



Project Manual for:

PALO VERDE COUNTY WATER DISTRICT WATER WELL REPLACEMENT PROJECT PHASE II

March 3, 2023

Funded by:
California Department of Housing and Community Development (HCD)
Through Its
Community Development Block Grant (CDBG) Program
CDBG Grant No. 18-CDBG-12925
HCD Project No. ICCED-015

Prepared by:

The Holt Group, Inc.
THG Project No. 821.028

for

Imperial County Workforce & Economic Development
2799 South 4th Street
El Centro, CA 92243
Point of Contact: Tabita Velarde
Office (442) 265-110

1. ADVERTISEMENT FOR BIDS

**Office of the Clerk of the Board of Supervisors
940 Main Street, Suite 209
El Centro, CA 92243**

Separate sealed BIDS for the construction of the **Palo Verde County Water District Water Well Replacement Project – Phase II** will be received by the **Office of the Clerk of the Board of Supervisors** located at **940 Main Street, Suite 209, El Centro, CA 92243** until **11:00 am** (prevailing local time) on **April 13, 2023**, and then at said office will be publicly opened and read aloud.

The PLANS, SPECIFICATIONS, AND CONTRACT DOCUMENTS may be examined at the following locations:

Imperial County Workforce & Economic Development
2799 S 4th Street
El Centro, CA 92243
Phone: (442) 265-1100
Fax: (760) 337-5005

Copies of the CONTRACT DOCUMENTS may be obtained at the office of the **Imperial County Workforce and Economic Development, 2799 South 4th Street, El Centro, CA 92243** upon the nonrefundable payment of **\$100.00** for each set.

A Prebid Conference for prospective BIDDERS will be held at **The Palo Verde County Water District's Office**, located at **1065 Desert View, Palo Verde, CA 92266** at **10:00 am** (prevailing local time), on **March 22, 2023**. To become a qualified bidder, all contract documents shall be obtained from **Imperial County Workforce and Economic Development**. The contract documents can be purchased in the department's office or obtained from the department's website: www.imperialcountyced.com.

Bidders are notified that this construction project is financed by the California Department of Housing and Community Development (HCD) through its Community Development Block Grant (CDBG) and is subject to the rules and regulations of the Housing and Community Development Act of 1974 and all amendments thereof. Neither the United States nor any departments, agencies, or employees is, or will be, a part of this Invitation for Bids or any resulting contract.

The Contractor and Subcontractors on this project must comply with HUD contract provisions 24 CFR part 85.36(i), the Federal Davis-Bacon and Related Acts, California Department of Regulations Wage Determinations and California Labor Codes pertaining to Public Works projects, Nondiscrimination, Equal Employment Opportunity, Affirmative Action, Section 3 requirements, Anti-Kickback Act, and Federal Occupational Safety and Health Act as set forth in the Contract Bid Documents. This municipality is an equal employment opportunity employer; businesses owned by women or minorities are strongly encouraged to bid.

The female and minority goals are applicable to the Contractor's aggregate onsite construction work force whether or not part of that work force is performing work on a federal or federally assisted construction contract or subcontract as follows:

Time- tables	Goals for female participation in each trade
From December 30, 1980, until further notice	6.9%

Time- tables	Goals for minority participation for each trade
From November 3, 1980, until further notice	16.2% - Imperial County – Non SMSA Counties 16.9% - San Diego County – SMSA Counties

Until further notice, the above goals for minority utilization in each construction craft and trade shall be included in all Federal or Federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt Contractor's total on-site construction work force, regardless of whether or not part of that work force is performing work on a Federal, Federally assisted, or non-Federally related project, contract, or subcontract.

All potential contractors and subcontractors must have and maintain an active SAM.gov registration in order to submit a bid for this project.

The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

In projects involving construction where federal funding exceeds \$200,000 and any individual contract or subcontract exceeds \$100,000, the Contractor shall have incorporated into their contract the Section 3 Clause and comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and regulations at 24 CFR Part 135.

The Contract executed between the General Contractor and the Awarding agency and the General Contractor and any subcontractor at any tier, for the performance of work on the public works project shall contain the complete verbiage as found in the contract between the Imperial County and the General Contractor including at a minimum a copy of the provisions of California Labor Codes, Sections 1726, 1771, 1775, 1776, 1777.5, 1813, and 1815.

Notice is hereby given that, pursuant to Section 1773 of the Labor Code of the State of California, the Owner has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work for each craft, classification, or type of worker required to execute the Contract. A copy of said prevailing rate of per diem wages is on file in the principal office of the Owner, to which reference is hereby made for further particulars. Said prevailing rate of per diem wages will be made available to any interested party upon request, and a copy thereof shall be posted at each job site.

Prohibition Against Contracting with Debarred Contractors and Subcontractors: Contractor is prohibited from performing work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code. County shall not enter into any agreement with any Contractor without the prior determination that the Contractor, and its subcontractors, are eligible to receive Community Development Block Grant Funds and are not listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors.

In order to comply with HUD Section 3 requirements set forth in 24 CFR 135 of the Code of Federal Regulations, Section 3 Business Concerns are solicited to bid on this contract as prime contractors and are encouraged to make inquiries regarding potential subcontracting opportunities to Section 3 Business Concerns.”

Prospective Bidders shall be licensed Contractors in the State of California and shall be skilled and regularly engaged in the general class or type of work called for under the Contract. **Each Bidder shall have a Class C-57 or Class A California Contractor’s license. All work regarding the installation of new wells or decommissioning/demolition of existing wells shall be completed by a Class C-57 California Licensed Contractor or Subcontractor.**

Pursuant to California Civil Code Section 9550, the successful bidder shall, before commencement of work, furnish a payment bond to and approved by the County, if the public works contract exceeds twenty-five thousand dollars (\$25,000) in the amount of 100% of the contract amount. The successful Bidder shall also provide a performance bond in the amount of 100% of the contract amount.

(Date)

Blanca Acosta, Clerk of the Board of Supervisors
Imperial County, California

13. TABULATION OF MAJOR MATERIAL SUPPLIERS

The contractor shall indicate opposite each item of equipment or material listed below the name of the manufacturer and supplier of the equipment or material proposed to be furnished under the bid.

No.	Item	Manufacturer	Supplier
1.	24 Inch Diameter Steel Surface		
	Casing		
2.	12 Inch Diameter Steel Casing		
3.	Stainless Steel Wire Wrapped		
	Screen		
4.	15 HP Submersible Motors		
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

Palo Verde County Water District Water Well Replacement Project – Phase II

13.			
14			
15			
16			
17			
18			
19			
20			
21.			
22.			
23.			
24.			
25.			

(ATTACH ADDITIONAL NUMBERED PAGES IF NEEDED)

3. WAGE REQUIREMENTS

Notice is hereby given that, pursuant to 1773 of the Labor Code of the State of California, the Owner has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work for each craft, classification, or type of worker required to execute the Contract. A copy of said prevailing rate of per diem wages is on file in the principal office of the Owner, to which reference is hereby made for further particulars. Said prevailing rate of per diem wages will be made available to any interested party upon request, and a copy thereof shall be posted at each job site.

Prospective Bidders may obtain the general wage rates directly from the State of California Department of Industrial Relations at their web site at www.dir.ca.gov or by requesting a CD from the State. The Contractor shall keep an up-to-date listing of the general prevailing wage rates posted at the jobsite at all times.

This Public Works project is a multi-agency funded project and requires compliance with both California's Department of Industrial Relations requirements and the California Labor Codes for a Public Works project and the federal, Davis Bacon and Related Acts. This includes the current wage decisions. Bidders are notified that the higher of either the Davis-Bacon or the State prevailing wage rate shall apply.

The California lock in date for the wage decisions is the date of the bid advertising thus requiring compliance with California, Imperial County 2022-2 (IMP-2022-2) and various pre-determined increases.

All contractors and subcontractors who bid on a public works project must register and pay an annual fee to the California Department of Industrial Relations. All contractors and subcontractors must furnish electronic payroll records directly to the Labor Commissioner (aka California Division of Labor Standards Enforcement). These new requirements will apply to all public works that are subject to the prevailing wage requirements of the California Labor Code, without regard to the funding source.

Statutory Penalty for Failure to Pay Minimum Wage

- A. In accordance with 1775 of the California Labor Code, the Contractor shall as a penalty to the State or political subdivision on whose behalf a Contract is made or awarded, forfeit **fifty dollars (\$50.00)** for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing rate for any public work done under the Contract by the Contractor or by any Subcontractor under the Contractor.

Statutory Penalty for Unauthorized Overtime Work

- A. In accordance with 1813 of the California Labor Code, the Contractor shall as a penalty to the State or political subdivision on whose behalf the Contract is made or awarded, forfeit **twenty-five dollars (\$25.00)** for each worker employed in the execution of the Contract by the Contractor or by any Subcontractor for each calendar day during which said worker is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of 1810-1815 of the California Labor Code.

Apprenticeship Requirements

- A. The CONTRACTOR agrees to comply with 1777.5, 1777.6 and 1777.7 of the California Labor Code relating to the employment of apprentices. The responsibility for compliance with these provisions is fixed with the prime contractor for all apprenticeship occupations. Under these sections of the law, Contractors and Subcontractors must employ apprentices in apprenticeship occupations, where journeymen in the craft are employed on the public work, in a ratio of not less than one (1) apprentice hour for each five (5) journeymen hours (unless an exemption is granted in accordance with 1777.5) and Contractors and Subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the ground of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in 3077 of the Labor Code. Only apprentices, as defined in 3077, which provides that an apprentice must be at least sixteen (16) years of age, who are in training under apprenticeship standards

and who have signed written apprentice agreements will be employed on public works in apprenticeship occupations.

Payroll Records

- A. The Contractor shall keep accurate payroll records on forms provided by the Division of Labor Standards Enforcement, or alternatively, the Contractor shall keep accurate payroll records containing the same information. Said information shall include, but not be limited to, a record of the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice, or worker employed by the Contractor. Such record shall be made available for inspection at all reasonable hours, and a copy shall be made available to the employee or his authorized representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards in compliance with California Labor Code, Section 1776. Upon written notice from the OWNER or the Division of Labor Standards Enforcement, the Contractor shall, within **ten (10) days**, file with the Owner a certified copy of the payroll records. The Contractor shall cause an identical clause to be included in every subcontract for the Work.

Davis-Bacon and Related Acts

- A. This project requires compliance with the Davis-Bacon and Related Acts and adherence to the current U.S. Department of Labor Wage Decision. The Contractor and subcontractors must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act (DBA) CA20190002 Mod 7 08-28-2020, as specified in 29 CFR Parts 1, 3, 5, 6 and 7, and Related Acts. The Contract provisions and related matters set forth in 29 CFR Part 5-Section 5.5 are hereby made a part of this Contract. Attention is called to the fact that not less than the minimum salaries and wages set forth in the Contract Documents must be paid on this project. The Wage Decision, including modification, must be posted by the Contractor on the job site.
- B. It is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The awarding body must post or require the prime Contractor to post job site notices prescribed by regulation. (*See 8 Calif. Code Reg. §16451(d)* for the notice that previously was required for projects monitored by the CMU.)

All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka California Division of Labor Standards Enforcement).

<Davis-Bacon wage-determination entered here>

4. BID FORM

Project Identification: **Palo Verde County Water District Water Well Replacement Project – Phase II**

Contract Identification and Number: **CDBG Grant No. 18-CDBG-12925**

TABLE OF ARTICLES	Page
Article 1 - Bid Recipient	00410-1
Article 2 - Bidder’s Acknowledgments	00410-1
Article 3 - Bidder’s Representations	00410-1
Article 4 - Further Representations	00410-2
Article 5 - Basis of Bid – Schedule of Values	00410-3
Article 6 - Time of Completion	00410-5
Article 7 - Attachments to Bid	00410-5
Article 8 - Defined Terms	00410-6
Article 9 - Bid Submittal	00410-6

ARTICLE 1 - BID RECIPIENT

1.01 This Bid Is Submitted To: **Office of the Clerk of the Board of Supervisors
940 Main Street, Suite 209
El Centro, CA 92243**

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

ARTICLE 2 - BIDDER’S ACKNOWLEDGMENTS

2.01 The Bidder accepts all of the terms and conditions of the Advertisement and Instructions to Bidders, including without limitations those dealing with the dispositions of Bid Security. The Bid will remain subject to acceptance for **sixty (60) days** after the Bid Opening, or for such longer period of time that the Bidder may agree to in writing upon a request from the Owner.

ARTICLE 3 - BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, the Bidder represents that:

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

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____

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

- C. The 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. The Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities), if any, which have been identified in Supplementary Conditions 4.02, and (2) reports and drawings of a Hazard Environmental Condition, if any, which has been identified in Supplementary Conditions 4.06.
- E. The 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 the Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by the Bidder, and safety precautions and programs incident thereto.
- F. The 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. The Bidder is aware of the general nature of the Work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. The Bidder has correlated the information known to the 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. The Bidder has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Engineer is acceptable to the 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. The 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 The Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on the 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. The Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. The Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. The Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Owner.

ARTICLE 5 – BASIS OF BID – SCHEDULE OF VALUES

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

<u>Item No</u>	<u>Item Description</u>	<u>Lump Sum Cost</u>
1	Mobilization for installation of New North Well Site Number 2 as detailed in the Plans, Contract Documents, Specifications, and any addendum(a).	\$ _____
2	Construct site access road for Water Well Site Number 2 as illustrated in the Plans and Project Manual and any addendum(a).	\$ _____
3	Sawcut, remove and dispose of concrete sidewalk as illustrated in Plans the Project Manual and any addendum(a).	\$ _____
4	Conduct Geotechnical Testing for Water Well Site Number 2 in conformance with Specifications of the Project Manual, Improvement Plans and any addendum(a).	\$ _____
5	Demolish the existing north well site number 2 per plan sheets and all other requirements of the project manual and any addendum(a). This item includes the cost of the Well Decommissioning and Demolition Report.	\$ _____
6	Construct the new north well number 2 per Plans, Project Manual and any addendum(a) unless otherwise stated by this Bid Item. This item includes the preparation of the Water Well Report. This item does not include the Water Well and Downstream Pipeline Disinfection or Water Quality Testing included in the Technical Specifications of the Project Manual.	\$ _____
7	Conduct the disinfection of north well number 2 and the downstream piping in conformance with the Technical Specifications of the Project Manual and any addendum(a).	\$ _____
8	Conduct the Water Quality Testing of north well number 2 in conformance with the Technical Specifications of the Project Manual and any addendum(a).	\$ _____

<u>Item No</u>	<u>Item Description</u>	<u>Lump Sum Cost</u>
9	Install the piping between the north well number 2 and point of connection at the existing filter units per Plans, Project Manual and any addendum(a). This includes the hydrostatic testing of the piping and fittings. This item does not include the installation of the Magnetic Flowmeter.	\$ _____
10	Install the magnetic flowmeter, amplifier, electrical cable extending between the magnetic flowmeter and amplifier for well site number 2 per the project manual and any addendum(a). This item includes the supplying of the magnetic flowmeter, amplifier, and electrical cable materials. This item does not include the electrical and instrumentation work associated with installing the magnetic flowmeter, amplifier and electrical cable.	\$ _____
11	Install all electrical work as illustrated on the plans, Technical Specifications, including the electrical and control work for the Magnetic Flowmeter and all other portions of the Project Manual and any addendum(a) except for the installation of circuitry for Water Well Site Number 2. This item <u>does not include</u> the installation of conduits from the new electrical pull box approximately 22 feet northeast from the Electrical Building to Water Well Site Number 2.	\$ _____
12	Install electrical circuitry from the Electrical Building to water well site number 2. Include conduit installation from the new electrical pull-box approximately 22 feet northeast from the Electrical Building to water well site number 2.	\$ _____
13	Calibration and start-up of the flowmeter system for water well site numbers 2 by the Magnetic Flowmeter manufacturer/supplier in conformance with the Magnetic Flowmeter Technical Specifications, Improvement Plans, Project Manual and any addendum(a).	\$ _____

<u>Item No</u>	<u>Item Description</u>	<u>Lump Sum Cost</u>
14	Calibration and integration of the output signal of the flowmeter amplifier for water well site number 2 with the existing Filter Control Panel in the Control Building. The calibration, integration and start-up shall be coordinated with the assistance of the Filter Control Panel supplier/manufacturer in conformance with the Magnetic Flowmeter Technical Specifications, Improvement Plans, Project Manual and any addendum(a).	\$ _____
15	Install new turbidimeter analyzer’s assemblies per Improvement Plans, Project Manual and any addendum(a).	\$ _____
16	Conduct programming and integration of the Filter Control Panel to include input / output and controls of new well site number 2, flowmeter and analyzers per Improvement Plans, Project Manual and any addendum(a).	\$ _____
17	Install shade structure over new south well number 2 per Improvement Plans, Project Manual and any addendum(a).	\$ _____

TOTAL FOR COMPARISON

TOTAL BID in Figures \$ _____

TOTAL BID in Words _____

ARTICLE 6 - TIME OF COMPLETION

- 6.01 The Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 The Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work within the Contract Times.

ARTICLE 7 - ATTACHMENTS TO BID

- 7.01 The following documents are attached to and made a condition of the Bid:
 - A. Non-Collusion Affidavit;
 - B. Required Bid Security of ten percent (10%) in the form of a Bid Bond (EJCDC No. C-430) or Certified Check (circle type of security provided);
 - C. If Bid amount exceeds \$10,000, signed Compliance Statement/Certifications of Non-segregated Facilities RD 400-6). Refer to specific equal opportunity requirements set forth in Paragraph 18.10 of the General Conditions;
 - D. If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions (AD-1048);
 - E. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grant, and Loans. Refer to paragraph 18.11 of the General Conditions;
 - F. Worker’s Compensation Certification;
 - G. A Tabulation of Subcontractors with Names and Addresses and percent of Total Contract;
 - H. Required Bidder Qualifications Statement with supporting data;
 - I. Tabulation of Major Material Suppliers; and
 - J. Federal and State Contract Language Inclusion – January 1, 2018 – Exhibit ‘A’

ARTICLE 8 - DEFINED TERMS

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

ARTICLE 9 - BID SUBMITTAL

9.01 This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

SEAL,
if required
by State

Doing business as: _____

A Partnership

Partnership Name: _____

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

SEAL,
if required
by State

Name (typed or printed): _____

A Corporation

Corporation Name: _____

State of Incorporation: _____

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

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

Name (typed or printed): _____

Title: _____

Attest _____
(Signature of Corporate Secretary)

CORPORATE
SEAL,
if required by State

Date of Qualification to do business in _____ California is ___/___/_____

A Joint Venture

Name of Joint Venture: _____

First Joint Venture Name: _____

SEAL,
if required
by State

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

Name (typed or printed): _____

Title: _____

Second Joint Venture Name: _____

SEAL,
if required
by State

By: _____
(Signature of 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 party to the venture should be in the manner indicated above.)

Bidder's Business Address:

Business Phone No. (____) _____

Business Fax No. (____) _____

Business E-Mail Address _____

State Contractor License No. _____.

Employer's Tax ID No. _____

Phone and Fax Numbers, and Address for receipt of official communications, if different from Business Contact Information:

9.02 Bid submitted on _____, 2023.

5. NON COLLUSION AFFIDAVIT
(Public Contract Code Section 7106)

State of California

County of _____

_____, being first duly sworn, deposes and says that he or she is _____ of _____, 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 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.

By: _____

Subscribed and sworn to before me on _____
(Date)

(Notary Public)

(SEAL)

6. BID BOND

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

BIDDER (Name and Address):

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

OWNER (Name and Address):

**County of Imperial
Imperial County Workforce & Economic Development
2799 S 4th Street
El Centro, CA 92243**

BID

Bid Due Date:

Project: **Palo Verde County Water District Water Well Replacement Project – Phase II**

BOND

Bond Number:

Date (Not later than Bid due date):

Penal sum _____ (Words) _____ (Figures)

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

BIDDER

SURETY

Bidder's Name and Corporate Seal (Seal) _____
Surety's Name and Corporate Seal (Seal)

By: _____
Signature and Title

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

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: Above addresses are to be used for giving required notice.

Palo Verde County Water District Water Well Replacement Project – Phase II

1. The Bidder and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to the Owner upon default of the Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of the Surety's liability.
2. Default of the Bidder shall occur upon the failure of the Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by the Owner) the executed Agreement required by the Bidding Documents and the Performance and Payment Bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 The Owner accepts the Bidder's Bid and the Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by the Owner) the executed Agreement required by the Bidding Documents and the Performance and Payment Bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by the Owner, or
 - 3.3 The Owner fails to issue a Notice of Award to the Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by the Bidder and, if applicable, consented to by the Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by the Bidder and within **thirty (30) calendar days** after receipt by the Bidder and the 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. The Surety waives notice of any and all defenses based upon or arising out of any time extension to issue the Notice of Award agreed to in writing by the Owner and the Bidder, provided that the total time for issuing the Notice of Award including extensions shall not in the aggregate exceed **one hundred and twenty (120) days** from Bid due date without the Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to **thirty (30) calendar days** after the notice of default required in Paragraph 4 above is received by the Bidder and the Surety and in no case later than **one (1) year** after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the State of California.
8. Notices required hereunder shall be in writing and sent to the Bidder and the 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. The 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 the 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.

7. COMPLIANCE STATEMENT

This statement relates to a proposed contract with County of Imperial
(Name of borrower or grantee)

Who expects to finance the contract with assistance from the Community Development Block Grant (CDBG) or their successor agencies, California Department of Housing and Community Development (HCD) (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the Undersigned Bidder or Prospective Contractor. I represent that:

1. I have, have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I have, have not, filed all Compliance Reports that I have been required to file in connection with the contract or subcontract.

If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:

3. I have, have not, previously had contracts subject to the written Affirmative Action Program Requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, I have, have not, developed and placed on file at each establishment Affirmative Action Programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required by me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to the CDBG, or to the office of the governing agency where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity Clause in my contract. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

**7A. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS
FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, Order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date: _____

(Signature of Bidder or Prospective Contractor)

Address (including Zip Code)

8. FEDERAL AND STATE CONTRACT LANGUAGE INCLUSION - JANUARY 01, 2018 - EXHIBIT 'A'

The Contractor shall submit the Exhibit 'A' – Federal and State Contract Language Inclusion dated January 1, 2018 as a part of the Bid. Exhibit 'A' is attached as follows:

FEDERAL AND STATE CONTRACT LANGUAGE INCLUSION

JANUARY 01, 2018

Public Works Projects Required Bid Language

Required contract language for all state Public Works construction contracts between an awarding agency and the prime contractor;
And subcontractor contracts with the prime contractor.

SB 854, made important changes to the requirements from California for the contractors bidding or awarded a 'Public Works' contract.

AB 854 was signed into law on **June 20, 2014** and became effective immediately. All contractors and subcontractors who bid or work on a public works project must register and pay an annual fee to the State of California, Department of Industrial Relations (DIR). The phased-in timetable is as follows:

PUBLIC WORKS CONTRACTOR REGISTRATION PROGRAM

All contractors and subcontractors who bid on a public works project must register and pay an annual fee to the California Department of Industrial Relations. The phased-in timetable is as follows:

- **July 01, 2014:** the registration program became effective and all contractors may register on line and pay the required fee to the State of California, DIR. These early registrations will be valid through June 30, 2015.
- **March 01, 2015:** **NO** contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with DIR. Registration with DIR becomes mandatory on March 01, 2015 for bids on a public works contract.
- **April 01, 2015:** **NO** contractor or subcontractor may work on a public works project unless registered with DIR. Registration with DIR becomes mandatory on April 01, 2015 for performing work on a public works contract.

An awarding body may NOT accept a bid or enter into a contract for public works from an unregistered contractor.

NOTICE REQUIREMENTS,

January 01, 2015: The call for bids and contract documents must include the following information:

- **No contractor** or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 01, 2015) unless registered with the California Department of Industrial Relations pursuant to the California Labor Code section 1725.5 [with limited exception from this requirement for bid purposes only under California Labor Code section 1771.1(a)].
- **No contractor** or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 01, 2015) unless registered with the California Department of Industrial Relations pursuant to California Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

ELECTRONIC PAYROLL RECORDS,

All contractors and subcontractors must furnish electronic payroll records directly to the Labor Commissioner (aka California Division of Labor Standards Enforcement). The phased-in timetable for this requirement is as follows:

- **June 20, 2014 [Immediate]:** Any project that was being monitored by the CMU/Labor Commissioner prior to the adoption of SB 854 will continue to be monitored by the Labor Commissioner afterward; and the contractors on those projects must continue to furnish certified payroll records to the Labor Commissioner until the project is complete.
- **April 01, 2015:** For all new projects awarded on or after this date, the contractors and subcontractors must furnish electronic certified payroll records to the Labor Commissioner. **In addition hard copies must be provided to the awarding agency or their contracted agent on a weekly basis.**
- **Anytime:** For projects besides those listed above, the Labor Commissioner may at any time require the contractors and subcontractors to furnish electronic certified payroll records. *The Labor Commissioner anticipates requiring this for green energy school projects that receive Proposition 39 funding.*
- **January 01, 2016:** The requirement to furnish electronic certified payroll records to the Labor Commissioner will apply to all public works projects, whether new or ongoing.
- **Exceptions:** The Labor Commissioner may (but is not required to) excuse contractors and subcontractors from furnishing electronic certified payroll records to the Labor Commissioner on a project that is under jurisdiction of one of the four legacy California DIR-approved labor compliance programs (Caltrans, City of Los Angeles, Los Angeles Unified School District, and the County of Sacramento) or that is covered by a qualifying Project Labor Agreement (PLA).

These new requirements will apply to all public works that are subject to the prevailing wage requirements of the California Labor Code, without regard to the funding source.

California Labor Codes:

This Public Works project is funded by Agencies in California and requires compliance with the California Labor Standards, California Code of Regulations pertaining to Public Works projects, California Labor Codes and the California prevailing wage requirements with special attention to CLC §1720, CLC §1770, CLC § 1771, CLC § 1775, CLC § 1776, CLC §1777.5, CLC §1777.7, CLC §1810 through § 1815 and CLC §3700.

The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

CLC § 1720; State prevailing wage rates shall apply when the State wage rate is higher than the Federal wage rate. All contractors and subcontractors are subject to the application of Section 1720 et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages. Etc.

CLC § 1727; (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain there from all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review. Etc.

CLC § 1729; It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

CLC § 1729; It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law. Etc.

CLC § 1771.2; A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article.

CLC § 1774;The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

CLC § 1775; PENALTIES FOR INCORRECT WAGES

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for **each calendar day**, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

CLC § 1776; 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 diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

CLC § 1777.5 APPRENTICE REQUIREMENTS;

When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected.

CLC § 1777.7 APPRENTICE PENALTIES; A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

CLC § 1810-1814; All contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor or subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime. Etc.

CLC § 1815; of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of contractors who work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1-1/2 times the basic rate of pay. Etc.

CLC § Section 1860; The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

CLC § 1861; Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

CONFLICT OF INTEREST:

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the Department must be contacted immediately for clarification. The following explanations are general in nature. Please review the actual text of the statutes for detailed application.

Public Contracts Code section 10410 – Current State Employees:

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Public Contracts Code section 10411—Former State Employees:

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her leaving state service.

Public Contracts Code section 10420:

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void.

Public Contracts Code section 10430 (e):

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem.

NONDISCRIMINATION:

The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Contractor will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of the nondiscrimination clause.

TERMINATION FOR CAUSE:

The City/County may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the City/County may proceed with the work in any manner deemed proper by the City/County. All costs to the City/County shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor.

CHILD SUPPORT COMPLIANCE ACT:

For any agreement in excess of \$100,000, the Contractor acknowledges in accordance with, that:

- 1) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- 2) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

UNION ORGANIZING:

By signing this agreement, Contractor hereby acknowledges the applicability of Government Code section 16645 through section 16649 to this agreement.

- a. Contractor will not assist, promote or deter union organizing by employees performing work on a state construction contract, including a public works contract.
- b. No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, the Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

DRUG FREE WORKPLACE:

By signing this Agreement, Contractor hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, §8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works at the Property will: (1) receive a copy of the Contractor's drug-free workplace policy statement; and (2) agree to abide by the terms of the Contractor's statement as a condition of employment at the Property.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future state agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code, §8350 et seq.)

WORKMAN'S COMP. & LIABILITY INSURANCES.

Contractor shall at his own expense carry all workmen's compensation insurance to protect Contractor's employees and public liability insurance necessary for the full protection of Contractor and Awarding Agency from injury to persons or property arising from the acts of Contractor or his Subcontractors during the progress of the work. Certificates of such insurance shall be filed with Awarding Agency and with the Construction Lender if Awarding Agency so requires, and shall be subject to the approval of both of them as to adequacy of protection.

INSURANCE & BONDING:

The Contractor shall carry sufficient insurance coverage for unemployment, disability, and liability to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Consultant shall comply with the bonding and insurance requirements of Attachment B of OMB Circular A-110, Bonding and Insurance.

STATE LABOR STANDARDS PROVISIONS

State prevailing wage rates shall apply when the State wage rate is higher than the Federal wage rate. All contractors and subcontractors are subject to the application of Section 1720 et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages.

All contractors and subcontractors are subject to the provisions of Section 3700 of the California Labor Code which requires that every employer be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code.

All contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor or subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.

Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of contractors who work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1-1/2 times the basic rate of pay.

THE IMMIGRATION REFORM AND CONTROL ACT: (E-Verify.com)

The Immigration Reform and Control Act of 1986 (IRCA) legally mandates that U.S. employers verify the employment eligibility status of newly-hired employees. IRCA made it unlawful for employers to knowingly hire or continue to employ unauthorized workers. In response to the law, the Immigration and Naturalization Service (INS), now an integrated component of the Department of Homeland Security (DHS), created Form I-9 and mandated its accurate and timely completion by all U.S. employers and their employees.

For employers who fail to properly complete, retain, or make I-9 Forms available for inspection, fines range from \$100 to \$1,100 per individual I-9.

For employers who knowingly hire or knowingly continue to employ unauthorized workers, civil penalties range from \$250 to \$11,000 per violation.

For employers engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized workers, fines can be as much as \$3,000 per employee and/or 6 months of imprisonment. http://www.formi9.com/

SUBCONTRACTOR: _____

Signature: _____ Title: _____

Print Name

THE DAVIS-BACON AND RELATED ACTS: (DBRA)

Published in Chapter 3, section 276(a) 7 et seq. of U.S.C. Title 40. The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

THE COPELAND "ANTI-KICKBACK" ACT: (ANTI-KICKBACK)

Published in Chapter 3, section 276(c) of U.S.C. Title 40. The Copeland "Anti-Kickback" Act generally prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract and requires such contractors and subcontractors to submit weekly statements of compliance.

THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED: (CWHSSA)

Published in Chapter 5, Subchapter II, section 327 et seq. of U.S.C. Title 40. The Contract Work Hours and Safety Standards Act (CWHSSA) applies to federal service contracts and federal and federally assisted construction contracts over \$100,000. It requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects.

THE FAIR LABOR STANDARDS ACT: (FLSA)

Is published in Chapter 9, sections 201 et seq. of U.S.C. Title 29 which prescribes standards for the basic minimum wage and overtime pay, affects most private and public employment. It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. For nonagricultural operations, it restricts the hours that children under age 16 can work and forbids the employment of children under age 18 in certain jobs deemed too dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours and in certain jobs deemed too dangerous. The Act is administered by the Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor.

ACCESS AND RETENTION OF RECORDS: (24 CFR 92.508)

The awarding agency, the State of California, the U S DOL, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Under federal regulations all required records must be maintained by the contractor for five years after grantee makes final payments and all other pending matters are closed (this is two years longer than the old federal requirement of three years). The Contractor agrees to the above specified requirements.

WORKMAN'S COMP. & LIABILITY INSURANCES.

Contractor shall at his own expense carry all workmen's compensation insurance to protect Contractor's employees and public liability insurance necessary for the full protection of Contractor and Awarding Agency from injury to persons or property arising from the acts of Contractor or his Subcontractors during the progress of the work. Certificates of such insurance shall be filed with Awarding Agency and with the Construction Lender if Awarding Agency so requires, and shall be subject to the approval of both of them as to adequacy of protection.

INSURANCE & BONDING:

The Contractor shall carry sufficient insurance coverage for unemployment, disability, and liability to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Consultant shall comply with the bonding and insurance requirements of Attachment B of OMB Circular A-110, Bonding and Insurance.

CLEAN AIR ACT:

The contractor is required to comply with all aspects for the federal Clean Air Act which is the law that defines EPA's responsibilities for protecting and improving the nation's air quality and the stratospheric ozone layer. The last major change in the law, the Clean Air Act Amendments of 1990, was enacted by Congress in 1990. Legislation passed since then has made several minor changes. The Clean Air Act, like other laws enacted by Congress, was incorporated into the United States Code as Title 42, Chapter 85. The House of Representatives maintains a current version of the U.S. Code, which includes Clean Air Act changes enacted since 1990.

LOBBYING:

The Contractor hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress 'in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its 'instructions;
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Consultants shall certify and disclose accordingly; and
- d. Lobbying Certification - Paragraph_This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$ 100,000 for each such failure.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND
VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS
NONDEBARMENT CERTIFICATION

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160 – 19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

(1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization

Name & Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT:

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction" "debarred", "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting the proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but it is not required to, check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transactions knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the DOL may pursue available remedies, including suspension and/or debarment.

**STANDARD CONTRACT LANGUAGE REQUIRED FOR ALL
CONTRACTS AND SUBCONTRACTS**

1. The Civil Rights, HCD, and Age Discrimination Acts Assurances:

During the performance of this Contract, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this Contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

2. State Nondiscrimination Clause:

- a. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of the following: race, religion, color, national origin, ancestry, disability, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7258.0 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full, Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

STANDARD EQUAL OPPORTUNITY CLAUSE
(CONSTRUCTION OVER \$10,000)

The Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disabilities. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disabilities.
3. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph "1" and the provisions of paragraphs "1" through "7" in every contract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each contractor or vendor. The Contractor will take such action with respect to any contract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor

becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally- assisted construction work; provided that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.
9. The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Department and HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
10. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally-assisted construction contracts, pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this funding commitment (contract, loan, grant, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.

MBE/WBE STANDARD
BID DOCUMENT LANGUAGE FOR CONSTRUCTION CONTRACTS OVER \$10,000

(The following notice shall be included in and shall be a part of all solicitations for offers and bids on all Federal and Federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Secretary of Labor.)

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The offeror or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered areas are as follows:

GOALS FOR MINORITY GOALS FOR FEMALE

<u>PARTICIPATION IN</u> <u>TIMETABLES</u>	<u>PARTICIPATION IN</u> <u>EACH TRADE</u>	<u>EACH TRADE</u>
___ 16.9% ___	___ 6.9% ___	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

These goals are applicable to all contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform through the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

MBE/WBE
STANDARD CONTRACT LANGUAGE - CONSTRUCTION OVER \$10,000

FEMALE AND MINORITY GOALS AND TIMETABLES

The following goals and timetables for female utilization shall be included in all Federal and Federally-assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or Federally-assisted construction contract or subcontract.

AREA COVERED
(Goals for females apply nationwide)

<u>Timetable</u>	<u>Goal</u>
From April 1, 1981, until further notice	6.9%

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or Federally-assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, Federally-assisted, or non-Federally related project, contract, or subcontract.

Construction contractors participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this appendix.

ECONOMIC AREAS

<u>Area Covered</u>	<u>Goal Percent</u>
San Diego Economic Area	
Imperial County	18.2%
Riverside County	19.0%
San Diego County	16.9%

**MBE/WBE SUGGESTED
BID DOCUMENT LANGUAGE FOR
MINORITY/WOMEN'S BUSINESS ENTERPRISE CONSTRUCTION PROJECTS**

- (a) It is the policy of the _____ to take positive steps to maximize the utilization of minority and women's business enterprises in all contract activity administered by the _____.
- (b) The contractor will utilize his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority or women's business enterprise" means a business, at least 50% of which is owned by minority group members or women or, in the case of publicly-owned businesses, at least 51% of the stock is owned by minority group members or women. For the purpose of this definition, minority group members are Black, Hispanics, Asians, Native Americans, Alaskans or Pacific Islanders.
- (c) The contractor will submit the following statement as part of his/her sealed bid:

I have taken affirmative action to seek out and consider minority and women's business enterprises for the portions of work to be subcontracted. Such actions are fully documented in my records and available upon request. Results are as follows:

<u>Name and Address of Minority/ Women's Firms Contractor Anticipates Utilizing*</u>	<u>Category of Work</u>	<u>Dollar Value of Participation</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total Bid _____ Total Subcontract Amount _____

Minority/Women's Enterprise Total of Subcontract Amount _____

*Indicate whether business is owned by a minority or a woman.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (CONSTRUCTION OVER \$10,000)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted.
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
- c. "Employer identification number" means the federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, southeast Asia, the Indian subcontinent or the Pacific Islands).
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, contracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and women participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a. through 7.p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total

hours of employment and training of minority and women utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and women goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. **Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.**
6. **In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.**
7. **The Contractor shall take specific affirmative action's to ensure equal employment opportunity.** The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority individuals or women working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and women recruitment sources, provide written notification to minority and women recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or women referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the Contractor or when the

contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

- e. Develop on the job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b. above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and women-focused news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, women and community organizations, to schools with minority- and women-students and to minority and women-recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and women employees to recruit other minority persons and women and, where reasonable, provide after-school summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.
- l. Conduct at least annually, an inventory and evaluation at least of all minority and women personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., or other advancement opportunities.

- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel- and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority- and women-owned construction companies, contractors and suppliers, including circulation of solicitations to minority- and women-focused Contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a. through 7.p.).** The efforts of a contractor association, joint contractor/union, contractor/community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a. through 7.p. of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and women workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9. A single goal for minorities and a separate single goal for women have been established.** The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both men and women, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.**
- 11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.**
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs.** Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order

11246, as amended.

13. **The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.**
14. **The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company's EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.**
15. **Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area resident (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).**
16. **By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas,* transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, habits, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).*Parking lots, drinking fountains, recreation or entertainment areas.**

CALIFORNIA STATE LABOR STANDARDS AND PREVAILING WAGES

All contractors and subcontractors shall give the following certification to the grantee and forward this certification to the grantee within 10 days after the execution of any contract or subcontract.

- A. "I am aware of the provisions of Section **1720 et seq.** of the California Labor Code which requires that the State prevailing wage rate shall be paid to employees where this rate exceeds the Federal wage rate."
- B. "I am aware of the provisions of Section **3700** of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."
- C. "It is further agreed that, except as may be provided in Section **1810-1814** of the California Labor Code, the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the subcontract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week."
- D. "I am aware of the provisions of California Labor Code Section **1815** notwithstanding the provisions of 1810-1814 inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate."
- E. "I am aware of the provisions of California Labor Code, Section **1777.5** which requires the employment of apprentices on all public works projects and the payment of training contributions to the proper agency."
- F. Section **1861** of the California Labor Code; Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

STATE LABOR STANDARDS PROVISIONS

State prevailing wage rates shall apply when the State wage rate is higher than the Federal wage rate. All contractors and subcontractors are subject to the application of Section 1720 et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages.

All contractors and subcontractors are subject to the provisions of Section 3700 of the California Labor Code which requires that every employer be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code.

All contractors and subcontractors are subject to the provisions of Sections 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor or subcontractor shall forfeit, as a penalty, \$25 for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week and is not paid overtime.

Section 1815 of the California Labor Code requires that notwithstanding the provisions of Sections 1810-1814, employees of contractors who work in excess of eight hours per day and 40 hours per week shall be compensated for all hours worked in excess of eight hours per day at not less than 1-1/2 times the basic rate of pay.

Federal Labor Standards Provisions:

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (1) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR-5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's pay-roll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any

laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or sub-contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (l) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-WO14-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds. Further- more, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.1 2.

4. (i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not

less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any sub-contracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (1) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in sub-paragraph (1) of this paragraph, in the sum of \$1 0 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91 -54, 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

SUBCONTRACTOR: _____

Signature: _____ Title: _____

Print Name

9. CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form – LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1354, Title 34, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Organization/Firm)

(Name & Title of Authorized Representative)

(Signature)

(Date)

**10. CONTRACTOR’S CERTIFICATION REGARDING WORKER’S
COMPENSATION INSURANCE**

State of California

County of _____

I am aware of the requirements that every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that applicable codes, and I will comply with such provisions before commencing the performance of the work of this Contract.

(Organization/Firm)

(Name & Title of Authorized Representative)

(Signature)

(Date)

11. TABULATION OF SUBCONTRACTORS

No.	Subcontractor	Work To Be Performed	Percent Of Total Contract
1.	Name:		
	Address:		
	DIR Registration #:		
	SAM Registration #:		
2.	Name:		
	Address:		
	DIR Registration #:		
	SAM Registration #:		
3.	Name:		
	Address:		
	DIR Registration #:		
	SAM Registration #:		
4.	Name:		
	Address:		
	DIR Registration #:		
	SAM Registration #:		
5.	Name:		
	Address:		
	DIR Registration #:		
	SAM Registration #:		
6.	Name:		
	Address:		
	DIR Registration #:		
	SAM Registration #:		

(ATTACH ADDITIONAL NUMBERED PAGES IF NEEDED)

12. BIDDER QUALIFICATIONS STATEMENT

The bidder shall submit, as part of its proposal, the following statements as to its experience qualifications. The bidder certifies that all statements and information set forth are true and accurate.

- a. The bidder has been engaged in the contracting business under its present business name for _____ years.
- b. Experience in work of nature similar in type and magnitude to that set forth in the specification extends over a period of _____ years.
- c. The bidder, as Contractor, has satisfactorily completed all contracts awarded to it, except as follows: (Name any and all exceptions and reasons therefore. Bidder should attach additional pages if necessary).
 - 1. _____
 - 2. _____
- d. The following contracts cover work similar in type and magnitude to that set forth in the specification have been satisfactorily completed within the last **five (5) years** for the following owners (person, firms or authorities):

No.	Owner	Telephone No.	Contract Amount	Type of Work	Year Complete
1.					
2.					
3.					
4.					
5.					
6.					
7.					

- e. The bidder shall provide an audited financial statement (no more than two years old) with accompanying notes. (An audited financial statement with accompanying notes of a parent company guarantor may be substituted. A financial statement that is not audited is not acceptable. A letter verifying availability of a line of credit is not a substitute for the required financial statement.)

Yes

No

- f. The bidder shall fill in the following blanks based on the bidder's attached financial statement.

Current Assets: \$ _____

Current Liabilities: \$ _____

Total Net Worth: \$ _____

Current Ratio (Assets/Liabilities): _____

Working Capital (Current Assets – Current Liabilities): \$ _____

13. TABULATION OF MAJOR MATERIAL SUPPLIERS

The contractor shall indicate opposite each item of equipment or material listed below the name of the manufacturer and supplier of the equipment or material proposed to be furnished under the bid.

No.	Item	Manufacturer	Supplier
1.	24 Inch Diameter Steel Surface		
	Casing		
2.	12 Inch Diameter Steel Casing		
3.	Stainless Steel Wire Wrapped		
	Screen		
4.	15 HP Submersible Motors		
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

Palo Verde County Water District Water Wells Replacement Project – Phase II

13.			
14			
15			
16			
17			
18			
19			
20			
21.			
22.			
23.			
24.			
25.			

(ATTACH ADDITIONAL NUMBERED PAGES IF NEEDED)

14. NOTICE OF AWARD

Dated: _____

Project: Palo Verde County Water District Water Well Replacement Project – Phase II	Owner: County of Imperial	Owner's Contract No.:
---	-------------------------------------	-----------------------

Contract:	Engineer's Project No.:
	821.028

Bidder: _____

Bidder's Address (send Certified Mail, Return Receipt Requested):

You are notified that your Bid dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for the construction of the **Palo Verde County Water District Water Well Replacement Project – Phase II**.

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

You must comply with the following conditions within **fifteen (15) days** of the date you receive this Notice of Award.

1. Deliver to the Owner four (4) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Performance and Payment Bonds and Insurance Certificate as specified in the Instructions to Bidders (Article 20), and General Conditions (Paragraph 5.01)

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

Within **ten (10) days** after you comply with the above conditions, the Owner will return to you one (1) fully executed counterpart of the Contract Documents.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

County of Imperial

(Owner)

(Authorized Signature)

(Title)

14A. ACCEPTANCE NOTICE

Receipt of above NOTICE OF AWARD is hereby acknowledged

By: _____,

this the _____ day of _____, 2022.

By: _____
(Authorized Signature)

(Title)

State of _____ }

County of _____ }

On _____, before me, _____,

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true
and correct.

WITNESS my hand and official seal.

Signature of Notary Public

**15. AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)
FUNDING AGENCY EDITION**

THIS AGREEMENT is by and between _____ **COUNTY OF IMPERIAL** _____ (“Owner”) and _____ (“Contractor”).

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

TABLE OF ARTICLES	Page
Agreement	00521-1
Article 1-Work	00521-1
Article 2-The Project	00521-1
Article 3-Engineer	00521-1
Article 4-Contract Times	00521-2
Article 5-Contract Price	00521-2
Article 6-Payment Procedures	00521-2
Article 7-Interest	00521-4
Article 8-Contractor’s Representatives	00521-4
Article 9-Contract Documents	00521-4
Article 10-Miscellaneous	00521-6

ARTICLE 1 – WORK

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

Palo Verde County Water District Water Well Replacement Project – Phase II

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:

Palo Verde County Water District Water Well Replacement Project – Phase II

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by *The Holt Group, Inc.* (Engineer), who is to act as the Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIME

4.01 *Time is 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 Final Completion*

- A. The Work will be completed and ready for Final Payment within **one hundred sixty (160) calendar** days after the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions.

4.03 *Liquidated Damages*

- A. The Contractor and the Owner recognize that time is of the essence for this Agreement and that the 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 the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay Owner **\$2,000.00** for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

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

- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:
- B. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

- A. The Owner shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment on or about the 20th 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.
 - 1. Prior to Substantial Completion, Progress Payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and

less such amounts as the Engineer may determine or the Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

- a. **Ninety-five percent (95%)** of Work completed (with the balance being retainage); and
 - b. **Ninety-five percent (95%)** of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
2. Upon Substantial Completion, the Owner shall pay an amount sufficient to increase total payments to the Contractor to **ninety-five percent (95%)** of the Work completed, less such amounts as the Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

6.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by the Engineer's recommendation of payment in accordance with Paragraph 14.07 of the General Conditions, the Owner shall pay the Contractor as provided in Paragraph 14.07 of the General Conditions the remainder of the Contract Price as recommended by the Engineer as provided in said Paragraph 14.07, less any sum the Owner is entitled to set off against the Engineer's recommendation, including but not limited to liquidated damages.

6.04 *Substitution of Security*

Upon Contractor's request, COUNTY will make payment of funds withheld from progress payments to ensure performance under the contract pursuant to the requirements of California Public Contracts Code, Section 22300, if the Contractor deposits in escrow with COUNTY, or with a bank acceptable to COUNTY, securities eligible for investment under Government Code Section 16430 or bank savings and loan certifications of deposit, subject to the following conditions:

- A. Contractor shall bear the expense of COUNTY and the escrow agent, and COUNTY and the bank, in connection with the escrow deposit made.
- B. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amount of retention to be paid to the Contractor pursuant to this Article.
- C. Contractor shall enter into an escrow agreement satisfactory to COUNTY, which agreement shall include provisions governing, inter alia:
 1. the amount of securities to be deposited,
 2. the providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
 3. conversion of cash to provide funds to meet defaults by Contractor including, but not limited to, termination of Contractor's control over the work, stop notice filed pursuant to law or other amounts to be kept or retained under the provisions of the contract,
 4. decrease in value of securities on deposit,
 5. the termination of the escrow upon completion of the contract.
- D. Contractor shall obtain the written consent of the surety to such agreement.

ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at **eight percent (8%)** per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

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

- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. The 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. The Contractor is familiar with and is satisfied as to all Federal, State, and Local Laws and Regulations that may affect the cost, progress, and performance of the Work.
- D. The Contractor has obtained and carefully studied (or assumes responsibility 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 the 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 the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- E. The Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. The Contractor is aware of the general nature of work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey a clear understanding of all terms and conditions for the 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
 3. Payment Bond
 4. General Conditions
 5. Supplementary Conditions
 6. Technical Conditions
 7. Special Conditions
 8. Specifications as listed in the Table of Contents of the Project Manual
 9. Drawings consisting of 6 sheets.
 10. Addenda
 11. Exhibits to this Agreement
 - a. The Contractor’s Bid
 - b. Documentation submitted by the Contractor prior to the Notice of Award
 - c. Federal and State Contract Language Inclusion – January 01, 2018 – Exhibit ‘A’
 13. 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.
- 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.
- E. Contractor represents and warrants that it and its subcontractors are not ineligible to work for COUNTY due to violations of Labor Code Sections 1777.1 and 1777.7.

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

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 the Owner and the 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 *Prevailing Wage*

- A. Notice is hereby given that, pursuant to 1773 of the Labor Code of the State of California, the Owner has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work for each craft, classification, or type of worker required to execute the Contract. A copy of said prevailing rate of per diem wages is on file in the principal office of the Owner, to which reference is hereby made for further particulars. Said prevailing rate of per diem wages will be made available to any interested party upon request, and a copy thereof shall be posted at each job site.

IN WITNESS WHEREOF, the Owner and the Contractor have signed this Agreement in four (4) copies. One (1) counterpart each has been delivered to the Owner, the Contractor, the Engineer, and the Agency. All portions of the Contract Documents have been signed, initialed, or identified by the Owner and the Contractor or identified by the Engineer on their behalf.

Palo Verde County Water District Water Well Replacement Project – Phase II

This Agreement is dated _____ . This Agreement shall not be effective unless and until the Agency's designated representative concurs.

OWNER: **COUNTY OF IMPERIAL**

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

Agent for service of process:

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

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments there under, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency: _____

By: _____

Date: _____

Title: _____

16. NOTICE TO PROCEED

Dated: _____

Project: Palo Verde County Water District Water Well Replacement Project – Phase II	Owner: County of Imperial	Owner's Contract No.:
---	-------------------------------------	-----------------------

Contract:	Engineer's Project No.: 821.028
-----------	---

Contractor: _____

Contractor's Address (send Certified Mail, Return Receipt requested):

You are notified that the Contract Times under the above contract will commence to run on _____.
On or before that date, you are to start performing your obligations under the Contract Documents.

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

You are required to return an acknowledged copy of this NOTICE TO PROCEED to the OWNER.

		County of Imperial	
_____ Contractor		_____ Owner	
Given by:	_____ Authorized Signature	Given by:	_____ Authorized Signature
	_____ Title		_____ Title
	_____ Date		_____ Date

Copy to Engineer

17. PERFORMANCE BOND

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

**County of Imperial
Imperial County Workforce and Economic Development
2799 South 4th Street
El Centro, CA 92243**

CONTRACT

Date:

Amount:

Description: **Palo Verde County Water District Water Well Replacement Project – Phase II**

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL

SURETY

Company:

Signature: _____ (Seal)
Name and Title:

Surety's Name and Corporate Seal (Seal)

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

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

Attest: _____
Signature and Title

CONTRACTOR AS PRINCIPAL

SURETY

Company:

Signature: _____ (Seal)
Name and Title:

Surety's Name and Corporate Seal (Seal)

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

Attest: _____
Signature and Title:

Palo Verde County Water District Water Well Replacement Project – Phase II

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.
2. If the Contractor performs the Contract, the Surety and the 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, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety, at the addresses described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than **fifteen (15) days** after receipt of such notice to discuss methods of performing the Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than **twenty (20) days** after the Contractor and the Surety have received notice as provided in Paragraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to:
 1. The Surety in accordance with the terms of the Contract;
 2. Another Contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the 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 the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and the Contractor selected with the 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 the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the 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 the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond **fifteen (15) days** after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated Contractor's right to complete the Contract, and if the Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the

Palo Verde County Water District Water Well Replacement Project – Phase II

Contract. To a limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

- 6.1 The responsibilities of the Contractor for correction of defective Work and completion of the Contract;
- 6.2 Additional Legal, Design Professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 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 the Contractor.
- 7. The Surety shall not be liable to the Owner or others for obligations of the 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 the Owner or its heirs, executors, administrators, or successors.
- 8. The Surety hereby waives notice of any change, including changes of time, to the 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 (2) years** after Contractor Default or within **two (2) years** after the Contractor ceased working or within **two (2) years** after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties

as a defense in the jurisdiction of the suit shall be applicable.

- 10. Notice to the Surety, the Owner, or the 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 here from and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other Claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
 - 12.2 Contract: The agreement between the Owner and the Contractor identified on the signature page, including all the Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the 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 the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY (Name, Address and Telephone)	
SURETY AGENCY OR BROKER	_____

OWNER'S REPRESENTATIVE	_____

18. PAYMENT BOND

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

**County of Imperial
Imperial County Workforce and Economic Development
2799 South 4th Street
El Centro, CA 92243**

CONTRACT

Date:

Amount:

Description: **Palo Verde County Water District Water Well Replacement Project – Phase II**

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

The Surety and the 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:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

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

Attest:

Signature and Title

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:

Palo Verde County Water District Water Well Replacement Project – Phase II

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

9. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Contract. The 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. The 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 (1) 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 the Surety, the Owner, or the Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by the Surety, the Owner, or the 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, the 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 the Contractor, or with a first-tier subcontractor of the 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 the Contractor and the Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

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

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

FOR INFORMATION ONLY (Name, Address and Telephone)	
SURETY AGENCY OR BROKER:	_____

OWNER'S REPRESENTATIVE:	_____

**19. CERTIFICATE OF OWNER’S ATTORNEY
EXHIBIT GC-A**

I, the undersigned, _____ the duly authorized and acting legal representative of

County of Imperial do hereby certify as follows:

I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

Signature: _____

Name: _____

Title: _____

Date: _____

20. CERTIFICATE OF SUBSTANTIAL COMPLETION

Project: Palo Verde County Water District Water Well Replacement Project – Phase II	Owner: County of Imperial	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.: 821.028

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- All Work under the Contract Documents: The following specified portions:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of the Owner, the Contractor and the Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A (tentative) (revised tentative) (definitive) list of items to be completed or corrected, is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between the OWNER and the CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- Amended Responsibilities Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

Palo Verde County Water District Water Well Replacement Project – Phase II

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

Executed by Engineer

Date

Accepted by Contractor

Date

Accepted by Owner

Date

21. STANDARD GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agency* – The Federal or State Agency named as such in the Agreement.
 3. *Agreement* – The written instrument which is evidence of the agreement between the Owner and the Contractor covering the Work.
 4. *Application for Payment* – The form acceptable to the Engineer which is to be used by the 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.
 5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 6. *Bid* – The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 7. *Bidder* – The individual or entity who submits a Bid directly to the Owner.
 8. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 9. *Bidding Requirements* – The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Security of Acceptable Form, if any, and the Bid Form with any supplements.
 10. *Change Order* – A document recommended by the Engineer which is signed by the Contractor and the Owner and Agency and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 11. *Claim* – A demand or assertion by the Owner or Contractor seeking an adjustment of the Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 12. *Contract* – The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 13. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price* – The moneys payable by the Owner to the Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
15. *Contract Times* – The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by the Engineer’s written recommendation of final payment.
16. *Contractor* – The individual or entity with whom the Owner has entered into the Agreement.
17. *Cost of the Work* – See Paragraph 11.01.A for definition.
18. *Drawings* – That part of the Contract Documents prepared or approved by the Engineer which graphically shows the scope, extent, and character of the Work to be performed by the Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective; if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Engineer* – The individual or entity named as such in the Agreement.
21. *Field Order* – A written order issued by the Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time.
22. *General Requirements* – Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
23. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
24. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
25. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
27. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Substantial Completion of all of the Work.
28. *Notice of Award* – The written notice by the Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the Owner will sign and deliver the Agreement.
29. *Notice to Proceed* – A written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Work under the Contract Documents.
30. *Owner* – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

31. *PCBs* – Polychlorinated Biphenyls.
32. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
33. *Progress Schedule* – A schedule prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Time.
34. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Project Manual* – The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the Table(s) of Contents.
36. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
37. *Related Entity* – An officer, director, partner, employee, agent, consultant, or subcontractor.
38. *Resident Project Representative* – The authorized representative of the Engineer who may be assigned to the Site or any part thereof.
39. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
40. *Schedule of Submittals* – A schedule, prepared and maintained by the Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
41. *Schedule of Values* – A schedule, prepared and maintained by the Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing the Contractor’s Applications for Payment.
42. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work.
43. *Site* – Lands or areas indicated in the Contract Documents as being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Owner which are designated for the use of the Contractor.
44. *Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
45. *Subcontractor* – An individual or entity having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
46. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the 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.

47. *Successful Bidder* – The Bidder submitting a responsive Bid to whom the Owner makes an award.
48. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
49. *Supplier* – A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or any Subcontractor.
50. *Underground Facilities* – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
51. *Unit Price Work* – Work to be paid for on the basis of unit prices.
52. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
53. *Work Change Directive* – A written statement to the Contractor issued on or after the Effective Date of the Agreement and signed by the Owner and the Agency upon recommendation of the Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Time but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.

1.02 Terminology

- A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.
- B. *Intent of Certain Terms or Adjectives*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of Professional Judgment by the 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 the Engineer as to the Work. It is intended that such exercise of Professional Judgment, Action or Determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the Design Concept of the Completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to the Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

1. The word “day” means a calendar day of **twenty-four (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 the Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by the Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of the Contractor, “provide” is implied.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

- A. The Owner shall furnish to the Contractor ten (10) sets of printed or hard copies of the “Issued for Construction” Drawings and “Conformed” Project Manuals. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Time; Notice to Proceed*

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

2.04 *Starting the Work*

- A. The Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work shall be done at the Site prior to the date on which the Contract Time commences to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within **ten (10) days** after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), the Contractor shall submit to the Engineer for timely review:
 - 1. A Preliminary Progress Schedule;
 - 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 the performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference*

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

2.07 *Initial Acceptance of Schedules*

- A. At least **ten (10) days** before submission of the first Application for Payment a conference attended by the Contractor, Engineer, and others as appropriate will be held to review for acceptability to the Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. The Contractor shall have an additional **five (5) days** to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the Contractor until acceptable schedules are submitted to the Engineer.
 - 1. The Progress Schedule will be acceptable to the Engineer if it provides an orderly progression of the Work to completion within the Contract Time. Such acceptance will not impose on the Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve the Contractor from the Contractor’s full responsibility therefore.
 - 2. The Contractor’s Schedule of Submittals will be acceptable to the Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

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

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to the Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in Article 9.

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

- A. Reporting Discrepancies
 1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. The Contractor shall promptly report in writing to the Engineer any conflict, error, ambiguity, or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Engineer before proceeding with any Work affected thereby.
 2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, the Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, the Contractor shall promptly report it to the Engineer in writing. The Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

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

B. *Resolving Discrepancies*

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

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3) or
 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

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

3.06 *Electronic Data*

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

- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within **sixty (60) days**, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the **sixty (60) days** acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

- A. The Owner shall furnish the Site. The Owner shall notify the Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which the Contractor must comply in performing the Work. The Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If the Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in the Owner's furnishing the Site or a part thereof, the Contractor may make a Claim therefore as provided in Paragraph 10.05.
- B. Upon reasonable written request, the Owner shall furnish the Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and the 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. The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:*
- B. The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that the Engineer has used in preparing the Contract Documents; and
 - 2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that the Engineer has used in preparing the Contract Documents.
- C. *Limited Reliance by the Contractor on Technical Data Authorized:*
- D. The Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," the Contractor may not rely upon or make any claim against the Owner or Engineer, or any of their Related Entities with respect to:
 - 1. The completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto; or

2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. Any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

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

1. Is of such a nature as to establish that any “technical data” on which the Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. Is of such a nature as to require a change in the Contract Documents; or
3. Differs materially from that shown or indicated in the Contract Documents; or
4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;
5. then the Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify the Owner and the Engineer in writing about such condition. The Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Time Adjustments*

1. The Contract Price or the Contract Time, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in the Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. The Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
 - a. The Contractor knew of the existence of such conditions at the time the Contractor made a final commitment to the Owner with respect to the Contract Price and Contract Time by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for the Contractor prior to the Contractor’s making such final commitment; or
 - c. The Contractor failed to give the written notice as required by Paragraph 4.03.A.

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

4.04 *Underground Facilities*

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

1. The Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following will be included in the Contract Price, and the Contractor shall have full responsibility for:
 - a. Reviewing and checking all such information and data,
 - b. Locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. Coordination of the Work with the owners of such Underground Facilities, including the Owner, during construction, and
 - d. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, the Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to the Owner and Engineer. The Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, the Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If the Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that the Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the Owner and Contractor are unable to agree upon entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Time, the Owner or Contractor may make a Claim therefore as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. The Owner shall provide engineering surveys to establish reference points for construction which in the Engineer’s judgment are necessary to enable the Contractor to proceed with the Work. The 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 the Owner. The Contractor shall report to the Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:
 - 1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. The Contractor shall not be responsible for 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. The Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible.
- D. If the Contractor encounters a Hazardous Environmental Condition or if the Contractor or anyone for whom the Contractor is responsible creates a Hazardous Environmental Condition, the Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify the Owner and Engineer (and promptly thereafter confirm such notice in writing). The Owner shall promptly consult with the Engineer concerning the necessity for the Owner to retain a Qualified Expert to evaluate such condition or take corrective action, if any.
- E. The Contractor shall not be required to resume Work in connection with such condition or in any affected area until after the Owner has obtained any required permits related thereto and delivered to the Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If the Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Time, or both, as a result of such Work stoppage or such special conditions under which the Work is agreed to be resumed by the Contractor, either party may make a Claim therefore as provided in Paragraph 10.05.

- F. If after receipt of such written notice the Contractor does not agree to resume such Work based upon a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If the Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Time as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in Paragraph 10.05. The Owner may have such deleted portion of the Work performed by the Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom the Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate the Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by the Contractor or by anyone for whom the Contractor is responsible. Nothing in Paragraph 4.06. H shall obligate the Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. The Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of the Contractor's obligations under the Contract Documents. These bonds shall remain in effect until **one (1) year** after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. The Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.
- C. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, the Contractor shall promptly notify the Owner and Engineer and shall, within **twenty (20) days** after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

5.04 *Contractor's Liability Insurance*

- A. The Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and shall provide protection from claims set forth below which may arise out of or result from the Contractor's performance of the Work and the Contractor's other obligations under the Contract Documents, whether it is to be performed by the Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
 - 4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from; and
 - 6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
 - 1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insurer (subject to any customary exclusion regarding professional liability) the Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insurers, and include coverage for the respective officers, directors, partners,

employees, agents, consultants and subcontractors of each and any of all such additional insurers, and the insurance afforded to these additional insurers shall provide primary coverage for all claims covered thereby;

2. Include at least the specific coverage's and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. Include completed operations insurance;
4. Include contractual liability insurance covering the Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least **thirty (30) days** prior written notice has been given to the Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
6. Remain in effect at least until final payment and at all times thereafter when the Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
7. With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least **two (2) years** after final payment.
 - a. The Contractor shall furnish the Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to the Owner and any such additional insured of continuation of such insurance at final payment and **one (1) year** thereafter.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, the Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (the Contractor shall be responsible for any deductible or self-insured retention.). This insurance shall:
 1. Include the interests of the Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of Engineers and Architects);
 4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by the Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by the Engineer;
 5. Allow for partial utilization of the Work by the Owner;
 6. Include testing and startup; and
 7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by the Owner, Contractor, and Engineer within **thirty (30) days** written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. The Contractor shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of the Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least **thirty (30) days** prior written notice has been given to the Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. The Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of the Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by the Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.07 *Waiver of Rights*

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

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

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with the Contractor and made payable to the Contractor as fiduciary for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. The Contractor shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof.
- B. The Contractor as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within **fifteen (15) days** after the occurrence of loss to the Contractor's exercise of this power. If such objection be made, the Contractor as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, the Contractor as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, the Contractor as fiduciary shall provide a bond for the proper performance of such duties.

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice

thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. The 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall not be responsible for the negligence of the Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, the Contractor shall assign a competent Resident Superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be the Contractor’s representative at the Site and shall have authority to act on behalf of the Contractor. All communications given to or received from the superintendent shall be binding on the Contractor.

6.02 *Labor; Working Hours*

- A. The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The 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. The Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without the Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to the Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, the Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of the Owner. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. The Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. The Contractor shall submit to the Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Time. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Time may only be made by a Change Order.

6.05 *Substitutes and “Or-Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to the Engineer for review under the circumstances described below.
 - 1. *“Or-Equal” Items:* If in the Engineer’s sole discretion an item of material or equipment proposed by the Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by the Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in the Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. In the exercise of reasonable judgment the Engineer determines that:
 - 1) It is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) It will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) It has a proven record of performance and availability of responsive service; and
 - b. The 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 Time, and
 - 2) It will conform substantially to the detailed requirements of the item named in the Contract Documents.
 - 2. Substitute Items
 - a. If in the Engineer’s sole discretion an item of material or equipment proposed by the Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. The Contractor shall submit sufficient information as provided below to allow the Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and

an acceptable substitute therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by the Engineer from anyone other than the Contractor.

- c. The procedural requirements for review by the Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as the Engineer may decide is appropriate under the circumstances.
 - d. The Contractor shall make written application to the Engineer for review of a proposed substitute item of material or equipment that the Contractor seeks to furnish or use. The application:
 - 1) *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 be suited to the same use as that specified;
 - 2) *Will state:*
 1. The extent, if any, to which the use of the proposed substitute item will prejudice the Contractor's achievement of Substantial Completion on time;
 2. whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 3. whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) *Will identify:*
 1. All variations of the proposed substitute item from that specified and available engineering,
 2. sales, maintenance, repair, and replacement services;
 - 4) And shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other Contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by the Engineer. The Contractor shall submit sufficient information to allow the Engineer, in the Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by the Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* The Engineer will record the Engineer's costs in evaluating a substitute proposed or submitted by the Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not the

Engineer approves a substitute item so proposed or submitted by the Contractor, the Contractor shall reimburse the Owner for the charges of the Engineer for evaluating each such proposed substitute. The Contractor shall also reimburse the Owner for the charges of the Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with the Owner) resulting from the acceptance of each proposed substitute.

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. The Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to the Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom the Owner may have reasonable objection. The Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom the Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to the Owner in advance for acceptance by the Owner by a specified date prior to the Effective Date of the Agreement, and if the Contractor has submitted a list thereof in accordance with the Supplementary Conditions, the Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. The Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by the Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of the Owner or Engineer to reject defective Work.
- C. The Contractor shall be fully responsible to the 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 the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents:
1. Shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between the Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor
 2. Shall anything in the Contract Documents create any obligation on the part of the Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with the Contractor.
- E. The Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with the Engineer through the Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

- G. All Work performed for the Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against the Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, the Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

- A. The 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 the Owner nor the Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.
- B. If the Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, the Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be the Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve the Contractor of the Contractor's obligations under Paragraph 3.03.

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. The Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, the Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against the Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

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

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

6.12 *Record Documents*

- A. The Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record

documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings shall be delivered to the Engineer.

6.13 *Safety and Protection*

- A. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. The 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. The Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by the 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 the Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the 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 the Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- D. The Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the Engineer has issued a notice to the Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

- A. The Contractor shall be responsible for coordinating any exchange of Material Safety Data Sheets (MSDS) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Engineer prompt written notice if the 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 the Engineer determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings*

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

2. *Samples*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data to enable the Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

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

- C. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, the Contractor shall have determined and verified:
 - a. All field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - b. The suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
 - c. All information relative to the Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
 - d. Shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
2. Each submittal shall bear a stamp or specific written certification that the Contractor has satisfied the Contractor's obligations under the Contract Documents with respect to the Contractor's review and approval of that submittal.

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

D. *Engineer's Review*

1. The Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to the Engineer. The 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. The Engineer's review and approval will not extend to the means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. The Engineer's review and approval shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has complied with the requirements of Paragraph 6.17.C.3 and the Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. The Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. The Contractor warrants and guarantees to the Owner that all Work shall be in accordance with the Contract Documents and will not be defective. The Engineer and its Related Entities shall be entitled to rely on representation of the Contractor's warranty and guarantee.
- B. The 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 the Contractor is responsible; or
 2. Normal wear and tear under normal usage.

- C. The 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 the 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 the Engineer or any payment related thereto by the Owner;
 4. Use or occupancy of the Work or any part thereof by the Owner;
 5. Any review and approval of a Shop Drawing or Sample Submittal or the issuance of a Notice of Acceptability by the Engineer;
 6. Any inspection, test, or approval by others; or
 7. Any correction of defective Work by the Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from but only to the extent caused by any negligent act or omission of the 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 the Owner or the Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of the Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the 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 the Contractor under Paragraph 6.20.A shall not extend to the liability of the Engineer and the Engineer’s officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
1. The preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications.

6.21 *Delegation of Professional Design Services*

- A. The 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 the Contractor’s responsibilities for the construction means, methods, techniques,

sequences and procedures. The Contractor shall not be required to provide Professional Services in violation of applicable law.

- B. If Professional Design Services or Certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer.
- C. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and the Engineer have specified to the Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, the 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. The Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. The Owner may perform other work related to the Project at the Site with the Owner's employees or via other direct contracts therefore, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. Written notice thereof will be given to the Contractor prior to starting any such other work; and
 - 2. If the Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in Paragraph 10.05.
- B. The Contractor shall afford each other Contractor who is a party to such a direct contract, each utility owner and the Owner, if the Owner is performing other work with the Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and the others whose work will be affected. The duties and responsibilities of the Contractor under this Paragraph are for the benefit of such utility owners and other Contractors to the extent that there are comparable provisions for the benefit of the Contractor in said direct contracts between the Owner and such utility owners and other Contractors.
- C. If the proper execution or results of any part of the Contractor's Work depends upon work performed by others under this Article 7, the Contractor shall inspect such other work and promptly report to the 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 the Contractor's Work. The Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If the Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in the Supplementary Conditions:
 - 1. The individual or entity who will have authority and responsibility for coordination of the activities among the various Contractors will be identified;
 - 2. The specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. The extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, the Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of the Owner.
- B. Each other direct contract of the Owner under Paragraph 7.01.A shall provide that the other Contractor is liable to the Owner and the Contractor for the reasonable direct delay and disruption costs incurred by the Contractor as a result of the other contractor's inactions.
- C. The Contractor shall be liable to the Owner and any other Contractor for the reasonable direct delay and disruption costs incurred by such other Contractor as a result of the Contractor's actions or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to the Contractor*

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

8.02 *Replacement of the Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

- A. The Owner’s duties with respect to providing land and easements and providing Engineering Surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to the Owner’s identifying and making available to the Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by the Engineer in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on the Owner’s Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

- A. The Owner’s responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

9.01 *Owner’s Representative*

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

9.02 *Visits to Site*

- A. The Engineer will make visits to the Site at intervals appropriate to the various stages of construction as the 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 the Contractor’s executed Work.

Based upon information obtained during such visits and observations, the Engineer, for the benefit of the Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. The Engineer's efforts will be directed toward providing for the 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, the Engineer will keep the Owner informed of the progress of the Work and will endeavor to guard the Owner against defective Work.

- B. The Engineer's visits and observations are subject to all the limitations on the Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of the Engineer's visits or observations of the Contractor's Work the 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 the Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

- A. The Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on the Owner and also on the Contractor, who shall perform the Work involved promptly. If the Owner or the Contractor believes that a Field Order justifies an adjustment in the Contract Price or the Contract Time, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with the Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with the Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of Professional Design Services, if any, see Paragraph 6.21.
- C. In connection with the Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

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

9.07 *Determinations for Unit Price Work*

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

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

- A. The Engineer will be the initial interpreter of the requirements of the Contract Documents and the judge of the acceptability of the Work there under. All matters in question and other matters between the Owner and the Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to the Engineer in writing within **thirty (30) days** of the event giving rise to the question.
- B. The Engineer will, with reasonable promptness, render a written decision on the issue referred. If the Owner or the Contractor believes that any such decision entitles them to an adjustment in the Contract Price or the Contract Times or both, a Claim may be made under Paragraph 10.05. The date of the Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. The Engineer's written decision on the issue referred will be final and binding on the Owner and the Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, the Engineer will not show partiality to the Owner or the Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither the Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by the 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 the Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by the Engineer to the Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. The Engineer will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the performance of the Work. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. The Engineer will not be responsible for the acts or omissions of the Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. The Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, the Owner may, subject to written approval by the Agency at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If the Owner and the Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Time, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

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

10.03 Execution of Change Orders

- A. The Owner and the Contractor shall execute appropriate Change Orders recommended by the Engineer covering:
 - 1. Changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or the Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by the Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, the Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

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

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by the Engineer shall be required as a condition precedent

to any exercise by the Owner or the Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations with respect to such Claims.

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to the Engineer and the other party to the Contract promptly (but in no event later than **thirty (30) days** after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within **sixty (60) days** after the start of such event (unless the Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in the Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in the Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to the Engineer and the claimant within **thirty (30) days** after receipt of the claimant's last submittal (unless the Engineer allows additional time).
- C. *Engineer's Action:* The Engineer will review each Claim and, within **thirty (30) days** after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. Deny the Claim in whole or in part,
 2. Approve the Claim, or
 3. Notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that the Engineer does not take action on a Claim within said **thirty (30) days**, the Claim shall be deemed denied.
- E. The Engineer's written action under the Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon the Owner and the Contractor, unless the Owner or the Contractor invoke the dispute resolution procedure set forth in Article 16 within **thirty (30) days** of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 *Cost of the Work*

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

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

2. The 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 the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained.
3. Payments made by the Contractor to Subcontractors for Work performed by the Subcontractors. If required by the Owner, the Contractor shall obtain competitive bids from subcontractors acceptable to the Owner and the Contractor and shall deliver such bids to the Owner, who will then determine, with the advice of the 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 the Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to Engineers, Architects, Testing Laboratories, Surveyors, Attorneys, and Accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work.
 - b. The 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 the Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from the Contractor or others in accordance with rental agreements approved by the 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 the Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of the 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 the Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of the 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 the Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's fee.

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

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

- 1. Payroll costs and other compensation of the 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 the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of the Contractor's principal and branch offices other than the Contractor's office at the Site.
- 3. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.
- 4. Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

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

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

11.02 Allowances

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

B. *Cash Allowances:*

- 1. The Contractor agrees that:

- a. The cash allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. The Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance*

1. The Contractor agrees that a contingency allowance, if any, is for the sole use of the Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by the Engineer to reflect actual amounts due the Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of the Comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item.
- D. The Owner or the Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. The Bid price of a particular item of Unit Price Work amounts to more than five percent (5%) of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than twenty-five percent (25%) from the estimated quantity of such item indicated in the Agreement; and
 2. There is no corresponding adjustment with respect to any other item of Work; and
 3. The Contractor believes that the Contractor is entitled to an increase in the Contract Price as a result of having incurred additional expense or the Owner believes that the Owner is entitled to a decrease in the Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be fifteen percent (15%);
 - b. For costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent (5%);
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of fifteen percent (15%) of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;
 - d. No fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. The amount of credit to be allowed by the Contractor to the 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 the Contractor's fee by an amount equal to five percent (5%) of such net decrease; and
 - f. When both additions and credits are involved in any one change, the adjustment in the Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order. Any Claim for an adjustment in the Contract Time shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Time covered by a Change Order or any Claim for an adjustment in the Contract Time will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where the Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of the Contractor, the Contract Time will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph 12.02.A. Delays beyond the control of the Contractor shall include, but not be limited to, acts or neglect by the Owner, acts or neglect of utility owners or other Contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If the Owner, Engineer, or other Contractors or utility owners performing other work for the Owner as contemplated by Article 7, or anyone for whom the Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then the Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time, or both. The Contractor's entitlement to an adjustment of the Contract Time is conditioned on such adjustment being essential to the Contractor's ability to complete the Work within the Contract Time.
- C. If the Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of the Owner, or other causes not the fault of and beyond control of the Owner and the Contractor, then the Contractor shall be entitled to an equitable adjustment in the Contract Time, if such adjustment is essential to the Contractor's ability to complete the Work within the Contract Time. Such an adjustment shall be the Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.B.
- D. The Owner, the Engineer and the Related Entities of each of them shall not be liable to the Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) sustained by the Contractor on or in connection with any other project or anticipated project.
- E. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time for delays within the control of the Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

- B. The Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. For inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. That costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
 - 3. As otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the Engineer the required certificates of inspection or approval.
- D. The Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the Owner's and the Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the Owner and the Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by the Contractor without written concurrence of the Engineer, it must, if requested by the Engineer, be uncovered for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at the Contractor's expense unless the Contractor has given the Engineer timely notice of the Contractor's intention to cover the same and the Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observation and replaced at the Contractor's expense.
- B. If the Engineer considers it necessary or advisable that covered Work be observed by the Engineer or inspected or tested by others, the Contractor, at the Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, the Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and the Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, the Owner may make a Claim therefore as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, the Contractor may make a Claim therefore as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or the 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, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of notice, the Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Engineer, remove it from the Project and replace it with Work that is not defective. The Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, the Contractor shall take no action that would void or otherwise impair the Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within **one (1) year** after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by the Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions:
 - 1. Repair such defective land or areas; or
 - 2. Correct such defective Work; or
 - 3. If the defective Work has been rejected by the Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there from.
- B. If the Contractor does not promptly comply with the terms of the Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by the Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

- D. Where defective Work (and damage to other Work resulting there from) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of **one (1) year** after such correction or removal and replacement has been satisfactorily completed.
- E. The Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

- A. If the Contractor fails within a reasonable time after written notice from the Engineer to correct defective Work or to remove and replace rejected Work as required by the Engineer in accordance with Paragraph 13.06.A, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the Owner may, after **seven (7) days** written notice to the Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, the Owner shall proceed expeditiously. In connection with such corrective or remedial action, the Owner may exclude the Contractor from all or part of the Site, take possession of all or part of the Work and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the Owner has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Owner, the Owner's representatives, agents and employees; the Owner's other Contractors, and the Engineer and the Engineer's Consultants access to the Site to enable the Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against the Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, the Owner may make a Claim therefore as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's defective Work.
- D. The Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by the Owner of the Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. *Applications for Payments*

- 1. At least **twenty (20) days** before the date established in the Agreement for each progress payment (but not more often than once a month), the Contractor shall submit to the Engineer for review an Application for Payment filled out and signed by the 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 the Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the Owner's interest therein, all of which must be satisfactory to the Owner.
- 2. Beginning with the second Application for Payment, each Application shall include an affidavit of the Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge the Contractor's legitimate obligations associated with prior Applications for Payment.
- 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

- 1. The Engineer will, within **ten (10) days** after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the Owner or return the Application to the Contractor indicating in writing the Engineer's reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application.
- 2. The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on the Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of the Engineer's knowledge, information and belief:
 - a. The Work has progressed to the point indicated;
 - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
 - c. The conditions precedent to the Contractor's being entitled to such payment appear to have been fulfilled in so far as it is the Engineer's responsibility to observe the Work.
- 3. By recommending any such payment the 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 the Engineer in the Contract Documents;
or
 - b. That there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the Owner or entitle the Owner to withhold payment to the Contractor.
4. Neither the Engineer’s review of the Contractor’s Work for the purposes of recommending payments nor the Engineer’s recommendation of any payment, including final payment, will impose responsibility on the 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 the Contractor’s failure to comply with Laws and Regulations applicable to the Contractor’s performance of the Work, or
 - d. To make any examination to ascertain how or for what purposes the Contractor has used the moneys paid on account of the Contract Price, or
 - e. To determine that title to any of the Work, materials, or equipment has passed to the Owner free and clear of any Liens.
5. The Engineer may refuse to recommend the whole or any part of any payment if, in the Engineer’s opinion, it would be incorrect to make the representations to the Owner stated in Paragraph 14.02.B.2. The Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in the Engineer’s opinion to protect the Owner from loss because:
- a. The Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. The Contract Price has been reduced by Change Orders;
 - c. The Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. The Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. **Ten (10) days** after presentation of the Application for Payment to the Owner with the Engineer’s recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by the Owner to the Contractor.

D. Reduction in Payment

1. The Owner may refuse to make payment of the full amount recommended by the Engineer because:
 - a. Claims have been made against the Owner on account of the Contractor’s performance or furnishing of the Work;

- b. Liens have been filed in connection with the Work, except where the Contractor has delivered a specific bond satisfactory to the Owner to secure the satisfaction and discharge of such Liens;
 - c. The Contractor's performance or furnishing of the Work is inconsistent with funding Agency requirements;
 - d. There are other items entitling the Owner to a set-off against the amount recommended; or
 - e. The Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If the Owner refuses to make payment of the full amount recommended by the Engineer, the Owner will give the Contractor immediate written notice (with a copy to the Engineer) stating the reasons for such action and promptly pay the Contractor any amount remaining after deduction of the amount so withheld. The Owner shall promptly pay the Contractor the amount so withheld, or any adjustment thereto agreed to by the Owner and the Contractor, when the Contractor corrects to the Owner's satisfaction the reasons for such action.
 3. If it is subsequently determined that the Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When the Contractor considers the entire Work ready for its intended use the Contractor shall notify the Owner and the Engineer in writing that the entire Work is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Engineer issue a certificate of Substantial Completion.
- B. Promptly after the Contractor's notification, the Owner, Agency, Contractor, and Engineer shall make a pre-final inspection of the Work to determine the status of completion. If the Engineer does not consider the Work substantially complete, the Engineer will notify the Contractor in writing giving the reasons therefore.
- C. If the Engineer considers the Work substantially complete, the Engineer will deliver to the Owner a Tentative Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The Owner shall have **seven (7) days** after receipt of the Tentative Certificate during which to make written objection to the Engineer as to any provisions of the certificate or attached list. If, after considering such objections, the Engineer concludes that the Work is not substantially complete, the Engineer will within **fourteen (14) days** after submission of the Tentative Certificate to the Owner notify the Contractor in writing, stating the reasons therefore. If, after consideration of the Owner's objections, the Engineer considers the Work substantially complete, the Engineer will within said **fourteen (14) days** execute and deliver to the Owner and the Contractor a Definitive Certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the Engineer believes justified after consideration of any objections from the Owner.

- D. At the time of delivery of the Tentative Certificate of Substantial Completion, the Engineer will deliver to the Owner and the Contractor a written recommendation as to division of responsibilities pending final payment between the Owner and the Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless the Owner and the Contractor agree otherwise in writing and so inform the Engineer in writing prior to the Engineer's issuing the Definitive Certificate of Substantial Completion, the Engineer's aforesaid recommendation will be binding upon the Owner and the Contractor until final payment.
- E. The Owner shall have the right to exclude the Contractor from the Site after the date of Substantial Completion subject to allowing the Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to the Substantial Completion of all the Work, the Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which the Owner, the Engineer, and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the Owner for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, subject to the following conditions.
 - 1. The Owner at any time may request the Contractor in writing to permit the Owner to use or occupy any such part of the Work which the Owner believes to be ready for its intended use and substantially complete. If and when the Contractor agrees that such part of the Work is substantially complete, the Contractor will certify to the Owner and the Engineer that such part of the Work is substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 2. The Contractor at any time may notify the Owner and the Engineer in writing that the Contractor considers any such part of the Work ready for its intended use and substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, the Owner, the Contractor, and the Engineer shall make an inspection of that part of the Work to determine its status of completion. If the Engineer does not consider that part of the Work to be substantially complete, the Engineer will notify the Owner and the Contractor in writing giving the reasons therefore. If the Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to Certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment*

- 1. After the Contractor has, in the opinion of the 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 of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, the Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. All documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
 - b. Consent of the surety, if any, to final payment;
 - c. A list of all Claims against the Owner that the Contractor believes are unsettled; and
 - d. Complete and legally effective releases or waivers (satisfactory to the Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by the Owner, the Contractor may furnish receipts or releases in full and an affidavit of the Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any Lien.

B. Engineer's Review of Application and Acceptance

1. If, on the basis of the Engineer's observation of the Work during construction and final inspection, and the Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the Engineer is satisfied that the Work has been completed and the Contractor's other obligations under the Contract Documents have been fulfilled, the Engineer will, within **ten (10) days** after receipt of the final Application for Payment, indicate in writing the Engineer's recommendation of payment and present the Application for Payment to the Owner for payment. At the same time the Engineer will also give written notice to the Owner and the Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, the Engineer will return the Application for Payment to the Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. **Thirty (30) days** after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum the Owner is entitled to set off against the Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by the Owner to the Contractor.

14.08 *Final Completion Delayed*

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

and accepted shall be submitted by the Contractor to the Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. The remaining balance of any sum included in the final Application for Payment but held by the Owner for Work not fully completed and accepted will become due when the Work is fully completed and accepted.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
1. A waiver of all Claims by the Owner against the Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from the Contractor's continuing obligations under the Contract Documents; and
 2. A waiver of all Claims by the Contractor against the Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by the Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. The Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. The Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. The Contractor's disregard of the authority of the Engineer; or
 4. The Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, the Owner may, after giving the Contractor (and surety) **seven (7) days** written notice of its intent to terminate the services of the Contractor:
1. Exclude the Contractor from the Site, and take possession of the Work and of all the Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion),
 2. Incorporate in the Work all materials and equipment stored at the Site or for which the Owner has paid the Contractor but which are stored elsewhere, and

3. Complete the Work as the Owner may deem expedient.
- C. If the Owner proceeds as provided in Paragraph 15.02.B, the Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) sustained by the Owner arising out of or relating to completing the Work, such excess will be paid to the Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Such claims, costs, losses, and damages incurred by the Owner will be reviewed by the Engineer as to their reasonableness and, when so approved by the Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph the Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, the Contractor's services will not be terminated if the Contractor begins within **seven (7) days** of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than **thirty (30) days** of receipt of said notice.
- E. Where the Contractor's services have been so terminated by the Owner, the termination will not affect any rights or remedies of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the Owner will not release the Contractor from liability.
- F. If and to the extent that the Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon **seven (7) days** written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy of the Owner, terminate the Contract. In such case, the Contractor shall be paid for (without duplication of any items):
 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. All claims, costs, losses, and damages (including but not limited to all fees and charges of Engineers, Architects, Attorneys, and other Professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. Reasonable expenses directly attributable to termination.
- B. The Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of the Contractor, (i) the Work is suspended for more than **ninety (90) consecutive days** by the Owner or under an order of court or other public authority, or (ii) the Engineer fails to act on any Application for Payment within **thirty (30) days** after it is submitted, or (iii) the Owner fails for **thirty (30) days** to pay the Contractor any sum finally determined to be due, then the Contractor

may, upon **seven (7) days** written notice to the Owner and the Engineer, and provided the Owner or the Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from the Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if the Engineer has failed to act on an Application for Payment within **thirty (30) days** after it is submitted, or the Owner has failed for **thirty (30) days** to pay the Contractor any sum finally determined to be due, the Contractor may, **seven (7) days** after written notice to the Owner and the Engineer, stop the Work until payment is made of all such amounts due the Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude the Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to the Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. The Owner and the Contractor may mutually request mediation of any Claim submitted to the Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. The Owner and the Contractor shall participate in the mediation process in good faith. The process shall be concluded within **sixty (60) days** of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the claim is not resolved by mediation, the 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 **thirty (30) days** after termination of the mediation unless, within that time period, the Owner or the Contractor:
1. Elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
 2. Agrees with the other party to submit the Claim to another dispute resolution process, or
 3. Gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the State of California.

17.06 *Headings*

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

ARTICLE 18 – FEDERAL REQUIREMENTS

18.01 *Agency Not a Party*

- A. This Contract is expected to be funded in part with funds provided by the Agency. Neither the Agency, nor any of its departments, entities, or employees is a party to this Contract.

18.02 *Contract Approval*

- A. The Owner and the Contractor will furnish the Owner’s attorney such evidence as required so that the Owner’s attorney can complete and execute the following “Certificate of Owner’s Attorney” (Exhibit GC-A) before the Owner submits the executed Contract Documents to the Agency for approval.
- B. Concurrence by Agency in the award of the Contract is required before the Contract is effective.

18.03 *Conflict of Interest*

- A. The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer.
- B. The Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the

employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the Contractor or subcontractors.

18.04 *Gratuities*

- A. If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or the Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- B. In the event this Contract is terminated as provided in paragraph 18.04.A, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three (3) nor more than ten (10) times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

18.05 *Audit and Access to Records*

- A. For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), the Owner, the Agency, the Controller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor, which are pertinent to the Contract, for the purpose of making audits, examinations, excerpts and transcriptions. The Contractor shall maintain all required records for **three (3) years** after final payment is made and all other pending matters are closed.

18.06 *Small, Minority and Women's Businesses*

- A. If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) the Contractor is encouraged to procure goods and services from labor surplus area firms.

18.07 *Anti-Kickback*

- A. The Contractor shall comply with the Copeland Anti-Kickback Act (18 USC 874 and 40 USC 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that the Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to the Agency.

18.08 *Clean Air and Pollution Control Acts*

- A. If this Contract exceeds **\$100,000**, the Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 USC 1251 *et seq.*). The Contractor will report violations to the Agency and the Regional Office of the EPA.

18.09 *State Energy Policy*

- A. The Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

18.10 *Equal Opportunity Requirements*

- A. If this Contract exceeds **\$10,000**, the Contractor shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- B. Contractor’s compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within **ten (10) working days** of award of any construction subcontract in excess of **\$10,000** at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

18.11 *Restrictions on Lobbying*

- A. The Contractor and each subcontractor shall comply with Restrictions on Lobbying (Public Law 101-121, Section 349) as supplemented by applicable Agency regulations. This Law applies to the recipients of contracts and subcontracts that exceed **\$100,000** at any tier under a Federal loan that exceeds **\$150,000** or a Federal grant that exceeds **\$100,000**. If applicable, the Contractor must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 34 USC 1354. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by the Owner.

18.12 *Environmental Requirements*

- A. When constructing a project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:
1. *Wetlands* – When disposing of excess spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.
 2. *Floodplains* – When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert one-hundred (100) year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, i.e., alluvial soils on NRCS Soil Survey Maps.
 3. *Historic Preservation* – Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of the Agency. Construction shall be temporarily halted pending the notification process and further directions issued by the Agency after consultation with the State Historic Preservation Officer (SHPO).
 4. *Endangered Species* – The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of the Agency. Construction shall be temporarily halted pending the notification process and further directions issued by the Agency after consultation with the U.S. Fish and Wildlife Service.

22. SUPPLEMENTARY CONDITIONS

TABLE OF CONTENTS

SC-1.01.A.2. Defined Terms	00800-2
SC-1.01.A.4. Defined Terms	00800-2
SC-1.01.A.10. Defined Terms	00800-2
SC-1.01.A.20. Defined Terms	00800-2
SC-1.01.A.35. Defined Terms.....	00800-2
SC-2.03.A. Commencement of Contract Times; Notice to Proceed	00800-2
SC-4.02. Subsurface and Physical Conditions	00800-2
SC-4.06. Hazardous Environmental Condition at Site	00800-3
SC-4.06.D Hazardous Environmental Condition at Site	00800-3
SC-5.03. Certificates of Insurance	00800-3
SC-5.04. Contractor’s Liability Insurance	00800-3
SC-5.06.E. Property Insurance	00800-4
SC-6.05.C. Substitutes and “Or-Equals” – Engineer’s Evaluation	00800-4
SC-6.06. Concerning Subcontractors, Suppliers, and Others	00800-4
SC-6.13. Safety and Protection	00800-4
SC-6.20.C. Indemnification.....	00800-5
SC-9.03. Project Representative.....	00800-5
SC-10.05.Claims and California Public Works Contract Code.....	00800-5
SC-14.02.A.3 Progress Payments – Applications for Payments	00800-5
SC-14.02.C.1 Progress Payments – Payment Becomes Due	00800-5
SC-14.07.C. Final Payment – Payment Becomes Due	00800-6
SC-18.08. Clean Air and Pollution Control Acts	00800-6
SC-19. Project Sign	00800-6
SC-20. Additional State Requirements.	00800-6

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract Funding Agency Edition (No. C-710, 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 will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof. Every effort has been made to already have incorporated the following into the General Conditions.

SC-1.01.A.2 Add the following language to the end of Paragraph 1.01.A.2:

The Project is financed in whole or in part by California Department of Housing and Community Development (HCD) through its Community Development Block Grant (CDBG) Program. The HCD programs are administered through the CDBG offices; therefore, the Agency for these documents is CDBG.

SC-1.01.A.4 Add the following language to the end of Paragraph 1.01.A.4:

The Application for Payment form to be used on this Project is EJCDC No. C-620. The Agency must approve all Applications for Payment before payment is made.

SC-1.01.A.10 Add the following language to the end of Paragraph 1.01.A.10:

The Change Order form to be used on this Project is EJCDC No. C-941. Agency approval is required before Change Orders are effective.

SC-1.01.A.20 Add the following language to the end of Paragraph 1.01.A.20:

The Engineer for this project is: **The Holt Group, Inc.** The Engineer's Consultants on this project are:

- 1) **Geotechnical Engineer** – N/A
- 2) **Structural Engineer** – N/A
- 3) **Electrical Engineer** – JOL Enterprises, Inc. James R. Adler, P.E.
- 4) **Operation Building** – N/A

SC-1.01.A.35 Add the following language to the end of Paragraph 1.01.A.35:

The Project Manual also includes Improvement Plans 1 through 6 dated April 10, 2018.

SC-2.03.A Delete Paragraph 2.03.A in its entirety and insert the following in its place:

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within **thirty (30) days** after the Effective Date of the Agreement.

SC-4.02 Add the following new paragraphs immediately after Paragraph 4.02.B:

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

1. N/A

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. N/A

E. Copies of reports and drawings itemized in 4.02.C and 4.02.D that are not included with Bidding Documents may be examined at **The Holt Group, 1601 North Imperial Avenue, El Centro, CA 92243** office during regular business hours. These reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which the Contractor may rely as identified and established above are incorporated therein by reference. The Contractor is not entitled to rely upon other information and data utilized by the Engineer in the preparation of the 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 or explorations or tests of subsurface conditions at or contiguous to the Site are known to the Owner or the Engineer.

SC-4.06.D Amend the beginning of Paragraph 4.06.D to read as follows:

If the Contractor encounters a Hazardous Environmental Condition or 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, or if the Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, the Contractor shall immediately:

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

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

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

C. The limits of liability for 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 coverage under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

- a. State: Statutory
- b. 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 coverage and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor:

- a. General Aggregate: \$2,000,000
- b. Products – Completed Operations Aggregate: \$1,000,000
- c. Personal and Advertising Injury: \$1,000,000

Palo Verde County Water District Water Well Replacement Project – Phase II

- | | |
|---|-------------|
| d. Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |
| e. Excess or Umbrella Liability | |
| 1) General Aggregate | \$2,000,000 |
| 2) Each Occurrence | \$2,000,000 |
| 3. Automobile Liability under paragraph 5.04.6 of the General Conditions: | |
| a. Combined Single Limit | \$1,000,000 |
| 4. Property Damage liability insurance will provide Explosion, Collapse and Underground (X,C,U) coverage where applicable. | |
| 5. Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall be provided as part of the General Liability coverage. | |
| 6. The Owner and the Engineer are to be included as additional insureds. | |

SC-6.05.C. Amend the paragraph by making two subparagraphs under the Title C.

Engineer's Evaluation. The paragraph text is re-titled, 6.05.C.2 After Effective Date of Agreement. A new paragraph is added before this paragraph to read as follows:

1. *During Bidding:* The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or-equal" materials and equipment as defined in Paragraph 6.05 of the General Conditions, or those substitute or materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of the required type, function, and quality to be met by any proposed substitute or "or-equal" item. A request for the Engineer's clarification of materials and equipment considered "or-equal" prior to the Effective Date of the Agreement must be received by the Engineer at least **five (5) days** prior to the date for receipt of Bids. No item of material or equipment will be considered by the Engineer as a substitute unless a written request for approval has been submitted by the Bidder and has been received by the Engineer at least **fifteen (15) days** prior to the date for receipt of Bids. Each 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 the Bidder. The Engineer's decision of approval or disapproval of a proposed item will be final. If the Engineer approves any proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders. The Bidders shall not rely upon approvals made in any other manner.
2. *After the Effective Date of the Agreement:* The Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. The Engineer may require the Contractor to furnish additional data about the proposed substitute item. The Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until the Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." The Engineer will advise the Contractor in writing of any negative determination.

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

- H. The Contractor shall not award work valued at more than **ninety percent (90%)** of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

SC-6.13. Add the following language to the end of paragraph 6.13.B:

For all excavations in excess of five (5) feet, the Contractor shall, pursuant to Labor Code Section 6705, submit in advance of any excavation hereunder a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground. No such excavation shall be made until said detailed plan is submitted by the Contractor and accepted by the Engineer.

SC-6.20.Delete Paragraph 6.20.C.2 in its entirety:

SC-9.03. Add the following language at the end of paragraph 9.03:

The Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative will be stated in the Agreement for Engineering Services executed for this specific Project.

SC-10.05. Add the following new paragraph immediately after paragraph 10.05.F:

G. If this is a “Public Works Contract” as defined in Section 22200 of the California Public Contract Code, claims shall be resolved pursuant to Sections 20104 et seq. of the California Public Contract Code. These sections are summarized as follows:

1. Claim means a separate demand by the Contractor for (a) a time extension, (b) payment of money or damages arising from work done by, or on behalf of the Contractor, pursuant to this Contract, payment not otherwise expressly provided in the Contract, or (c) any separate demand by the Contractor, the amount of which is disputed by the Owner.
2. For claims less than \$50,000, the Owner shall respond in writing to all written claims within **forty-five (45) days** of receipt of the claim, or may request in writing, within **thirty (30) days** of receipt of the claim, any additional documentation supporting the claim or relating to any defenses the Owner may have against such claim. The Owner’s written response to the claim, as further documented, will be submitted to the Contractor within **fifteen (15) days** from receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional documentation, whichever is greater.
3. For claims over \$50,000 and less than or equal to \$375,000, the Owner shall respond in writing to all written claims within **sixty (60) days** of receipt of the claim, or may request in writing, within **thirty (30) days** of receipt of the claim, any additional documentation supporting the claim or relating to any defenses the Owner may have against such claim. The Owner’s written response to the claim, as further documented, will be submitted to the Contractor within **thirty (30) days** from receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional documentation, whichever is greater.
4. If the Contractor disputes the Owner’s written response, or the Owner fails to respond within the time specified, the Contractor may notify the Owner in writing within either **fifteen (15) days** of receipt of the Owner’s response, or within **fifteen (15) days** of the Owner’s failure to respond within the statutorily prescribed time, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, the Owner shall schedule a meet and confer conference within **thirty (30) days** for settlement of the dispute.
5. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Government Code Sections 900, et seq. The period of time within which to file such a claim shall be defined in Public Contract Code Section 20104.2(e).

SC-14.02.A.3 Add the following language at the end of paragraph 14.02.A.3:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the Contractor.

SC-14.02.C.1. Delete Paragraph 14.02.C.1 in its entirety and insert the following in its place:

1. **Thirty (30) days** after presentation of the Application for Payment to the Owner with the Engineer’s recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by the Owner to the Contractor.

SC-14.07.C Delete Paragraph 14.07.C1 in its entirety and insert the following in its place:

1. **Thirty-five (35) days** after the filing of a Notice of Completion with the County Recorder and after presentation to the Owner of the Application for Payment and accompanying documentation, the amount recommended by the Engineer, less any sum the Owner is entitled to set off against the Engineer’s recommendation, including but not limited to liquidated damages, will become due and will be paid by the Owner to the Contractor.

SC-18.08 Delete paragraph 18.08.A in its entirety and insert the following in its place:

- A. If this Contract exceeds **\$100,000**, the Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC §1857(h)), Section 508 of the Clean Water Act (33 USC §1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

SC-19 Add the following new paragraph:

ARTICLE 19 - PROJECT SIGN

19.01 The Contractor will place a temporary construction project sign at a location designated by the Engineer. This sign measuring 4' x 8', will be made of 3/4" exterior grade plywood and adhere to the format and details illustrated on the sheet included in Section 23., “Project Signs,” of these Contract Documents. The sign will be prepared by a professional sign painter.

SC-20 Add the following new paragraphs:

ARTICLE 20 - ADDITIONAL STATE REQUIREMENTS

20.01 In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the awarding body 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. Section 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 the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

20.02 Unless otherwise indicated in the Contract Documents, all utility lines, conduits, wires, or structures shall be maintained by the Contractor and shall not be disturbed, disconnected, or damaged by him during the progress of the Work, provided, that should the Contractor in the performance of the Work disturb, disconnect, or damage any of the above, all expenses arising from such disturbance or in the replacement or repair thereof shall be borne by the Contractor. However, in accordance with Section 4215 of the California Government Code, the Contractor shall be

Palo Verde County Water District Water Well Replacement Project – Phase II

compensated for all costs of locating and repairing damage to main or trunkline utility facilities located on the work site and for costs of operating equipment on the work site necessarily idled during such work where the Contractor has exercised reasonable care in removing or relocating utility facilities which are inaccurately indicated in the Contract Documents.

23. PROJECT SIGN

- Below is a typical project identity sign to include the project identity, credit to the State and/or Federal grant agencies and the awarding agency.
- Below is a typical contractor identity sign.

<p>THIS PROJECT IS ADMINISTERED BY THE COUNTY OF IMPERIAL, WITH FUNDING FROM THE CALIFORNIA DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT'S (HCD) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM</p> <p>IMPERIAL COUNTY WORKFORCE AND ECONOMIC DEVELOPMENT 2799 S 4TH Street El Centro, CA 92243 (442) 265-1100</p>  	<p>CONTRACTOR'S NAME BUSINESS ADDRESS BUSINESS PHONE # STATE CONTRACTOR'S LICENSE # EMERGENCY AFTER HOURS #</p>
---	---

- Project identity sign to be placed on white background with black lettering.
- Provide and install logos.
- Sign to measure at a minimum 48" wide and 36" high.
- Both signs may be incorporated into one sign 8' x 4'.
- Contractors Identity sign to be placed on white background with black lettering.
- Provide art work and logo.
- Sign to measure a minimum 36" wide and 36" high

24. CONTRACTOR’S APPLICATION FOR PAYMENT NO. _____

	Application Period:	Application Date:
To (Owner): County of Imperial	From (Contractor):	Via: Imperial County Workforce & Economic Development
Project: Palo Verde County Water District Water Well Replacement Project – Phase II	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.: 821.028

**APPLICATION FOR PAYMENT
Change Order Summary**

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

CONTRACTOR’S CERTIFICATION

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

By:	Date:
-----	-------

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

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

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

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

Approved by: _____ (Date) _____
Funding Agency (if applicable)

25. CHANGE ORDER FORM

No. _____

Date of Issuance: _____ Effective Date: _____

Project: Palo Verde County Water District Water Well Replacement Project – Phase II	Owner: County of Imperial	Owner's Contract No.:
Contract:	Date of Contract:	
Contractor:	Engineer's Project No.: 821.028	

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

Description: _____

Attachments: (List documents supporting change): _____

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$ _____	Original Contract <input type="checkbox"/> Working days <input type="checkbox"/> Calendar days Substantial completion (days or date): _____ Ready for final payment (days or date): _____
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial completion (days): _____ Ready for final payment (days): _____
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial completion (days or date): _____ Ready for final payment (days or date): _____

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Date: _____	Date: _____	Date: _____
Approved by Funding Agency (if applicable):	Date: _____	Date: _____

CHANGE ORDER INSTRUCTIONS

A. General Information

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Time. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Time.

Changes that affect Contract Price or Contract Time should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Time, a Field Order should be used.

B. Completing the Change Order Form

The Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by the Contractor, or requests from the Owner, or both.

Once the Engineer has completed and signed the form, all copies should be sent to the Owner or the Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. The Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to time, cross out the part of the tabulation that does not apply.