diem wages, including holiday and overtime pay, to all workmen employed in the execution of this Contract. Failure to so comply will result in a fine of \$25.00 per day per violation, and the obligation to compensate each such employee the difference between the wage actually paid and the prevailing wage applicable to that employee's craft.

b. Pursuant to Section 1773.2 of the California Labor Code, the District has on file at its principal office, copies of the prevailing rate of per diem wages for each craft, and classification or type of workman needed to execute the contract, and a copy shall be available to any interested party upon request.

c. The Contractor shall obtain and post copies of the prevailing per diem wage rates at the job site during the term of this project.

d. Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid each journeyman, apprentice, worker, or subcontractor in connection with the project, and such other information as required by law, and such payroll records shall be certified and made available for inspection and release all in accordance with Labor Code Section 1776 and 8 California Code of Regulations Section 16000 et seq. **All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).** The Contractor shall file with the District certified copies of its and all its subcontractors' payroll records within thirty (30)

e. Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall also be paid to each workman needed to execute such work if such travel and subsistence payments are set forth in the applicable collective bargaining agreements and filed with the Department of Industrial Relations thirty (30) days prior to the call for bids.

f. Unless the Contract amount is under \$30,000 or will be completed in less than twenty (20) days (or if this Contract involves a specialty contractor under \$2,000 or less than 5 days) the Contractor shall comply with Section 1777.5 regarding the employment of registered apprentices upon public works by hiring, and by requiring that all subcontractors hire apprentices at the wage rate and ratio required, if at all, and by requiring the contribution of funds to appreciable crafts or trades as applicable under Section 1777.5.

g. The Contractor shall, as a penalty to the District, forfeit not more than two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Relations for such work or craft in which such worker is employed for any public work done under this contract by the Contractor or by any subcontractor under the Contractor. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor. Labor Code Section 1775.

h. Required California Department of Industrial Relations provisions:

- No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

i. The Contractor certifies that the Contractor and all subcontractors for this public works project have

been registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

j. The District shall not recognize any claim for additional compensation from the Contractor because of the payment by the Contractor of any wage rate in excess of the prevailing rate of per diem wages. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its bid and will not, under any circumstances, be considered as the basis of a claim against the District under this contract.

3. Hours of Labor

a. Pursuant to Sections 1810 through 1815 of the Labor Code, eight hours of labor constitutes a legal day's work, and work performed by employees of the Contractor or any subcontractor in excess of eight hours per day, and forty hours in any one week, shall be compensated at not less than one and one-half times their basic rate of pay. Violation of this condition shall result in a penalty of \$25.00 per day per workman so underpaid.

4. Unidentified Utilities – Costs (Government Code 4215)

a. The District shall be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the construction site, if such utilities are not identified in the plans and specifications for the work. The Contractor shall be compensated for his actual costs of locating, repairing damage not due to his failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the project necessarily idled during such work. If the Contractor discovers utility facilities not identified in the contract plans or specifications, he shall immediately notify the District and the utility in writing. The Contractor shall not be assessed liquidated damages for delay if caused by the failure of the District or the owner of the utility to provide for removal or relocation of such utility facilities. The District shall provide a layout of all main lines and existing service laterals. The Contractor shall exercise due care in verifying the locations provided by the District and shall notify the District of site conditions that differ from those indicated.

5. Dispute Resolution Procedures for Claims of Less Than \$375,000

a. Sections 20104 - 20104.6 of the Public Contract Code set forth required procedures for the parties to resolve claim disputes involving less than \$375,000,

including the presentation of written claims with substantiating documents on or before the date of final payment, requests for additional documentation, time limits for responding to written claims, and requiring a conference to meet and confer; and also relating to filing a claim before suit, and required arbitration provisions in the event of a civil action filed to resolve the claim. All of such procedures, time limits and requirements shall be complied with if such Code sections are applicable to disputed claim.

6. Assignment of Antitrust/Unfair Business Practice Claims

a. Pursuant to Public Contract Code Section 7103, Contractor and any subcontractors supplying goods, services or materials under this contract agree to assign District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract or the subcontract.

6.09.F. Local Hiring for District Public Works

1. Pursuant to Section 2.10 of the Marina Coast Water District Code of Ordinances, Contractor shall make a good faith effort, to include but not limited to requesting the assistance of community resources designated by the District, to hire qualified individuals who are residents of the Monterey Bay area. All such contractors shall strive to hire no less than eighty percent of their employees performing the work from the pool of qualified workers who reside in Monterey, Santa Cruz or San Benito Counties. Only persons who are domiciled in one of these counties at the time of the bid shall be considered "local" for the purpose of this resolution. This requirement also applies to subcontractor employees under such contracts.

2. The good faith local hiring provisions of this chapter shall bind the contractor both with regard to persons hired directly and to all persons hired by the Contractor's subcontractors. The contractor shall include the following in all contracts with subcontractors:

"This contract is for labor for a MCWD public works project. As subcontractor on a District project you are required to comply with all of the provisions of Ordinance 53 Local Hiring. Failure to comply with the local hiring ordinance may subject the subcontractor herein with disqualification from any future MCWD public works contracts."

3. Contractor and subcontractor(s) shall keep an accurate record on a standardized form of good faith efforts made to meet the local hiring goals. Copies of these records shall be provided to the District upon request.

4. Exceptions to the policy may be granted if the District determines that a suitable pool of persons providing specialized skills does not exist locally for a specific public works project. The Contractor must identify those specialized skills to the District in advance of performing the work.

5. Contractor and subcontractor(s) shall keep an accurate record on a standardized form showing the name, place of residence, classification, hours employed, per diem wages and benefits of each person employed by the contractor on specific public works projects. Certified copies of these reports shall be furnished to the Marina Coast Water District upon request.

SC-6.13 Add the following new paragraphs after paragraph 6.13.D:

E. In carrying out his/her work, the Contractor shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include, but shall not be limited to, adequate life protection, and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks; confined space procedures; trenching and shoring; fall protection; and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures.

F. The Contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning work, the Contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The Contractor shall immediately notify the District and the utility owner if he/she disturbs, disconnects, or damages any utility.

G. In accordance with Section 6705 of the California Labor Code, the Contractor shall submit to the District specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the District prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of the California Department of Industrial Relations (Cal/OSHA), the plan shall be prepared by a California registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of this plan in no way relieves the Contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the Contractor shall submit his/her permit with the excavation/trench work safety plan to the District before work begins.

H. Trench Excavation: Approval of Plan for Protection from Caving

1. If the contract involves an estimated expenditure of more than \$25,000, for the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit, for acceptance and approval by the District or its designated engineer, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provision to be made for worker protection from the hazard of caving ground during such excavation, all in accordance with Labor Code Section 6705.

I. Excavations Deeper than Four Feet Involving Hazardous Wastes or Materially Different Site Conditions

1. If the contract involves digging trenches or other excavations that extend deeper than four feet below the surface:

a. The Contractor shall promptly, and before any of the following conditions are disturbed, notify the District, in writing, of any:

(1) Material that the Contractor believes may be material that is hazardous waste as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

(2) Subsurface or latent physical conditions at the site differing from those indicated;

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

b. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, it shall issue a change order under the procedures described in the Agreement.

c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by contract or by law, which pertains to the resolution of disputes and protests between the contracting parties.

SC-6.20 Delete paragraph 6.20.A in its entirety and insert the following in its place:

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 or the failure, neglect or refusal of the Contractor to perform the Work and all obligations under the Contract, 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.

SC-7.01 Related Work at Site – None.

SC-7.04 Add the following new paragraph immediately after paragraph GC-7.03:

SC-7.04 Claims Between Contractors

A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by

any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

SC-9.03 Project Representative Not Used.

SC-11.03.D Delete Paragraph 11.03.D in its entirety and insert the following in its place:

C. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

1. if the Bid price of a particular item of Unit Price Work amounts to 10 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 10 percent from the estimated quantity of such item indicated in the Agreement; and

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

3. if Contractor believes that Contractor has incurred additional expense as a result thereof or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC-16 Dispute Resolution

SC-16.01 Delete Paragraph 16.01.A in its entirety and insert the following in its place:

A. Either Owner or Contractor may request mediation of any Claim submitted to the Engineer for a decision under Paragraph 10.05 before such a 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, except that the American Arbitration Association shall not administer the mediation. The mediation shall be initiated by one party sending a written demand of mediation to the other party. The parties shall agree on an arbitrator and if they are unable to so agree, the then-presiding judge of Monterey County, California Superior Court shall appoint an arbitrator.

SC-16.01 Delete Paragraph 16.01.C in its entirety and insert the following in its place:

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 demand arbitration of the Claim, pursuant to Paragraph SC-16.02, or

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

SC-16.02 Add the following new paragraph immediately after Paragraph 16.01.

SC-16.02 Arbitration

A. All Claims or counterclaims, disputes, or other matters in question between Owner and Contractor arising out of or relating to the Contract Documents or the breach thereof (except for Claims which have been waived by the making or acceptance of final payment as provided by Paragraph 14.09) including but not limited to those not resolved under the provisions of Paragraphs SC-16.01A and 16.01.B will be decided before a single neutral arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that the American Arbitration Association shall not administer the arbitration. The parties shall agree on an arbitrator and if they are unable to so agree, the then-presiding judge of Monterey County, California Superior Court shall appoint an arbitrator. The arbitration shall be subject to the conditions and limitations of this Paragraph SC-16.02. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.

B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the 30 day period specified in Paragraph SC-16.01.C, and in all other cases within a reasonable time after the Claim or counterclaim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim or other dispute or matter in question would be barred by the applicable statute of limitations.

C. No arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or

consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.

D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include: (i) a concise breakdown of the award; (ii) a written explanation of the award specifically citing the Contract Document provisions deemed applicable and relied on in making the award.

E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Controlling Law relating to vacating or modifying an arbitral award.

F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.

SC-17.05 Delete paragraph 17.05.A in its entirety and replace it with the following:

A. This Contract shall be construed and enforced according to the laws of the State of California, and the parties hereby agree that the County of Monterey shall be the proper venue for any dispute arising hereunder.

SECTION 500. NOT USED

SECTION 501. SPECIFICATIONS & PLANS

The Contractor shall perform the work specified herein in accordance with the most current MCWD Standard Specifications and Standard Plans.

In case of conflict between the MCWD Standard Specifications and Standard Plans and these special provisions, the special provisions shall take precedence and be used in lieu of such conflicting portions.

SECTION 502. NOT USED

SECTION 503. NOT USED

SECTION 504. GENERAL CONSTRUCTION

SECTION 504.1 REFERENCED SPECIFICATIONS

The Contractor shall perform the work specified herein in accordance with Marina Coast Water District Standard Specifications and Plans, adopted by the Board of Directors on September 24, 2003, periodic updates that have been approved by the District Engineer and posted on the District web site.

SECTION 504.2 ORDER OF WORK

The District reserves the right to determine, in sequential order of priority, the order of work.

SECTION 504.3 EXISTING CONDITIONS

Existing utilities, structures and natural features, where known, have been indicated at their approximate locations on the Contract Plans. The locations of such features are intended only as an aid and in no way relieves the Contractor of the responsibility of determining and verifying the size and locations of all potential conflicts which might be encountered in the performance of the work, whether indicated on the plans or not.

The Contractor shall restore drainage patterns and facilities to pre-existing conditions.

SECTION 504.4 DUST SUPPRESSION

The Contractor shall implement a dust suppression plan if requested by the District Engineer. If a mechanical broom sweeper is used, it shall be equipped with water nozzles

to minimize dust. At the end of each workday, the Contractor shall clean construction debris from the work area.

Measurement and Payment

The Contractor shall include all costs associated with “Dust Suppression” in the contract unit or lump sum prices for other items of work. The District will not consider any additional compensation.

SECTION 504.5 NOISE CONTROL

The Contractor shall abide by the City of Marina Noise Ordinances and shall protect the public from offensive project related noise by providing adequate sound attenuation enclosures for equipment running throughout the night.

- The maximum allowable noise level at the property line during the hours of construction, no construction, tools or equipment shall produce a decibel level of more than 60 decibels for twenty-five percent of an hour at any receiving property line.

Measurement and Payment

The Contractor shall include all costs associated with “Noise Control” in the contract unit or lump sum prices for other items of work. The District will not consider any additional compensation.

SECTION 504.6 PROTECTION OF PROPERTY & MATERIAL

Description

The Contractor shall contact each property owner having access along project corridor with a District approved letter (submitted to and approved by the District) and shall keep area residents informed of the plan of operation throughout the course of this contract.

The Contractor's attention is called to the proximity of private residences. The Contractor shall conduct operations with due care to avoid upsetting area residents. The Contractor shall work with the District to appease all reasonable requests from area residents. The District Engineer will determine what requests from area residents are reasonable.

The Contractor shall protect the road surface and shall restore said surface to an equivalent or better condition upon completion of all work. The Contractor shall make any interim repairs or maintenance that may be requested by the District Engineer or Inspector during the course of work.

The Contractor shall protect in place or remove and replace all existing utilities and public or private improvements (whether they are specifically noted on the Contract Plans or not) including but not limited to all berms, curbs, gutters, walkways, sidewalks, driveways, trail-ways, storm drains, landscaping materials, landscape irrigation, landscape electrical systems, walls and fences in place. The Contractor shall correct or

replace any damaged utilities or improvements as part of the contract work. No additional compensation will be considered.

The Contractor shall not disturb existing survey monuments or benchmarks. The Contractor shall contact a registered civil engineer or land surveyor to remove or replace monuments. The Contractor shall ensure monument ties be established prior to removal.

Measurement and Payment

The Contractor shall include in the contract unit or lump sum prices for other items of work all costs associated with “Protection of Property and Materials.” The District will not consider any additional compensation.

SECTION 504.7 SAFETY PLAN

Description

In carrying out his/her work, the Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act. The Contractor shall prepare a Safety Plan and shall include in the Safety Plan provisions for the protection of all persons having access, authorized or not, to the work site. Such plan shall be submitted to and accepted by MCWD prior to project.

The Contractor agrees that they are solely responsible for jobsite and worker safety.

Measurement and Payment

The Contractor shall include all costs associated with “Safety Plan” in the contract unit or lump sum prices for other items of work. The District will not consider any additional compensation.

SECTION 505. MOBILIZATION AND SITE WORK

SECTION 505.1 GENERAL DESCRIPTION

Site preparation shall consist of work necessary to prepare the project site for construction improvements. This may include removal of vegetation for site access. The contractor is able to use the current site for staging and storage during the duration of the coating project.

Property and Materials Protection shall extend to facility items on site, roadway/driveway or other access into the site, and other associated materials. The Contractor shall protect Property and Materials during the entire duration of the project.

The Contractor shall provide a minimum of one (1) chemical toilet of suitable type at the construction site and maintain the facilities in a sanitary condition, including cleaning and servicing at regular intervals. Facilities shall not cause a nuisance to the public.

Measurement and Payment

Under this item, the Contractor shall perform site work as described in these Special Provisions.

All costs associated with disposal, demolition and clearing shall be considered as included in the contract unit or lump sum prices for Bid Item 5 "Mobilization/Demobilization". This bid item is limited to a maximum amount of five percent of bid price. No additional compensation will be considered therefore. Payment will be made on a lump sum basis.

SECTION 506. RESERVOIR #2 Tank Recoat Requirements

SECTION 506.1 GENERAL REQUIREMENTS

Scope of Work

The Contractor shall provide all labor, materials, equipment and incidentals required to remove all the existing interior coatings and repaint the reservoir interior shell, rafters, floor, ladder, overflow, ceiling, roof drain piping, and all other miscellaneous steel on the interior of a 2 million gallon, 80 foot interior diameter by 56 foot tall Reservoir #2, with an interior paint system of heavy coal tar enamel coating and a two coat alkyd exterior paint system. The shell to roof seam shall be caulked with Sika 1-A. The reservoir was last coated in 1979 during the original erection. The District will consider the Exterior as an alternate from the base bid. See Alternate Item 1 in the bid documents. The exterior coatings of Reservoir #2 and all associated piping shall be prepared as per this specification and coated with an epoxy urethane system. The exterior of the reservoir shall be abrasive blasted and recoated. Full containment will be required for the exterior surface preparation and coating operations. The District will drain the reservoir. The Contractor is able to use the existing overflow pond for disposal of wastewater while using a filter bag.

The Contractor shall have a current California C-33 license. The Contractor shall submit three projects within the last two years using plural component equipment and NSF-61 100% solids epoxy on the interior of potable water storage tanks. The information shall include Name of project, size of project, name and phone number of owner and Engineer. When the new interior coating has completely cured, the Contractor shall clean and disinfect the reservoir.

After filling the reservoir, the District shall test the reservoir water for bacteriologic and volatile organic contamination, and for aesthetic quality. The District shall not accept the project until the reservoir water meets State Water Resources Control Board, Division of

Drinking Water (DDW) and federal drinking water standards. In addition, the tank will not be accepted until the coating system is free of taste and odor associated with the coating product and does not impart any adverse aesthetic quality to District water.

The interior roof, rafters and shell shall be completely coated, tested, repaired and caulked prior to any operations on the floor of the tank.

The Contractor shall dispose of all wastes from abrasive blasting and any other wastes or debris generated during work. The Contractor shall sample and test wastes as required by applicable regulatory agencies, and as necessary for classification of wastes prior to disposal. The Contractor shall bear all costs for waste sampling, testing, accumulation, transport, and disposal, including the cost for wastes classified as hazardous and non-hazardous.

The Contractor should expect that the entire surface under the existing coatings to be corroded or having mill scale and shall provide for such conditions accordingly, including complete removal of such materials down to bare steel and providing “White Metal Blast Cleaning” (SSPC/SP # 5) to allow for proper adhesion of the interior coating system.

The District shall conduct a 1.5 year anniversary inspection and the Contractor shall provide floor protection, lighting, and scaffolding during the inspection. The Contractor shall be present at the inspection.

When considering the proposed work schedule, the Contractor shall allow four (4) consecutive working days for the District to fill the tank after the coating has cured.

Governing Coating Standards

The following standards (including the most recent update or version) shall govern the work unless specified otherwise in these specifications:

SSPC-Vol.1,	Steel Structures Painting Manual, Good Painting Practice.
SSPC-Vol.2,	Steel Structures Painting Manual, Systems and Specifications.
SSPC-SP 1	Solvent Cleaning
SSPC-SP 2	Hand Tool Cleaning
SSPC-SP 3	Power Tool Cleaning
SSPC-SP 5	White Metal Blast Cleaning
SSPC-SP Guide 11	Stripe Coating
SSPC-SP 7	Brush-Off Blast Cleaning
SSPC-SP 10	Near White Blast Cleaning
SSPC-SP 11	Power Tool Cleaning to Bare Metal
SSPC-AB 1	Mineral and Slag Abrasives
SSPC-PA 1	Shop, Field and Maintenance Painting
SSPS-PA Guide 3	Guide to Safety in Paint Application
SSPS-PA Guide 12	Lighting
SSPC-Guide to Vis 1-89	Visual Standard for Abrasive Blast Cleaned Steel
SSPC-V15 (3-93)	Visual Standard for Power & Hand-Tool Cleaned Steel
AWWA D102-97	Standard for Painting Steel Water-Storage Tanks
AWWA C652	Disinfection of Water Storage Facilities.
ISO-8502-3	Preparation of Steel Substrates (Class 2)
All applicable State and Federal OSHA safety standards.	

Qualifications

1. The Contractor shall provide evidence of regular engagement in application of similar coatings for at least five years prior to commencement of this work. The Contractor shall provide a certification from the manufacture that the Contractor has been certified for the past five years prior to this project in the application of 100% solid epoxies for potable water service.
2. The Contractor shall certify in writing that foremen and workers on-site shall be experienced and knowledgeable in preparation for and application of 100% solids NSF epoxy coatings and plural component application equipment.

Quality Assurance

The Contractor's workmanship shall conform to standards and recommendations of SSPS Vol. 1, especially Chapters 5.1 and 6.

The District may use any testing method deemed necessary by the District Coating Inspector to verify quality of work. The District may, but is not required to, monitor the quality of work pursuant to this section.

The Contractor shall ensure proper materials handling and use, including: all coating materials are labeled and used in accordance with SSPC-PA 1, Paragraphs 5.1.1 thru 5.1.5, except all coating system materials without a stated shelf life shall be delivered and used within six months of the date of manufacture; and certification, from any source, that the coating system materials are still suitable for use beyond the stated shelf life or beyond the six month period specified above will not be accepted. All equipment and materials shall be stored in a secured ventilated container.

The Contractor shall perform the necessary quality assurance in accordance with an approved plan. The Contractor will supply all inspection equipment. The District reserves the right to use their equipment at any time.

The Contractor shall notify the District Engineer in advance (48 hours minimum) of all surface preparation or paint application in order to perform a preliminary examination and provide acceptance of the surface preparation and each coat prior to application of the next coat.

The Coating Inspector shall examine all materials, tools, and equipment to be used in the blasting and coating operations and shall have the authority to direct the Contractor to remove, replace, or repair any materials, tools, or equipment found not to be in conformance with the Contract Documents including the approved shop drawings and manufacturer's recommendations. The Contractor shall be fully responsible for compliance with all safety measures, hazardous and toxic materials regulations, and site security. Observation of or failure to observe any safety efforts of the Contractor by the Inspector shall not relieve the Contractor of this responsibility nor shall any liability transfer from the Contractor to the District or the Inspector. The Contractor shall indemnify, defend, and save harmless the District and the coating Inspector from all liability associated therewith.

The Contractor shall comply with the following conditions in collection and analysis of wastes:

1. All testing of spent abrasive blast media and removed coating materials to classify these wastes as hazardous or non-hazardous shall be performed by a laboratory that complies with and is certified under the Environmental Laboratory Accreditation Program (ELAP) of the California Department of Health Services.
2. Any Laboratory performing analysis shall provide for comparison to TTLC, STLC, TCLP limits, and RCA limits, and to all other applicable regulatory limits. Laboratory shall retain samples at least ninety (90) calendar days after all analyses are complete.
3. The Contractor shall ensure collection of as many representative samples as required by the representative of the disposal facility, but not less than 4 total.
4. The Contractor shall ensure the following: each sample shall have an identifying sample number assigned when the sample is taken; each sample number shall be included on the sampling chain of custody and in all reports, correspondence, and other documentation related to the sample; each sample shall have a sampling chain of custody; and, each chain of custody show the

name and organization of each person having custody of the sample, and also show the sample number, job name and location, time of day and date sample was taken, material sampled, and tests to be performed.

5. The Contractor shall notify the District at least 24 hours prior to sampling collection for the purpose of District verification of samples collected.

Manufacturer's Representative

The Contractor shall, at no cost to the District, provide a qualified technical representative of the coating system manufacturer at the job-site as required by the District to resolve problems related to the coating system or the application of the system.

Delivery, Storage, and Handling

The Contractor shall deliver materials as follows:

1. Delivery of abrasive grit shall be in original moisture-proof bags or airtight bulk containers. Abrasives shall not be reused.
2. Delivery of coating system materials shall be in original, unopened containers with seals unbroken and labels intact. Labels shall identify type of material, color, and batch number. No material shall exceed six months from the original batch manufacturing date.

The Contractor shall store materials as follows:

1. Store materials in a single, approved location.
2. Store coating system materials in enclosed and ventilated structures, and maintain temperature inside the structure within the temperature range recommended by the manufacturer.
3. Keep storage location clean, neat, and free of fire hazards.
4. All operating equipment shall be placed into secondary containment to prevent accidental spills.

The Contractor shall handle materials as follows:

1. Avoid spilling thinners, solvents, paint products or other materials that contain toxic substances. All compressors and operating equipment shall be placed in secondary containment. All sewer or site drains shall be covered.
2. Remove discarded thinners, solvents, and paint products from the job-site daily.

Safety

The Contractor shall comply with all Federal, State, and Local applicable safety regulations and requirements. All scaffolding shall be equipped with interior stairways. No exterior ladders will be allowed.

Existing Interior Coatings

The District assumes present coating system is the original coating system provided at the time of tank erection.

The Contractor shall bear all cost associated with stripping, handling, storing, testing, transport, and disposal of all waste. It shall be the Contractor's responsibility to estimate the quantity and classification of waste associated with work.

Warranty

Anniversary inspection requirements and failure criteria shall be in accordance with AWWA D-102, Section A.11, except as modified herein. The warranty period shall be two years from the final acceptance date for the interior coating system and three years from the final acceptance date for the exterior coating system.

The District will conduct a warranty inspection approximately 1.5 years following final acceptance of the work, including inspection of the interior of the tank. The District will establish the date of the inspection and will notify the Contractor at least thirty (30) calendar days in advance of the inspection.

The Contractor shall furnish ventilation, scaffolding, and lighting equipment as necessary for any warranty inspections, and shall be present for such inspections.

The District will provide an inspection report to the Contractor detailing the number and types of failures observed, the percentage of surface area where failures have occurred, and the names of the persons making the inspections.

The District shall consider any location where coating has delaminated, peeled, blistered, or cracked; and any location where rusting is evident as failure of the coating system. In addition, the District shall consider photographs or reports of the coating imperfections or failures as acceptable evidence of failure.

The Contractor shall be liable for all remedial work including repair of all failures by removing the deteriorated coating, cleaning the surface, and recoating with the same system in accordance with this Section. The District may allow surface preparation of small failures (areas less than 1 sq ft.) by cleaning to bare metal in accordance with appropriate SSPC-SP standards, however, the method of repair is at the sole discretion of the District.

The District will prepare a schedule for remedial work completion, to be no more than thirty (30) calendar days after the submittal of the inspection report to the Contractor. Upon failure of the Contractor to commence remedial work within ten calendar days after the starting date established by the District, the District may at its option, retain another Contractor to perform the remedial work. The Contractor shall be liable for actual cost of all such remedial work plus a 20 percent District administrative cost.

The Contractor shall bear the expense of all warranty inspections of the remedial work required by the District. The Contractor shall disinfect the reservoir after the inspection and repairs.

SECTION 506.2 INTERIOR COATING REMOVAL AND REPLACEMENT

Products for Interior Coating System Materials. The Contractor shall provide the following new interior coating systems consisting of a thin film epoxy on the rafters, roof plates, and down 6" onto the shell (Devoe 233H or Sherwin Williams's tank clad B-62). The floor, shell, ladder, roof supports, and overflow shall be coated with Devoe 234P or Sherwin Williams Sherplate PW 100% solids epoxy recommended for corrosion protection of steel water storage tanks.

The Contractor shall not use or allow to come in contact with any portion of the tank interior, any coating system and/or any thinners or additives which have not been approved and listed by the National Sanitation Foundation, Standard 61 (NSF 61) for use in potable water tanks.

Minimum adhesion value (ASTM D-4541) for the lining system using a type two instrument shall be 800 P.S.I. The interior roof, rafters, and shell shall be completely coated, caulked and tested prior to abrasive blasting on the floor plates.

The Contractor shall provide coating "certified non-lead" (less than 0.06 percent lead by weight in the dried film) as defined in Part 1303 of the Consumer Products Safety Act.

Submittals

The Contractor shall submit all submittals in accordance with District's Standard Specifications.

The Contractor shall provide a separate submittal for each material to be used in the work. At a minimum provide submittals for Abrasive materials, Paint systems, Thinners, and any other additives

The Contractor shall include the following data in the interior coating system submittal:

1. Weight in pounds/gallon – ASTM D-2196
2. % solids by volume – ASTM D-2369
3. Percent solids by weight – ASTM D-2369
4. Air cure dry time to re-coat – ASTM D-1640
5. Minimum adhesion to steel substrate - ASTM D-4541 using a type II instrument (minimum acceptable adhesion shall be 800 p.s.i.)
6. Adhesion between coats – ASTM D-4541
7. Manufacturer's batch numbers and dates of manufacture for materials to be furnished as part of this project.
8. Letter from dehumidification manufacturer for materials to be furnished as part of this project.

The Contractor shall include technical data documenting that the material to be provided complies with these specifications. Submittals will not be accepted until all requirements of this specification have been confirmed.

The Contractor shall include the following data in the manufacturer's recommended handling and installation instructions for the proposed paint system submittal:

1. Storage – including maximum and minimum storage temperatures
2. Surface preparation
3. Coating repair
4. Application equipment
5. Mixing and application of coating system – including a table of minimum and maximum time to re-coat as a function of temperature
6. Curing – including curing time required before holiday testing, and curing time required before immersion as function of temperature and coating thickness. Minimum and maximum re-coat times.
7. Ventilation and Containment System
8. Acceptable temperatures at the time of application.
9. Health and Safety Plan.
10. Fire Safety Plan

The Contractor shall include the following data in the equipment submittal:

1. Details of vacuum system for removing dust and abrasive from abrasive blast cleaned surfaces; and,
2. The manufacturer's latest written operation instructions including recommendations for air filter maintenance and change interval for air compressors used for work.

The Contractor shall include the following data in the report submittal:

1. Actual weight of blast cleaning abrasive used for field abrasive blast cleaning, submitted within 24 hours after blasting is completed.
2. Quantity of coating material used for each coat, submitted within 24 hours after completion of each coat.
3. Name of laboratories proposed to be used to test wastes and tanks water prior to testing any materials.
4. Laboratory test results for representative waste samples prior to removing any waste materials from the job site. At a minimum, the samples shall be tested for total concentrations of the 17 metals identified in Title 22, for comparison to Total Threshold Limit Concentrations (TTLC) values. The California Waste Extraction Test (WET) shall be performed for each analyte of each sample for which the total concentration exceeds 10 times the STLCL value, if any, as specified in Title 22. Toxic Characteristic Leaching Procedure (TCLP) testing shall be performed for each analyte of each sample for which the total concentration exceeds 20 times the TCLP values, if any, specified in the Federal Resource Conservation and Recovery Act. Reactivity, corrosivity, and Ignitability testing shall be performed as required by Title 22 and/or the District or representative of the disposal facility.
5. Receipts from disposal site for all wastes. Receipts shall identify disposed material and source, show quantity of disposed material in tons or cubic yards, and show method used for final disposition as buried, incinerated, and chemically treated and/or other means.
6. Quantity of thinner used for each coat and total amount used.

The Contractor shall include the following data in the disposal plan submittal:

1. Certification that the materials disposal plan complies with all applicable requirements of: the Federal Resource Conservation and Recovery Act; Title 22 and Title 26 of the California Administrative Code; and other applicable regulations of local, state and federal agencies having jurisdiction over the disposal of spent abrasive blast media, removed coating materials, and other waste, whether hazardous or non-hazardous.
2. The name and Environmental Laboratory Accreditation Program Certificate number of laboratory that will sample and test spent abrasive blast media and removed coating materials. Include statement of the laboratory's certified testing areas and analyses that the laboratory is qualified to perform.
3. Written permission to dispose of material from disposal site representative. Include name, address, and telephone number of disposal site and of representative.
4. The District shall provide written acceptance of the disposal plan prior to disposal of any wastes.

Abrasives

The Contractor shall use abrasive grit for field blast cleaning conforming to the following:

- Produce a surface profile of 3.5 to 4.5 mils (100% solids epoxy) for the floor, shell, roof supports, ladder, and overflow
- Produce a surface profile of 1.5 to 2.5 mils (Thin film epoxy) for the roof plates, rafters and down onto the shell 1 foot.
- New, clean and free of contaminants, and containing no hazardous materials.
- Certified by California Air Resources Board, Executive Order G-565.
- Conform to all applicable requirements of the Monterey Bay Air Resources District.
- Kleen Blast is approved. No sand abrasives are allowed.

Quality Control

The Contractor shall provide adequate lighting, without shadows, during all phases of work to insure that work is performed as specified and that the entire work area is illuminated.

The Contractor shall provide ground supported scaffolding and lighting, as determined by the Inspector, to facilitate visual and instrument inspection by the Inspector of each phase of the work and of the completed work, as so placed as directed to minimize glare and shadows. Work will be rejected if proper lighting is not achieved for a proper inspection. All scaffolding shall be equipped with stairways, no exterior ladders.

The Contractor shall provide personnel to move scaffolding and furnish other assistance to District Inspectors as required.

The District Coating Inspector will examine surfaces after abrasive blast cleaning to verify that all deposits of contaminants have been removed as per surface clean as per

ISO 8502 (Class 2). The Contractor shall blow down, and vacuum all surfaces prior to District inspection. Tank floors shall be vacuumed.

The Contractor shall verify at a minimum of two times daily that air supply is free of oil and moisture contamination. The Contractor shall use effective oil and water separators in all main compressor airlines and shall be placed as close as practicable to the equipment. Prior to using compressed air, the Contractor shall test the quality of air downstream of the separators at suitable outlets by blowing the air on clean white blotter for 2 minutes to check for any contamination, oil, or moisture.

The Contractor shall perform the following daily: measure air temperature, humidity, relative humidity, and metal surface temperature, and determine dew point and relative humidity prior to abrasive blasting or painting; provide portable temperature / humidity recorders to provide continuous permanent hard copy of the tank conditions; and, repeat measurements and determination of dew point as often as the District Inspector deems necessary but not less often than every four hours at the start of preparation operations and run constantly until final cure.

The Contractor shall maintain a written record of measurements and dew points, noting the time that measurements were taken. Contractor shall keep such records on-site, and make records available to District Inspector on request.

The Contractor shall furnish 1 roll of Testex tape 1.5 to 4.5 mils X-course prior to the start of abrasive blasting. The District Coating Inspector may evaluate surface preparation using field abrasive blasting standards, and Testex tape. Evaluation may include inspection of blasted surfaces for dust and abrasive residue, using clear adhesive coated tape. Evaluation will be made immediately prior to coating application.

The Contractor shall verify cleanliness of all spray application equipment prior to, or no later than, time of mixing coating material.

The Contractor shall measure wet film thickness during coating application of coating to ensure adequate coating thickness, taking at least one measurement for each 100 square feet of application area.

The Contractor shall measure dry film thickness after each coat using a non-destructive magnetic dry film thickness gauges, as follows:

- The District Coating Inspector may, but is not required to, also measure coating thickness, at random locations, after each coat. SSPC –PA 2 (Level 1) is only to be used for the calibration of dry film thickness gauges. This is a minimum maximum dry film thickness specification. Dry film thickness readings will not be averaged. All inspection equipment shall be supplied by the Contractor. All equipment shall have current calibration certificates. The District reserves the right to use their own equipment at any time.
- The District Coating Inspector will evaluate cleanliness of coated surface immediately prior to application of a subsequent coat.

The Contractor shall test all coated surfaces for pinholes and holidays after application of the final coat in accordance with the following:

1. Perform test in presence of the District Coating Inspector.
2. Perform test after coating has cured as recommended by the manufacturer.
3. Use an appropriate detector, such as an Elocometer #236 or as approved by the District representative.
4. Re-test after coating repairs.
5. The District may hire a third party inspector to inspect Contractor's work, but the ultimate responsibility for the quality of the Contractor's work and the performance of contractual obligations remains with the Contractor.

Limiting Environmental Conditions

The Contractor shall not abrasive blast when air temperature is less than 5°F above dew point.

The Contractor shall apply coatings only when conditions are within the limits prescribed by the manufacturer and shall not apply coatings when the following conditions exist:

Metal temperature is less than 60°F.

Relative humidity is greater than 45 percent.

Dehumidification

The Contractor shall provide dehumidification (D/H) for the interior and exterior as required to establish and maintain the specified temperature and relative humidity inside the tank. The Contractor shall complete any blasting, coating and testing operations within the duration of time as specified in Section 00520, AGREEMENT. The District shall not provide a time extension for weather delay. The Contractor shall bear all cost and liability for work resulting from dehumidification equipment failure, breakdown, power failure, or down time.

The Contractor shall submit a letter from the dehumidification manufacture that the equipment has been properly sized for this project prior to any abrasive blasting operations.

The Contractor shall provide dehumidification continuously from start of white metal (SP #5) abrasive blasting, until a minimum of three (3) days after application of final coat and all repairs are completed, or for a longer period as recommended by the coating system's manufacturer. The D/H system shall be used on the exterior abrasive blast cleaning and recoating.

The Contractor shall provide dehumidification equipment consisting of a solid desiccant (not liquid, granular, or loose lithium chloride) design having a single rotary desiccant bed capable of continuous operation, fully automatic with drip-proof electrical controller. Air heaters alone are not acceptable as dehumidification units.

The Contractor shall ensure that relative humidity of processed air from dehumidification unit not exceed forty five percent.

The Contractor shall ensure dehumidification equipment provides a minimum of two complete air changes inside the tank every sixty minutes.

The Contractor shall ensure areas adjacent to the surface that is to be blasted and coated are not exposed to a relative humidity greater than forty-five percent at any time during blasting, cleaning, coating, or curing.

The Contractor shall ensure that during blast cleaning and coating, and for 96 hours after final coat and all repairs are completed, dehumidification units maintain an air temperature of 60°F minimum inside the tank.

The Contractor shall ensure dehumidification equipment is placed as close to tank manhole as possible.

The Contractor shall ensure cleaning of dehumidification filters prior to start of dehumidification and weekly cleaning thereafter.

The Contractor shall ensure dehumidification tubing is maintained as follows:

- Mechanically connected and sealed with duct tape at joints.
- Extended to the center of the tank and attached to a diffuser that will distribute air equally throughout tank.
- Have no dust or other foreign matter inside tubing.

The Contractor shall provide and maintain 24-hour strip chart recorder for humidity and temperature and place humidity and temperature measuring devices inside tank at the start of abrasive blasting operations.

Preparation

The Contractor shall prepare surfaces to be coated in accordance with the coating manufacturer's instructions but not less than specified herein.

The Contractor shall clean surfaces including: removal of all visible oil, grease, dirt, welding residue, and other contaminants from areas to be coated (SSPC/Sp#1); inspection using a black light to locate oil and grease; and removal of slag and weld metal accumulation and splatters by chipping or grinding as required in NACE SPO-178.

The Contractor shall provide blast cleaning including: removal of existing coating, under film corrosion, corrosion, and other corrosion products from all areas to be coated; and, preparation of all surfaces to be coated by abrasive blast cleaning to SSPC-SP 5 white metal with a surface profile of 3.5 to 4.5 mils for the 100% solids epoxy and 1.5 to 2.5 mils for the thin film epoxy.

The Contractor shall ensure complete abrasive blast cleaning of metal prior to application of coating system. The Contractor will provide a hold back of 5" into the existing coating.

The Contractor shall not reuse abrasive blast media unless the media is specifically designed for reuse. If steel abrasive is used the working mixture shall be a minimum of 75% grit and 25% shot. No automatic blast units shall be allowed on the exterior roof. The Contractor shall be fully aware of the different required anchor profiles that are required for different products.

The Contractor shall ensure maintenance of abrasive blasting equipment including:

- Installation of an oil moisture separator in the airline between compressor and blast machine.
- Installation of an air cooler in the airline between the compressor and the oil and moisture separator.
- Use of venturi nozzle.

The Contractor shall ensure all surfaces to be blast cleaned are electrically grounded during blast cleaning. All air and blast lines will have cable whip checks installed.

The Contractor shall provide exhaust air dust collectors to prevent discharge of dust to outside air. No dust socks are allowed.

The Contractor shall mask-off and protect all exposed machined metal surfaces, plastic, and other surfaces not to be painted or that may be damaged by abrasive blasting or tying into coating systems.

The Contractor shall remove all dust and abrasive from freshly blasted surfaces by use of a District approved vacuum system. When the Contractor is painting the roof plates, rafters, knuckle, shell and roof support there shall be no more than 1" of remaining grit on the floor during coating application.

The Contractor shall dispose of abrasive blast media and other waste materials off-site and in accordance with approved material disposal plan, and discard material directly from tank to a portable container and remove container from site after approval from the District. The Contractor shall ensure media is not placed on ground or other intermediate location. No abrasives shall be reused at any time.

Application

The Contractor shall adhere to general application requirements as follows:

1. Mix and apply all coatings in accordance with the manufacturer's recommendations and instructions, the applicable requirements of SSPC-PA 1, and as specified herein.
2. Obtain Inspector's evaluation and approval of steel surface preparation immediately prior to application of first coat.
3. Obtain Inspector's evaluation and approval of cleanliness of previous coat immediately prior to application of a subsequent coat.
4. Contractor shall provide ratio testing at the beginning of each application to inspector to ensure proper mixing of epoxy material.

5. Completely coat all surfaces above shell prior to coating shell. The floor will be abrasive blasted and coated after the shell, roof, roof supports and rafters are completely caulked, tested and repaired.
6. For each portion of the tank-shell, roof, and floor, complete application.
7. Apply coatings by plural component spray except:
 - Areas of less than 2 square inches may be brushed, or the roof and rafters. Required brush striping of edges, welds, nuts, bolts, rafter edges, and roof plate edges. The thin film stripe coat will be applied as a totally independent coat by brush and allowed to dry prior to application of the finish coat. The stripe coat will be the same as the system being applied. No other products shall be allowed for stripe coats.
8. Apply coatings at a temperature recommended by manufacturer. Prior to mixing, coating materials shall be not less than 90°F. Use explosion-proof inline heaters, as necessary.
9. Scaffolding or other support system shall be free of abrasive blast media, dirt, and other foreign matter. The Contractor shall be fully aware that most 100% epoxies can produce amine blush which must be removed prior to over coating and disinfection.
10. Finish coat shall be uniform in color and gloss over the entire surface. Areas shall be masked off to prevent over spray on newly applied coating. Finish coat shall be smooth to touch with no sags, runs, over-spray, cracks, pinholes or other surface defects. When coating is applied previously coated area will be masked off to prevent overspray onto newly painted surfaces.
11. Coating should not be applied closer than 6 inches from an unprepared surface.
12. The Contractor shall apply an totally independent brush coat and allowed to dry to all welds, plate edges, rafter edges, nuts, bolts, and hard to reach areas prior to application of the finish coat

The Contractor shall provide color as follows (Thin Film Epoxy / Devoe/233H or Sherwin Williams Tank Clad):

1. First coat: Buff
2. Second coat: White

The Contractor shall provide color as follows: (Thick Film Epoxy/ Devoe 234P or Sherwin Williams Sherplate PW)

1. White

The Contractor shall provide a Dry Film Thickness (DFT) as follows (Thin Film Epoxy):

-
- First Coat: 8.0 mils minimum to 10.0 mils maximum
-
- Finish Coat: 8.0 mils minimum to 10.0 mils maximum
- Minimum total DFT (First & Final coats): 16.0 mils
- Maximum total DFT (First & Final coats): 20.0 mils

The Contractor shall provide a Dry Film Thickness (DFT) as follows (Thick Film Epoxy):

- First Coat: 25.0 mils minimum to 30.0 mils maximum
- Minimum total DFT (All coats): 25.0 mils
- Maximum total DFT (All coats): 30.0 mils

The Contractor shall remove areas of paint in excess of allowable mils specified.

The Contractor shall provide additional coats to achieve specified minimum dry film thickness.

The Contractor shall provide application equipment as follows:

- Airless Spray pumps in compliance with manufacturer's requirements, having an anti-freeze device and fluid filter.
- Use fluid tip size recommended by manufacturer.
- Use clean fluid lines not previously used to apply zinc-rich or water-based coating materials.
- Clean equipment using only products recommended by the coating manufacturer.
- Barcol hardness testing is required eight hours after each application of the 100% solids epoxy
- Blow lines to remove all thinners prior to painting.
- Each application a sample shall be sprayed onto plastic and marked with the date and time of application including the batch number. This sample shall be retained to be given to the project engineer.
- Ratio checks will be performed prior to each application in new clean measured beakers. All plural component pump gauges shall be in working order prior to any application, if gauges are not working they shall be immediately replaced. All gauges shall be in the zero position when pump is off. If the pump error alarm goes off the Contractor shall immediately shutdown and repair the pump.

The Contractor shall provide coating repairs as follows:

- Touch-up or refinish all chipped, abraded, or otherwise unsatisfactory portions of the work in accordance with the manufacturer's recommendations. The Contractor should be fully aware that high solids epoxies can amine blush.
- Re-coating or touch-up of areas that have cured beyond the maximum time recommended by the manufacturer require the following special preparation:
 - Sweep blast area and 3-inches into the surrounding area. Sweep blast under low pressure to uniformly abrade surface and feather edges. Feather edges by sanding or other means acceptable to the Inspector.
 - Remove abrasive blast residue from blasted area with special attention to marginal areas of intact coating.
 - All repairs will be masked off.
 - Clean area with a bond solvent recommend by the manufacturer.

Interior Curing and Cleaning

The Contractor shall ensure curing of all coatings by forced heated air ventilation for a minimum of 72 (ventilating) hours at seventy degrees, or longer if recommended by the manufacturer after coating application and repairs are completed. Curing shall include:

- Providing ventilation at a rate of at least one complete air change every four hours.
- Equipment shall have a time recorder that provides a cumulative record of operating time.
- Deliver air from ventilating fan to center of tank through continuous flexible duct that is not reduced in area from the fan outlet.

Prior to re-installation of roof vent covers removed during forced air ventilation, the Contractor shall ensure cleaning as follows:

- Clean dust and abrasive-blasting residue from the roof ventilation screens and top of rafter lips.
- District shall flush the inlet piping prior to cleaning operations. Contractor shall thoroughly wash down with water all interior surfaces, including but not limited to, roof, rafters, walls, floor, piping and supports. All amine blush must be removed prior to putting the reservoir into service.
- The Contractor shall steam clean surfaces where necessary.

Shell to Roof Junction Gap and Rafter Caulking

Prior to finish coat is cured (finger nail depression test), the Contractor shall completely fill and seal the shell to roof juncture gap, rafters voids and around the entryways and the floor roof pedestals with Sikaflex –1A caulking or approved substitute to provide a tightly adherent, smooth and continuous seam of caulk. This application may be performed prior to the application of epoxy finish coat or as directed by the manufacturer.

Manway Gasket, Vent Screens and Cathodic Protection Replacement

The Contractor shall supply new manway gaskets for tank manways. The vent screens shall be replaced with new vent screens as per AWWA D-100.

Tank Disinfection

Upon complete curing, the Contractor shall submit in writing to the District certification that the coating is cured and ready to be placed into service for disinfection and testing. Tank cleaning and disinfection shall not commence without written certification. All amine blush must be removed prior to disinfection.

After all other work has been completed, the Contractor shall ensure that the interior of the tank is thoroughly cleaned and disinfected in accordance with the most current edition of AWWA C652, Disinfection of Water Storage Facilities. The Contractor shall ensure the tank is disinfected in accordance with Chlorination Method 3. The District will assist the Contractor in filling the tank and the Contractor shall allow four (4) consecutive working days for the owner to fill the tank.

The Contractor shall furnish all cleaning and disinfection materials and all equipment and labor necessary for the cleaning and disinfecting operations.

After the first 24 hours have elapsed once the tank is full, the District will take a sample of the water to be used for bacteriological contaminants. If the results of this test are negative, the tank will be considered satisfactorily disinfected. If the results are positive, the tank shall be drawn down to that depth that will permit the addition of sodium hypochlorite to a final concentration of 10-mg/L. This depth will be determined upon an evaluation of the chlorine residual provided for in this Section of these Project Special Provisions.

The Contractor shall ensure that any water used for cleaning and disinfecting the tank, is discharged in a manner acceptable to the District and the appropriate water pollution control agency. The Contractor shall ensure all water discharged is de-chlorinated.

Soak Period & Testing For Volatile Organic Compounds

The Contractor shall ensure that water in the tank is allowed to soak for five (5) days after the tank has been filled to the over-flow level and disinfected.

After the five-day soak period the District will sample and submit a single sample to a certified laboratory to test the water for presence of organic chemical contaminants (e.g. TCE, PCE, etc.) possibly having leached from the new paint system. The sample is to be tested in accordance with EPA Method 524.2. The water sample will be collected by the District in the presence of the Contractor and should be a true representation of the water in the tank at the time.

The Contractor shall be liable for all cost associated with re-testing water if tank water draining and refilling is necessary.

The District Engineer shall evaluate and determine acceptability of the aesthetic quality of the water as a condition of final acceptance of the work. Constituent levels found from sample results which are at or below regulated maximum contaminant levels specified by state and federal standards shall not be the sole basis for tank acceptance.

The District Engineer may reject all work or a portion thereof based on any adverse taste or odor detected or other conditions affecting the aesthetic quality of the water.

Disposal of Existing Coatings and Spent Abrasive Blast Media

The Contractor shall dispose of spent abrasive blast media and removed coating materials in accordance with a District approved disposal plan.

The Contractor shall coordinate and pay all costs for sampling and testing of spent abrasive blast media and removed coating materials in order to document waste class. Minimum sampling and testing requirements are listed previously in this Section.

Prior to removal of hazardous wastes off-site, the Contractor shall allow adequate time for District to review laboratory test results, as well as the time required to obtain a Hazardous Waste Generator's U.S. EPA ID Number, if required the District will provide

the Contractor with written notice to dispose of all or a portion of the spent abrasive blast media and/or removal coating materials as hazardous waste, if so determined by the District that such disposal is required.

The Contractor shall be responsible for all costs associated with accumulating, transporting, and disposing of spent abrasive blast media and removed coating materials.

Clean-Up

Upon completion of the work, the Contractor shall make a detailed inspection of all work.

The Contractor shall be solely responsible for all paint over-spray or fugitive dust fallout claims.

The Contractor shall remove all spattering, spits, and blemishes.

Upon completion, of work, the Contractor shall remove all staging, tarps, scaffolding, and containers from the site, including but not limited to: paint and thinner containers and excess paint and thinner (to be disposed of in conformance to all current regulations); paint spots removed and the entire job site cleaned; all damage to surfaces resulting from the work from this section to be cleaned, repaired or refinished to the complete satisfaction of the District. All clean up shall be completed within seven (7) calendar days starting at the last day of holiday testing of the tank. The Contractor shall allow adequate time for District for review of laboratory test results, as well as the time required to obtain a Hazardous Waste Generator's U.S. EPA ID Number if required.

The District will provide the Contractor with written notice to dispose of all or a portion of the spent abrasive blast media and/or removed coating materials, as required.

The Contractor shall bear all costs associated with site clean up.

Measurement and Payment

Bid Item 1: Preparation and Painting of Tank Interior including dehumidification equipment and sound blankets:

Under this item, the Contractor shall remove all existing coatings from the inside of the tank and abrasive blast interior surfaces. The Contractor shall then recoat the tank interior using the system specified. The Contractor shall also provide the necessary environmental controls (dehumidification, heaters, enclosures, etc) and arrange for the VOC testing, disinfecting of the tank, and arrange for bacteriological testing.

Note that items discussed in this section related to welding are discussed in later sections in regards to measurement and payment.

Payment will be made on a lump sum basis.

SECTION 506.3 EXTERIOR COATING RESERVOIR #2 TANK

The Contractor shall properly prepare all exterior surfaces of the water storage tank including, shell, roof, ladders, structural supports, bracing, piping, and appurtenances. The Contractor shall apply the coating system as indicated herein and in a manner prescribed by these specifications and the manufacturers printed application instructions. The interior coating system must be completed prior to coating work on the exterior.

Contractor shall remove all the existing coatings by abrasive blasting to SSPC/SP#10. The exterior shall be in full containment. The drains shall have filter fabric installed to prevent any cleaning debris from entering the site drainage system. The existing caulking shall be completely removed at the concrete interface with the base of the tank. The existing caulking shall be removed and replaced with SIKA-2C. Note Measurement and Payment for caulking work is discussed in SECTION 508.

At least two days prior to start of work, the Contractor shall arrange with the District for a pre-preparation conference at the job site to ensure that all parties involved are familiar with the entire project, including all specifications, safety codes, and job site conditions.

Materials

The District provides the following protective coatings manufacturer, as specified herein, as a standard of quality, or equal. All finish colors shall be colored at the factory as a dry grind only, no quick colors shall be accepted.

Sherwin Williams – International Devco

Reference Standards

The Contractor shall comply with the requirements of the Steel Structures Painting Council Painting Manual, Volume 1 and 2, Good Painting Practices, including the National Association of Corrosion Engineers, American Society of Testing and Materials, and American Water Works Association D-102-06, for application and surface preparation, and all applicable OSHA and safety standards.

The Contractor shall consult the District Engineer regarding any situations not covered by the reference standards or this specification; however, it is the Contractor, not the District, that is ultimately responsible for proper exterior coating application.

Submittals

The Contractor shall submit all submittals in accordance with District's Standard Specifications.

The Contractor shall submit the manufacturers latest written product data sheets on each product to be used, and current manufacturer's safety data sheets (M.S.D.S.) on all materials to be used in the surface and coating operations including abrasives, thinners, cleaning fluids, and solvents.

The Contractor shall submit, for the District Engineer's acceptance, a written program detailing measures for full containment, and equipment and dust and over-spray control.

The Contractor shall maintain on the job site at all times M.S.D.S. and product data sheets.

The Contractor shall include the following data in the manufacturer's recommended handling and installation instructions for the proposed paint system submittal:

- Storage – including maximum and minimum storage temperatures
- Surface preparation
- Coating repair
- Application equipment
- Mixing and application of coating system – including a table of minimum and maximum time to re-coat as a function of temperature
- Curing – Minimum and maximum re-coat times.
- Full Containment Plan and equipment and dust collection system.
- Acceptable temperatures at the time of application
- Thinner Addition

The Contractor shall include the following data in the report submittal:

1. Actual weight of blast cleaning abrasive used for field abrasive blast cleaning, submitted within 24 hours after blasting is completed.
2. Quantity of coating material used for each coat, submitted within 24 hours after completion of each coat.
3. Name of laboratories proposed to be used to test wastes prior to testing any materials.

Laboratory test results for representative waste samples prior to removing any waste materials from the job site. At a minimum, the samples shall be tested for total concentrations of the 17 metals identified in Title 22, for comparison to Total Threshold Limit Concentrations (TTLC) values. The California Waste Extraction Test (WET) shall be performed for each analyte of each sample for which the total concentration exceeds 10 times the STLC value, if any, as specified in Title 22. Characteristic Leaching Procedure (TCLP) testing shall be performed for each analyte of each sample for which the total concentration exceeds 20 times the TCLP values, if any, specified in the Federal Resource Conservation and Recovery Act. Reactivity, Corrosively, and Ignitability testing shall be performed as required by Title 22 and/or the District or representative of the disposal facility.

4. Receipts from disposal site for all wastes.
Receipts shall identify disposed material and source, show quantity of disposed material in tons or cubic yards, and show method used for final disposition as buried, incinerated, chemically treated and/or other means.
5. Quantity of thinner used for each coat and total amount used.

The Contractor shall include the following data in the disposal plan submittal:

- Certification that the materials disposal plan complies with all applicable requirements of: the Federal Resource Conservation and Recovery Act; Title 22 and Title 26 of the California Administrative Code; and other applicable regulations of local, state and federal agencies having jurisdiction over the disposal of spent abrasive blast media, removed coating materials, and other waste, whether hazardous or non-hazardous.
- The name and Environmental Laboratory Accreditation Program Certificate number of laboratory that will sample and test spent abrasive blast media and removed coating materials. Include statement of the laboratory's certified testing areas and analyses that the laboratory is qualified to perform.
- Written permission to dispose of material from disposal site representative. Include name, address, and telephone number of disposal site and of representative.
- Ambient Air Quality Program. The Contractor shall prepare a written program for air monitoring at the project site to confirm that dust emissions do not exceed the specified criteria. The following shall be addressed:
 - The Contractor shall monitor emissions of particulate matter equal to or greater than 10 micrometers in aerodynamic size (PM 10) in accordance with 40 CFR 50. The type and number of samplers to be used, their proposed locations, provisions for background monitoring, and the duration of testing shall be provided.
 - Observations that will be made to verify that the visible emissions criteria of this specification are not exceeded in accordance with 40 CFR 60.

General sound levels for this project shall be those that will not affect routine facility, or neighborhood activities. Whenever levels are objectionable, they shall be adjusted as directed by the Engineer.

The District shall provide written acceptance of the disposal plan prior to disposal of any wastes.

Delivery

The Contractor shall assure that all materials delivered to the job site are in their original unopened containers.

The Contractor shall not use any product older than twelve months from the manufacturer's factory batch date as listed on the container.

Storage

The Contractor shall submit, for the District Engineer's acceptance, a specified material storage area and store all materials in the approved location.

The Contractor shall maintain material storage areas in a clean condition, free of solvent rags, and wastepaper. The Contractor shall remove debris and other fire hazards and dispose of such items in accordance with all the applicable regulations at the end of each work day.

Safety

This project is subject to all applicable Safety and Health regulations and Industry Safety Standards.

The Contractor shall submit a notarized letter signed by a principal officer certifying the Contractor fully complies with the California Code of Safety Regulations and the Federal Code of Regulations pertaining to the scope of this project, but not limited to the following; as well as any other applicable orders, codes, ordinances, or laws, State, Federal, and Local. (GISO-General Industry Safety Orders, CSO-Construction Safety Orders, CFR-Code of Federal Regulations).

Title	Code Regulation	Section
Illness Injury Prevention Program	CSO/GISO	1508-3203
Hazard Communication	GISO	5194
Lead	CFR	1926.62
Safety Instructions for Employees	CSO	1510
Dust, Fumes, Mist, Vapors, and Gases	CSO	1528
Metal Scaffolding	CSO	1644
General Industry Standards	29 CFR	1910.102 5
Respiratory Protection	CSO/GISO	1531-5144

Hazardous Substances

The Contractor shall exercise extreme care when handling or disposing of materials or substances listed in Section 8-339 of Division 4 (California Code of Occupational Safety and Health Regulations) of Title 26 (Toxics) of the California Code of Regulations, or as evidenced by the M.S.D.S.

The Contractor shall immediately notify the District Engineer of any spill of material that is a hazardous substance in accordance with the appropriate jurisdiction.

The existing tank exterior coating has been analyzed. Results are included in Appendix A-2

Dust/Over-Spray Control

The Contractor shall provide full containment for the coating and surface preparation operations to prevent damage or nuisance to property or persons.

The Contractor shall be solely responsible for all claims resulting from dust and over-spray control from the coating and surface preparation operations or any damage or nuisance to property or persons.

Workmanship

The Contractor shall provide written evidence to the District Engineer that workers furnished have performed quality work and possess experience and knowledge in surface preparation and the application of high performance industrial coatings.

The Contractor shall provide written evidence to the District Engineer that the Contractor has a minimum of five years experience in the painting of water storage tanks and a current list of water tank painting projects for the past five years (five minimum), as per section 00418 LIST OF PROJECT REFERENCES.

The Contractor shall conform to the standards of craftsmanship as discussed in the Steel Structures Painting Council's Painting Manual, Volume 1, Good Painting Practice. These techniques include, but are not limited to multiple passes of the spray gun with each pass overlapped 50%, and "cross hatching" successive coats of paint. A stripe (Brush coat) is required on all welds prior to the finish coat.

Equipment

The Contractor shall use properly functioning equipment capable of performing the task required herein.

Surface Preparation

The Contractor shall prepare all exterior surfaces to be abrasive blasted as per SSPC-SP 10 by water blasting, hand and power tool cleaning.

The Contractor shall schedule cleaning, blasting and painting so that detrimental amounts of dust or other contaminants do not fall on wet, or newly painted surfaces. Surfaces not to be painted shall be suitably protected from the effects of cleaning and painting operations. Prior to priming, surfaces shall be cleaned by a combination of blowing with clean dry air with a 1/2" hose with a shut off device, vacuuming, brooming, or as directed by the District Engineer.

Dehumidification

The Contractor shall refer to the requirements as outlined in "Section 506.2 Interior Coating Repair –Dehumidification," of these special provisions for instruction regarding establishing and maintaining the specified temperature and relative humidity outside the tank.

Degree of Cleanliness

The Contractor shall abrasive blast the exterior of the reservoir and ladders, handrails and all associated piping to to SSPC/Sp #10 near white metal. The anchor profile shall be sharp and angular. The anchor profile will be 1.5 mils minimum and 3.0 mils maximum.

The exterior shall be in full containment as per SSPC/Technology Guide 6, Class 2. The dust collection shall be abag house type as described in SSPC/Technology Guide 16. No dust socks are allowed.

Control Building Equipment Protection & Pump Station Operation

Control Building must remain operational at all times during surface preparation and painting operations. Contractor shall use care to contain any dust or water inside control building to protect pump motors, control panels and cabinets and any other sensitive equipment inside the building. Contractor shall construct containment system inside control building for managing any dust or water. Contractor shall be responsible for any damage that occurs from failure of containment system.

Air Compressors

The Contractor shall remove from the work site air compressors that are undersized or will not supply sufficient air for the coating operations. All operating equipment shall be placed into secondary containment to prevent accidental spills. All air compressors shall have whip checks on pressurized hoses.

The Contractor shall check air stream a minimum of twice daily for moisture and oil contamination as per ASTM D-4258. All equipment shall have moisture and oil separators.

Coating Application/ Environmental Conditions

The Contractor shall not apply coating when the metal temperature is less than five degrees above the dew point. Also, the metal temperature must be on the rise for a minimum of six hours prior to applying a new coat.

The Contractor shall measure relative humidity and dew point using a sling psychrometer in conjunction with U.S. Department of Commerce Weather Bureau Psychrometric Tables.

Application Procedures

The Contractor shall apply all coatings in accordance with the manufacturer's latest written recommendations and the best state of the art techniques that will result in a finish that is free of runs, sags, pinholes, dry spray, orange peel, or de-laminations. All coatings shall be equal in color and appearance. The exterior welds shall be stripe coated with the epoxy primer prior to the application of the urethane finish coat.

The Contractor shall bring all materials to the job site in the original factory sealed containers. The Contractor shall not use any material until the Engineer has inspected the contents and obtained the information from the containers or labels. All materials shall be mixed as full kits only. Materials shall only be thinned with the manufacturer's

recommended thinners, and will be thinned as required to adjust for viscosity for temperature variations, proper atomization and flow. Thinning shall not exceed the Local, State, or Federal V.O.C. limits. Any catalyzed material remaining at the end of each day shall be properly discarded. The entire primer application shall be complete before the finish coat is applied.

In order to prevent the degradation or contamination of cleaned surfaces, the first coat of paint shall be applied immediately after the surfaces have been cleaned and approved by the Engineer. Succeeding coats shall be applied before contamination of the under surface occurs.

Curing

Each coat of paint shall be allowed to either dry or cure for the amount of time recommended by the coating manufacturer before successive coats of paint are applied.

All successive coats of paint shall be applied within the re-coat threshold time as recommended by the manufacturer.

Color Scheme

The exterior top coat color shall be as per the District Engineer's instructions. Tank top coat color shall match the Devthane 378 'Clover' product.

The Contractor shall submit color chips at least 3-inches by 5-inches in dimension within fifteen (15) days prior to the start of application of the exterior top coat. The Contractor shall order final coating materials only after receiving written approval from the District Engineer. Failure to obtain the District's approval prior to ordering shall not be cause for additional compensation.

Exterior Surfaces- Coating Systems

The Contractor shall full prime all exterior surfaces including, shell, roof, ladders, railings, and all associated piping.

The following coating system is approved by the District.

DEVOE COATINGS, INC.

Full Prime: Bar-Rust #231 at 4.0 minimum 6.0 maximum mils DFT (Dry Film Thickness)

Full Intermediate Coat: Bar-Rust #231 at 4.0 minimum 6.0 maximum mils DFT (Dry Film Thickness)

Full Finish Coat: Devthane * #359 at 3.0 minimum 4.0 maximum mils DFT (Dry Film Thickness)

SHERWIN WILLIAMS, INC.

Full Prime: Tank Clad at 4.0 minimum 6.0 maximum mils DFT

Full Intermediate Coat: Tank Clad at 4.0 minimum 6.0 maximum mils DFT

Full Finish Coat: HS Polydon HP at 2.0 minimum 3.0 maximum mils DFT This shall match color of Devthane 378 'Olive Green' product.

Total System DFT: 6.0 minimum-9.0 mils maximum

Total System DFT: 7.0 minimum-9.0 mils maximum

**The color and sheen shall be submitted to the District for approval prior to Contractor ordering material.*

Film Thickness

The tank Coating Inspector shall inspect film thickness with a non-destructive dry film thickness gauge (e.g., Elcometer 456). The Contractor shall provide to the District upon request U.S. Department of Commerce, Bureau of Standards calibration plates to verify accuracy.

Coating Repairs

If it is necessary to touch-up or re-coat damaged areas after the coatings have cured beyond the maximum re-coat time, the Contractor shall prepare surfaces prior to applying touch-up paint. The Contractor shall mask off and spray designated areas only. All repairs will be masked off.

Contractor's Responsibility

The Contractor shall dispose of any residual waste from surface preparation operations in compliance with all Federal, State, and Local regulations. The Contractor shall ensure that all openings are covered and protected to prevent over-spray from entering the tank. The Contractor will be responsible for all costs in the event of contamination of the water inside the tank.

Site Restoration

Upon completion of the work, the Contractor shall restore the site to the original condition, including removing all trash and other debris from the site.

Disposal of Existing Coatings and Spent Abrasive Blast Media

The Contractor shall dispose of spent abrasive blast media and removed coating materials in accordance with a District approved disposal plan.

The Contractor shall coordinate and pay all costs for sampling and testing of spent abrasive blast media and removed coating materials in order to document waste class. Minimum sampling and testing requirements are listed previously in this Section.

Prior to removal of hazardous wastes off-site, the Contractor shall allow adequate time for District to review laboratory test results, as well as the time required to obtain a Hazardous Waste Generator's U.S. EPA ID Number, if required.

The District will provide the Contractor with written notice to dispose of all or a portion of the spent abrasive blast media and/or removal coating materials as hazardous waste, if so determined by the District that such disposal is required.

The Contractor shall solely be responsible for all costs associated with accumulating, transporting, and disposing of spent abrasive blast media and removed coating materials.

Clean-Up

Upon completion of the work, the Contractor shall make a detailed inspection of all work.

The Contractor shall be solely responsible for all paint over-spray or dust fallout claims and shall restore the site to its original condition.

The Contractor shall remove all spattering, spits, and blemishes.

Upon completion of work, the Contractor shall remove all staging, tarps, scaffolding, and containers from the site, including but not limited to: paint and thinner containers and excess paint and thinner (to be disposed of in conformance to all current regulations); paint spots removed and the entire job site cleaned; all damage to surfaces resulting from the work from this section to be cleaned, repaired or refinished to the complete satisfaction of the District. All clean up shall be completed within seven (7) calendar days starting at the last day of holiday testing of the tank. No abrasive residual may be left on the ground and shall be removed.

The Contractor shall bear all costs associated with site clean up.

Steel Tank 2-Year Anniversary Inspection

At the time of tank acceptance for service, the District Engineer shall schedule the first anniversary inspection provided for in AWWA D102-06. The inspection of the tank shall be scheduled for a date between the first day of the twenty-second (22rd) month and the thirtieth day of the twenty-fourth (24th) month following acceptance. This schedule for the inspection shall be considered tentative and the Contractor will be notified of the inspection schedule no later than the first day of the tenth month following acceptance of the tank.

Upon completion of this inspection, the inspecting firm will prepare a report that includes but is not limited to, the methods used in the inspection, the equipment and personnel on hand at the time of the inspection, a summary of findings, photographs of all deficiencies found, and any other information relevant to the condition and maintenance of the tank.

The Contractor shall have a representative on site at the time of inspection to authorize any minor repairs the inspection subcontractor is willing to perform during or directly after the inspection.

Omissions

Care has been taken to delineate herein those surfaces to be coated. However, if the coating requirements have been inadvertently omitted from this section or any other section of the specifications, it is intended that all metal surfaces unless specifically exempted herein, shall receive a first class protective system equal to that given the same type surface pursuant to these specifications.

Measurement and Payment

Alternate Bid Item 1: Preparation and Painting of Tank exterior including containment and materials handling:

This item includes all costs associated with cleaning and preparing Reservoir #2 tank exterior surfaces, coating Reservoir #2 tank exterior and appurtenances, and handling and disposing of any hazardous waste as per these special provisions using the system specified.

Payment will be made on a lump sum basis.

SECTION 506.4 CONTRACTOR/COATING INSPECTOR INTERACTION & COMPLIANCE

Inspection

The District has retained a coating inspection firm to oversee all quality control related to coating operations. The tank inspector will report directly to the District Engineer and shall act with the Engineer's authority in all matters related to tank construction. The Inspector will be an N.A.C.E. Certified Coating Inspector, who will inspect any or all phases of work to be performed as outlined herein. The tank inspector shall be an addition to the District Inspector; authority shall be limited to tank related work only. The District Inspector shall remain the primary observer for all work on the project. The tank inspector shall work for and report to the District. The Contractor shall not rely upon the tank inspector for documentation of environmental conditions and assuring compliance with plans and specifications.

The Coating Inspector shall examine all materials, tools, and equipment to be used in the blasting and coating operations and shall have the authority to direct the Contractor to remove, replace, or repair any materials, tools, or equipment found not to be in conformance with the Contract Documents including the approved shop drawings and manufacturer's recommendations. The tank inspector will also observe the Contractor's safety activities throughout blasting and coating operations and the Contractor shall immediately rectify any deficiencies noted in that observation. The Contractor shall be fully responsible for compliance with all safety measures, hazardous and toxic materials regulations, and site security. Observation of or failure to observe any safety efforts of the Contractor by the Tank Inspector shall not relieve the Contractor of this responsibility

nor shall any liability transfer from the Contractor to the District or the Tank Inspector. The Contractor shall indemnify, defend, and save harmless the District and the Tank Inspector from all liability associated therewith.

The Contractor shall afford the tank inspector all reasonable facilities and assistance in monitoring the coating and priming operations. The Contractor shall provide weekly copies of their daily work reports to the tank Coating Inspector. Such reports shall include, but not be limited to, the day and date of work performed, the relevant weather conditions, the type and amount of work performed, all work related to the safety of the operation, and personnel assigned to work actually performed.

Coating Inspector Authority

The tank Coating Inspector shall have authority to direct the Contractor to suspend operations when environmental conditions fall outside the manufacturer's recommended parameters.

The Contractor shall comply with directions and shall not proceed until the tank Coating Inspector determines environmental conditions are sufficient to proceed. Failure to suspend coating operations as directed or restarting work without the direction of the tank Coating Inspector shall be cause for rejection of work so performed.

The Contractor shall immediately remove and replace all such work in accordance with these Project Special Provisions and directions of the Coating Inspector.

No additional compensation will be allowed for work resulting from failure to comply with the tank inspector or for surfaces not otherwise conforming to the provisions of these Project Special Provisions.

Safety

The Contractor shall provide a safe work environment at all times. In the event the Coating Inspector notes any safety deficiencies, the Contractor shall immediately rectify noted deficiencies.

The Contractor shall be fully responsible for compliance with all safety measures, hazardous and toxic materials regulations, and site security. Observation of or failure to observe any safety deficiencies of the Contractor by the Coating Inspector shall not relieve the Contractor of this responsibility nor shall any liability transfer from the Contractor to the District or the Coating Inspector.

The Contractor shall save harmless the District and the Coating Inspector from all liability associated therewith.

Inspection Assistance

To facilitate adequate inspection of all surfaces, the Contractor shall provide scaffolding or rigging necessary for the Coating Inspector to perform dry film thickness readings, and visual holiday inspection as required by these specifications and reference standards.

The Contractor shall provide personnel to move scaffolding or rigging at the instructions of the Coating Inspector.

The Contractor shall afford the Coating Inspector all reasonable facilities and assistance in monitoring the coating and priming operations.

Notification

The Contractor shall communicate closely with the Coating Inspector. Failure to advise the Coating Inspector of cancelled contractor work days with less than 24-hour notice shall result in the Contractor reimbursing the District for the Coating Inspector's daily costs

The Contractor shall notify the Coating Inspector in advance (48 hours minimum) of all surface preparation or paint application in order to perform a preliminary examination and provide acceptance of the surface preparation and each coat prior to application of the next coat.

Acceptability for Paint Application

The SSPC-Vis1 pictorial surface standards along with dry film and wet film thickness gauges will be used by the Coating Inspector to determine acceptability of the paint application.

The Contractor shall provide necessary testing equipment to perform the above-mentioned tests.

Reporting

The Contractor shall provide weekly copies of daily work reports to the tank Coating Inspector. Such reports shall include, but not be limited to, the day and date of work performed, the type and amount of work performed, all work related to the safety of the operation, and personnel assigned to work actually performed.

Measurement and Payment

All work related to accommodating Inspector, providing testing equipment, following safety practices, preparation of reports and all other work detailed in this section shall be included in the contract unit or lump sum prices for other items of work. The District will not consider any additional compensation.

SECTION 507. WELDING CORROSION RELATED REPAIRS

General Description and Execution

After completion of interior sand blasting operation, the District Inspector shall inspect the tank for any holes or seams that may have developed as a result of the blasting. The Contractor shall weld plates as replacement for areas of severe corrosion. The Contractor

shall repair areas at the direction of the District Engineer. The Contractor shall submit materials to be used prior to welding repairs.

- All repairs shall be seal welded in conformance to AWWA D103-97, Section 6 and AWWA D100-05, Section 8, whichever is more stringent will govern work.
- All repair welds shall be abrasive blast cleaned to near white condition (SSPC-SP10).

Measurement and Payment

Under this item, the Contractor shall weld portions of the tank wall, roof, floor, and roof support system as directed by the District Engineer where repairs are needed and improvements are required after surface cleaning and/or sandblasting. Such work shall include all materials, equipment, and labor. Payment shall be all-inclusive, including all welding consumables such as welding electrodes, grinding disks, welding gas, and repair materials

All costs associated with “Welding and Repairs” shall be considered as included in the contract unit or lump sum prices for other items of work where improvements are required.

- Payment for welding repairs will be made “per pit” under Bid Item 2 and/or by “linear foot” Under Bid Item 3.

No additional compensation will be considered therefore.

SECTION 508. REMOVAL AND REPLACEMENT OF EXTERIOR CAULKING AT BASE

General Description and Execution

The Contractor shall completely remove the existing caulk and protruding felt between the ring wall and steel tank with a chisel or other device that will not damage the steel tank, concrete ring wall, or the tank expansion joint underneath the steel tank floor.

The Contractor shall completely clean and prepare the cavity area for re-caulking.

The Contractor shall remove weeds around the tank ring wall and subsequent to tank re-filling, shall place a bead of SIKA-2C caulk within the cavity area under the tank with a minimum penetration of ¾” of an inch.

The Contractor shall notify the District Engineer or Inspector and request inspection prior to placement of caulk material.

Measurement and Payment

Under this item, the Contractor shall remove the existing caulk and protruding felt, clean and prepare cavity for re-caulking, remove weeds, and re-caulk the cavity as per these special provisions.

All costs associated with removal of the existing caulking and felt, cleaning, removal of weeds and re-caulking shall be considered as included in the contract unit or lump sum prices for Bid Item 4: "Remove and Replace Ringwall Caulking". No additional compensation will be considered therefore. Payment will be made on a lump sum basis.

APPENDIX

- A-1 2005 Reservoir #2 Tank Inspection
- A-2 2015 Reservoir #2 Tank Inspection
- A-3 2 MG Water Storage Reservoir #2 Plans
- A-4 Reservoir #2 Shop Drawings