



## Virginia Department of Fire Programs Government Affairs

### Virginia Fire Services Board Addendum to the Minutes

**Dates of Meetings:** February 22<sup>nd</sup> and 23<sup>rd</sup>, 2024

**Location of Meetings:** Virginia Beach Convention Center

The addendum to the minutes provides supplemental information provided to the Virginia Fire Services Board and its' committees as a component of the Board Packet or during Board meetings. *Of note, the agendas and prior minutes are posted on the Department of Fire Programs website and on Virginia Town Hall.*

#### **Documents:**

1. February VFSB Schedule
2. VDFP Chief of Training Report
3. VDFP Administration Report
  - a. VDFP Live Fire Structure Grant Information
    - i. Department of Fire Programs Live Fire Structure Grant Application
    - ii. Price Proposal Replacement Gas Prop Equipment for Existing VDFP Mobile Trainers (3)
  - b. FY24 ATL Payments
  - c. FY24 Budget Summary
  - d. Fluvanna County Extension Request
  - e. Open Burn Building Projects
  - f. City of Richmond Extension Request
  - g. Revised Live Fire Training Structure Project Manual
  - h. Prototype 4B Sample Drawings
4. Presentation by Fluvanna County
5. Presentation by The Structures Group
6. VFSB Rules of Procedure Update
7. Alleghany County Fire and EMS Study Report
8. New and Emerging Technology for the Virginia Fire Service Training Board



## Virginia Department of Fire Programs Government Affairs

### February 2024 Virginia Fire Services Board Meeting Schedule

#### VFSB Schedule

- **Wednesday, February 21, 2024**
  - 3:00 PM – Governor’s Fire Service Awards and Opening Ceremonies (*Ballroom*)
  
- **Thursday, February 22, 2024**
  - 1:00 PM – Administration, Policy, and Finance Committee
  - 2:00 PM – Live Fire Training Structure Committee
  - 3:00 PM – Fire Prevention and Control Committee
  
- **Friday, February 23, 2024**
  - 9:00 AM- Fire Education and Training Committee
  - 10:00 AM- Full Board Meeting

*Unless otherwise noted, all meetings will occur at the Virginia Beach Convention Center located at 1000 19<sup>th</sup> Street, Virginia Beach, VA 23451 Suite 1D.*

#### **Catering Information**

*February 23, 2024 at 8:30 AM:*

Ham, Egg, and Cheese Croissants

Assorted Breakfast Pastries

Coffee

Water

*All other meals can be covered by per diem as submitted on a VDFP travel reimbursement form.*

#### **Lodging Information**

All VFSB members and VDFP staff will be staying at the following location:

Hilton Virginia Beach Oceanfront

3001 Atlantic Ave

Virginia Beach, VA 23451



## **Virginia Department of Fire Programs Government Affairs**

### **Conference Information**

*Please see the link below for information on the Virginia Fire Rescue Conference. Spencer Willett suggests downloading the conference app as found on the website.*

<https://www.registration123.com/VFCA/24VFCA/ConferenceAgenda.cfm>



# COMMONWEALTH of VIRGINIA

L. Brad Creasy  
EXECUTIVE DIRECTOR

## Virginia Department of Fire Programs

Jamey Brads  
BRANCH CHIEF  
TRAINING & OPERATIONS

### Memorandum

To: Brad Creasy, Executive Director  
Fire Board Members

From: Jamey Brads, Branch Chief  
Training and Operations

Date: February 2, 2024

Subject: Report Training and Operations

The Training and Operations Branch continues to support both funded and non-funded deliveries. Since our last report that was presented in December:

#### **Branch Realignment:**

Over the past 6 months we have developed a plan for realigning the Training & Operations branch to better serve Virginia's stakeholders. The implementation of this plan started in July with the filling of one full-time position that went to the Accreditation and Certification Division (AC). The overarching plan for realignment is for testing to be the sole responsibility of the AC division and for training session processing and business process visible to external stakeholders being handled at the Learning Development Division (LD) level.

This would take the realignment of current agency assets and the reallocation of open positions within the branch. In October, Jeff Liebold, former Division Chief and Curriculum Development Workgroup Coordinator retired from full-time service with the agency. His retirement created a vacancy. We utilized this vacancy to create a Learning Administration Coordinator position which officially onboarded to LD on January 10.

January 1, we moved Division 1 and Division 7 testing to the AC division. Effective February 12, 2024, the Administrative Specialists from Division 1 and 3 were reassigned to LD and AC divisions respectively. Within this reassignment, LD now has entry and closing of CSOD sessions as well as any other processing for Divisions 1, 3, and 7 while the AC division has testing and certification for Divisions 1, 3, 7, and Delegated Authorities (DA).

Division Chief Marc Brade stepped into the role of Curriculum Development Workgroup Coordinator in addition to his Division 7 responsibilities as of January 5.

As of the February 12 shift of personnel, the staffing levels will be as follows:

LD: 3 FTEs, 1 P-14, 3 CD support adjuncts  
AC: 5 FTEs and 1 P-14.

We will be reevaluating at 30 days, 60 days, and the end of the fiscal year, June 30, on the progress of the LD and AC divisions. Adjustments will be made as necessary and then we will begin shifting the remaining division work on a division-by-division basis.

### **Special Operations Accomplishments:**

- Updated and revised 7 curriculums (Rope, Vehicle, Confined Space, Trench, Surface Water, Swift Water/Flood, Watercraft).
- Rolled out and conducted 21 days of instructor updates for all updated curriculums.
- Updated and revised the HTR flow chart.
- Delivered new podcast in collaboration with Training and Operations branch leadership.
- Coordinated Water Deployment drill with VDEM and State Water Rescue Teams.
- Coordinated with the Logistics Division on trailer and equipment upgrades.
- Established Divisional/Regional collaborations to enhance the Special Operations ability to deliver programs within a geographical area.
- Completed and published HTR/Water Training schedule one year in advance.
- Special Operations Administrative Specialist, Pricilla Pardue, was promoted to Learning Administration Coordinator.
  - Special Operations Program Support Specialist to be onboarded Feb. 10, filling the vacancy left by Ms. Pardue's promotion.

### **Logistics Accomplishments:**

- The agency upgraded its AV capabilities by acquiring equipment from another state agency to support current and future conferences/training.
- We added 6 additional trailers to its fleet after acquiring them from another state agency.
- We purchased additional trailers to support the buildout of 3 new rope trailers.
- Logistics staff has been certified as Fork Truck Train-the-Trainers (TTTs).

- Logistics completed the buildout of the agency's new Trench trailer. It has spent the year going through classes for feedback prior to paint. All feedback has been positive.
- We built out the agency's new Heavy Vehicle trailer.
- Logistics staff spent a large amount of work keeping the MBTs operational.

### **Learning Development Accomplishments:**

- The agency rolled out specialized reporting for localities based on a request basis. We are currently looking to expand this resource to additional volunteer and career localities
- With over 20 online courses, videos, and materials, the branch continues to develop and expand our OnDemand resources within CSOD.
  - Most notably we have relaunched 1403 Awareness online and will be providing two smaller micro learning series on Behavioral Health and Basic Professional Development Skills.
- We continue to refine and enhance our Learning Platform with additional features to improve user experience.
  - We have streamlined search features within the Events Calendar, added a button to enable locating accredited courses faster, and created additional self-service forms for ease of use.
- Continuing the momentum of 2022, we held our annual Virtual Instructor In-Service for 2023.
  - For our Adjunct Instructor cadre we have streamlined our orientation process through virtual onboarding, added a quarterly newsletter to provide consistent and timely information, and continue to provide CSOD training to staff in virtual CSOD 101 sessions.
- Three Instructor Symposiums were delivered across the state in Divisions 6, 1, and 5.
  - The symposiums were very well received netting 600+ TTTs.
  - Plans are in development for delivering a fourth Instructor Symposium in Division 7 at the end of this fiscal year or early in the next.
- We're developing and implementing a new TTT mentorship check-off program modeling the semblance of a task book check-off.

### **Accreditation and Certification Accomplishments:**

- We have registered over 13,000 certificates with Pro-Board at no cost to the localities and/or student thus saving them more than \$227,000.

- We have completed the review and updating of the identified improperly processed Division 7 training sessions, which affected students and localities not just in Division 7 but across the state.
- Staffing was increased within the division to better support the testing functions of the agency.
  - We have added 3 full-time positions since July one and will be backfilling the now vacant P-14 position.
- The paper-based reciprocity process has been converted to a completely electronic process within CSOD allowing us to approve the request within no more than a week from receipt.
- We have streamlined the test grading process, so the majority of divisions are getting grading back in less than five business days.

**Online testing solution update** - Final negotiations underway with second online testing solution vendor. The primary vendor was not able to meet VITA requirements.

**Lithium-Ion Battery Training Update** – The development process is underway. The third-party vendor supplied story boards for modules and the project is on target.

**Modular FF Update** – Pilot one is complete and pilot two is nearing completion. A review of the two pilots is planned in February.

**Statistics of Interest:**

<b>FY2022</b>	<b>FY2023</b>
<b>1,754</b> individual sessions delivered	<b>1,815</b> individual sessions delivered
<b>21,103</b> Students attended training	<b>26,051</b> students attended training
<b>215</b> cancelled sessions	<b>209</b> cancelled sessions
<b>849</b> No-shows	<b>708</b> no-shows
<b>132,695</b> Instructional hours delivered	<b>180,514</b> Instructional hours delivered
<b>2112</b> Withdrawals	<b>3169</b> Withdrawals

*Jamey Brads*

Virginia Department of Fire Programs  
 Branch Chief - Training & Operations  
 1005 Technology Park Drive  
 Glen Allen, Virginia 23059-4500  
 804.371.3209 (fax)  
 804.839.1042 (cell)  
<http://www.vafire.com>  
 E-mail: [jamey.brads@vdfp.virginia.gov](mailto:jamey.brads@vdfp.virginia.gov)



Commonwealth of Virginia  
Department of Fire Programs

**ATTACHMENT A**

**Live Fire Structure Grant Application  
Construction, Renovation, or Repair**

A. Applicant Information	
1. Title of Jurisdiction Making Application (Check <input type="checkbox"/> only one, then make entry)	County of <u>VA Dept of Fire Programs (VDFP)</u> City of _____ Incorporated Town of _____
2. Employer Identification Number (EIN)	_____-_____-_____-_____-_____-_____-_____-_____-_____-_____-
3. Principal Point of Contact	(Include salutation, name & title) <b>Jamey Brads, Chief of Training and Operations</b>
4. Mailing Address (Include zip code+4)  Identify COUNTY if appropriate →	<b>1005 Technology Park Dr Glen Allen, VA 23059</b>
5. Telephone Number	( 804 839-1042
6. FAX Number	( _____
7. Internet e-mail address	<u>jamey.brads@vdfp.virginia.gov</u>
8. Application Scope (Check <input type="checkbox"/> only one)	<input type="checkbox"/> Sole Jurisdiction as identified in [A] <input checked="" type="checkbox"/> Multiple Jurisdictions - Complete [F]

B. Facility Information (Burn Building)	
	The term "burn building" refers to an unoccupied structure. The purpose of the Burn Building is to provide live fire training to fire service personnel in support of Fire Fighter I and Fire Fighter II Training throughout the Commonwealth of Virginia.
1. Current / Proposed Owner of Facility	(Party holding /to hold title to the property) <b>VDFP</b>
2. In-Service Date or Age of Structure	(Leave blank if NOT an existing structure as reported in [C1] below.) Date _____ Purchased in <b>2009</b> <input type="checkbox"/> Unknown If unknown, enter approximate age in years
3. Address of Structure (If appropriate, identify COUNTY where located.)	<b>Statewide asset - available to any jurisdiction for funded training</b>
4. Will the renovation or repair bring the the burn building into compliance with the current standard of NFPA 1403, including appropriate NFPA 1403 signage? If no, explain in 6. Comments.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5. Will the construction of the burn building be in compliance with the current edition of Sections I through IV of the Summary of Burn Building Prop Grant Program as included in the VDFP Project Manual for Burn Building Props and the current standard of NFPA 1403? If no, explain in 6. Comments.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
6. Comments (pertaining to Facility)	<input type="checkbox"/> None <b>We have three of these units that were purchased at the same time. All of them need updates and upgrades to come into compliance with the new standard. They are statewide assets, however, due to needed upgrades, we typically only have one in service at a time due to needed repairs, etc.</b>

**C. Facility Usage**

<p>1. Number of annual burns (must be documented)</p> <p>(for New construction, this figure is projected)</p>	<p>VDFP FFI Burns <input type="text" value="15"/></p> <p>(in compliance with NFPA 1403 standards)</p>	
	<p>VDFP FFII Burns <input type="text" value="10"/></p> <p>(in compliance with NFPA 1403 standards)</p>	
	<p>In-Service Burns <input type="text"/></p>	
	<p>Other Burns <input type="text" value="6 demos"/></p> <p>(specify types of burns)</p>	
	<p>Other Burns <input type="text"/></p> <p>(specify types of burns)</p>	
<p>2. Travel to another facility</p>	<p>Distance traveled to closest alternate facility <input type="text" value="N/A"/></p> <p>(in miles)</p>	
	<p>Time traveled to closest alternate facility <input type="text"/></p> <p>(rounded to whole hours)</p>	
<p>3. Other localities served (list number of stations and number of firefighters served for each locality)</p> <p>(for New construction, this figure is projected)</p> <p>(if more than 5 localities are served, additional localities must be included on Additional Localities Served tab)</p>	<p>Name of Locality <input type="text" value="Statewide"/></p> <p>Number of stations <input type="text"/></p> <p>Number of Firefighters <input type="text"/></p>	
	<p>Name of Locality <input type="text"/></p> <p>Number of stations <input type="text"/></p> <p>Number of Firefighters <input type="text"/></p>	
	<p>Name of Locality <input type="text"/></p> <p>Number of stations <input type="text"/></p> <p>Number of Firefighters <input type="text"/></p>	
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	<p>Name of Locality <input type="text"/></p> <p>Number of stations <input type="text"/></p> <p>Number of Firefighters <input type="text"/></p>	
	<p>Name of Locality <input type="text"/></p> <p>Number of stations <input type="text"/></p> <p>Number of Firefighters <input type="text"/></p>	
	<p>TOTAL NUMBER OF STATIONS SERVED (from above and add') <input type="text"/></p>	
	<p>TOTAL NUMBER OF FIREFIGHTERS SERVED (from above and add') <input type="text"/></p>	
	<p>4. Maintenance of facility</p> <p>(for New construction, skip Section C.4. Section E.2. MUST be completed)</p>	<p>Annual Maintenance Inspections <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(documentation of annual inspections MUST be provided with application for inspections conducted after 12/2007)</p>
		<p>Previous Repair Projects <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(documentation MUST be provided with application for most recent repairs)</p>

D. Project Description													
1. Level of work proposed (Check <input checked="" type="checkbox"/> only one)	<input checked="" type="checkbox"/> NEW Construction where no such structure previously existed <input type="checkbox"/> RENOVATION of an existing burn building or substantially similar structure <input type="checkbox"/> REPAIR of an existing burn building (up to \$50,000)												
2. Type of Building (proposed or existing)	<table border="0"> <tr> <td><input type="checkbox"/></td> <td>Class A fuel</td> <td><input type="checkbox"/></td> <td>Prototype I plans (brick, block, concrete)</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Class B fuel</td> <td><input type="checkbox"/></td> <td>Prototype II plans (steel frame)</td> </tr> <tr> <td></td> <td></td> <td><input checked="" type="checkbox"/></td> <td>Other*</td> </tr> </table> <input type="text" value="500"/> Square Footage of Building (proposed or existing)  <input type="text" value="2"/> Number of Burn Rooms on 1st floor <input type="text" value="N/A"/> Number of Burn Rooms on 2nd floor  <b>For New Construction:</b> *If building plans deviate from Prototype I or II, applicant MUST define building concept and include proposed plans with application.  <b>For Renovations or Repairs:</b> *If building plans deviate from Prototype I or II, applicant MUST include copy of existing building plans with proposed renovations/repairs.	<input type="checkbox"/>	Class A fuel	<input type="checkbox"/>	Prototype I plans (brick, block, concrete)	<input checked="" type="checkbox"/>	Class B fuel	<input type="checkbox"/>	Prototype II plans (steel frame)			<input checked="" type="checkbox"/>	Other*
<input type="checkbox"/>	Class A fuel	<input type="checkbox"/>	Prototype I plans (brick, block, concrete)										
<input checked="" type="checkbox"/>	Class B fuel	<input type="checkbox"/>	Prototype II plans (steel frame)										
		<input checked="" type="checkbox"/>	Other*										
3. Architectural and/or Engineering (A/E) (Check <input checked="" type="checkbox"/> only one for each)	Has an A/E study already been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable If so, is a copy attached to this application? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable												
4. Condemnation and/or fitness for use  (Leave [C4] blank if this application is for totally new construction; otherwise Check <input checked="" type="checkbox"/> only one for each statement.)	time of application? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, is there currently a scheduled date to remove the structure from service? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, enter the month & year: _____ If not presently in service, has this structure been <u>condemned</u> by a building official or other such entity legally empowered to do so? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable If yes, is a copy of such order attached to this application? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable												

<b>E. Financial Plan</b>	An estimated project budget must be attached to this application. For renovation/repair projects, contractor estimates must be attached.		
<b>1. Project Budget (Capital Expend)</b>			
<b>a. Expense</b>			
i. Estimated Cost of Construction (Enter or check <input checked="" type="checkbox"/> )	166,020 X3	<input type="checkbox"/>	Unknown at time of application
ii. Estimated A/E Costs (Enter or check <input checked="" type="checkbox"/> )	\$ -	<input checked="" type="checkbox"/>	Unknown at time of application
iii. Estimated Total Costs (Enter or check <input checked="" type="checkbox"/> )	\$ 498,060.00	<input type="checkbox"/>	Unknown at time of application
<b>b. Revenue</b>			
i. Grant Funding Being Requested New construction maximum \$450,000	\$ 498,060.00		
ii. Matching / Cost Share Funds	N/A		
iii. Source of Matching Funds (local contributions, donations, etc.)	N/A		
<b>2. Operating Budget (Maint. Expend)</b>			
a. Is there a financial agreement among partnering localities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Not Applicable
b. Is there a local budget for annual maintenance costs?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
c. Is there a local budget for annual inspection costs?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
d. Is there a local budget for 5-year inspection costs?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	



**3. Electronic Transfer of Funds Information**

Note: The completion of this section is optional at the time of application and will not hinder determination of eligibility, etc. However, if not provided and since funds will only be transferred electronically, disbursement will be delayed until this information is properly provided.

1. Account Ownership Information  
Employer Identification Number

		---							
--	--	-----	--	--	--	--	--	--	--

SSN may **NOT** be substituted.

Complete next three (3) entries **ONLY** if Name is different than ACCOUNT TITLE as it appears in [E2].

(Last, First, Initials)

NAME \_\_\_\_\_

(Telephone Number)

MAIN \_\_\_\_\_

(Telephone Number)

ALTERNATE \_\_\_\_\_

2. Direct Deposit Account Information  
(Check  one Type of Account)

Checking       Savings

(9 digits)

ROUTING TRANSIT NUMBER \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_

ACCOUNT TITLE \_\_\_\_\_

FINANCIAL INSTITUTION \_\_\_\_\_



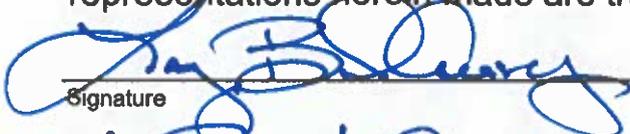
Note - This section of the application MUST be properly executed for the

- City Manager /or/ Deputy
- County Administrator /or/ Deputy
- Town Manager /or/ Mayor
- Or other duly authorized official but only when the application

Only completed applications can be acted upon.

### CERTIFICATION

This application is made on behalf of the jurisdiction above described [ A ] with the full knowledge and belief that all representations herein made are true and correct.

	<u>January 9, 2024</u>
Signature	Date
<u>L. Brad Creasy</u>	<u>Executive Director</u>
Printed Name	Title

( All applications must be notarized to be considered - incomplete forms shall be returned.)

State of Virginia }  
}

City / County of Harrison }

On this 9 day of January (month) in 2024 (year), before me, the undersigned a Notary Public for the Commonwealth of Virginia, personally appeared L. Brad Creasy to me known ( or to me proved ) to be the identical person named herein and having in my presence executed the above, and acknowledged that he executed same as his voluntary act and deed.

My Commission expires: April 30, 2025  }  
Date Notary Public {Seal}





December 23, 2023

Glenn Akers, Logistics Technician  
Virginia Department of Fire Program  
1005 Technology Park Dr.  
Glen Allen, VA 23059  
Via email: [glenn.akers@vdfp.virginia.gov](mailto:glenn.akers@vdfp.virginia.gov)

**SUBJECT: Price Proposal Replacement Gas Prop Equipment  
for Existing VDFP Mobile Trainers (3)**

Dear Mr. Akers:

Please find our price proposal enclosed for replacement Gas Prop Equipment for your existing Mobile Fire Trainers.

Symtech specializes in live fire simulation technologies utilizing environmentally friendly propane or natural gas. Our Live Fire Simulator Technology is fully compliant with the NFPA 1402 Standard on Facilities for Fire Training and Associated Props.

We look forward to meeting your fire training needs!

Sincerely,

Jonathan J. Hanson  
Managing Director

**Who we are...**

Symtech specializes in live fire simulation technologies utilizing environmentally friendly propane or natural gas. Our Live Fire Simulator Technology is fully compliant with the NFPA 1402 Standard on Facilities for Fire Training and Associated Props. In addition to our LPG-fueled structural live fire training systems, we offer a full complement of Outdoor & Industrial Fire Simulators, Flashover Trainers, Hazmat, and Fire Behavior Labs. Our service team has the expertise to service both our installations, as well as competitive installations. We also provide annual NFPA 1402 inspections for Symtech or competitive equipment.



[symtechfire.com](http://symtechfire.com)

**Our commitment to excellence...**

**Safety...**



Symtech is committed to the safety of system operators and trainees alike. Our systems are fully compliant with NFPA 1402, which became a standard (*rather than a guide*) beginning in 2019. Unlike older systems, our offerings are designed from the ground up with this new Standard in mind. We utilize the highest quality components available including pilot and main burners systems, valves, and electronics.

**Realism...**

We are committed to delivering training realism with thermal output, flame sizes, flame variability, and smoke output that leads the fire training systems industry. Environmentally friendly propane and natural gas (*indoors only*) alleviate environmental concerns, while delivering consistent training fires at the push of a button.



**Customization...**



Within the parameters of the NFPA 1402 Standard, Symtech provides our customers with the customization and flexibility options they desire. This is imperative to addressing unique challenges that vary from department to department and within SOP's domestically and abroad. We pride ourselves in delivering timely custom solutions on time and under budget.

**Service...**

Service is an essential component in what we do as a company. It is not a profit center, but rather, it is a vital element in achieving our mission of enabling AHJ's to deliver life-saving training when it's needed most. We not only stock vital system components to ensure their availability on short notice, but we also offer turnkey service and maintenance.



**ST1397-JH-23Dec2023**
**Proposal for Replacement Gas Prop Equipment for Existing Mobile Fire Trainer**

Item	Description	Price
Option 1	<p><b>Fire Simulator ST-PRO Gas Prop Equipment Retrofit, Single Unit</b></p> <p><b>Live Fire Training Equipment</b></p> <ul style="list-style-type: none"> <li>▪ (2) Durable LPG Live Fire Simulator Burn Platforms</li> <li>▪ Fixed Kitchen Stove Prop</li> <li>▪ Interchangeable Burn Prop w/ Interchangeable Bed, Clothes Dryer, and Boiler mockups</li> <li>▪ (1) Ceiling Rollover Fire Simulator</li> <li>▪ Stainless Steel Pilot Ignition Systems (using Highly Reliable Ionization Method)</li> <li>▪ Designed For Maintenance (DFM)</li> <li>▪ 70,000 CFM Integrated Smoke Generation System (2 output ports)</li> <li>▪ Fully Integrated Sound Generation System</li> </ul> <p><b>Industrial Controls</b></p> <ul style="list-style-type: none"> <li>▪ Touchpanel Operator Interface</li> <li>▪ PLC-Computer Controls &amp; Wireless Remote</li> <li>▪ Variable Flame Control</li> <li>▪ Audible Fault Alarm</li> <li>▪ Data Recording</li> </ul> <p><b>Safety Systems</b></p> <ul style="list-style-type: none"> <li>▪ 3<sup>rd</sup> Party Certification by an OSHA-recognized NRTL</li> <li>▪ Monitored &amp; Interlocked Fail-safe Pilot</li> <li>▪ Fail-safe Valves</li> <li>▪ Infrared (IR) Gas Detection System</li> <li>▪ Temperature Monitoring System</li> <li>▪ Integrated Ventilation / Exhaust System</li> <li>▪ Full Compliance with the Latest Edition of NFPA 1402 (2019 ed.)</li> </ul> <p><b>Logistics &amp; Support</b></p> <ul style="list-style-type: none"> <li>▪ 8-hour Operation &amp; Maintenance Training Course, up to (10) Students</li> <li>▪ Electronic Operation &amp; Maintenance Manuals</li> <li>▪ Technical Phone Support for the Life of the Product</li> </ul>	\$162,000
Option 2	<p><b>Fire Simulator ST-PRO Gas Prop Equipment Retrofit, Two Units</b>            reduced price of \$154,000 per unit</p>	\$308,000
Option 3	<p><b>Fire Simulator ST-PRO Gas Prop Equipment Retrofit, Three Units</b>            reduced price of \$148,000 per unit</p>	\$444,000



**OPTIONS: PRICE PER UNIT**

4	<b>Option: Replacement 12kW Triple-Fuel On-Board Power Generator</b> supplied and installed	\$6,420 <del>\$19,260</del>
5	<b>Option: Replacement 200-Gal LPG Supply System</b> Including new DOT-compliant tanks, regulators, and manifold	\$11,600 <del>\$34,800</del>
6	<b>Option: Repaint Exterior</b> Sherwin-Williams Marine & Industrial Grade Paint, Gray Color	\$24,200
7	<b>Option: Add \$2,000 Graphic Allowance</b>	\$2,000

**Terms & Conditions:**

Prices valid through 31 December 2024.

Unit to be completed 180 to 240 Days from PO.

Payment Terms: 30% on Order, 60% on Shipment, 10% on Completion of Training Course. Net 10.

1-Year Industry Standard Warranty. Unlimited Technical Phone Support for the Life of the Product.

Subject to Symtech Standard Terms & Conditions.

**Inclusions:**

Burn Room Equipment Control Rack

Main Touchpanel Interface

Ventilation Fan incl. Control Electronics

NFPA-Compliant Safety Systems

Initial (5) Gallon Supply of Smoke Fluid.

Operator's Training Course

**Exclusions:**

Propane fill for training.

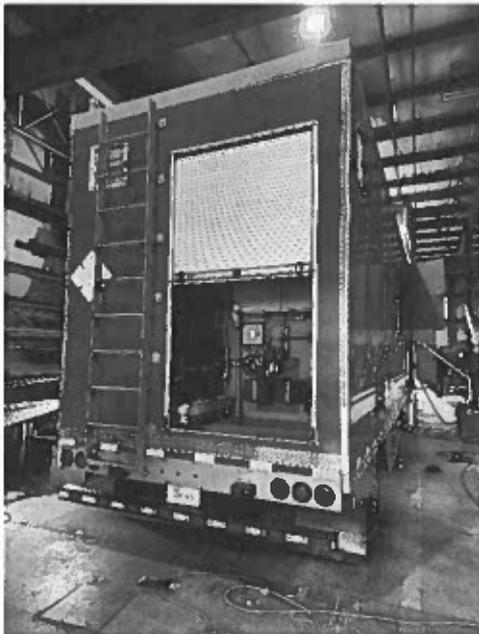
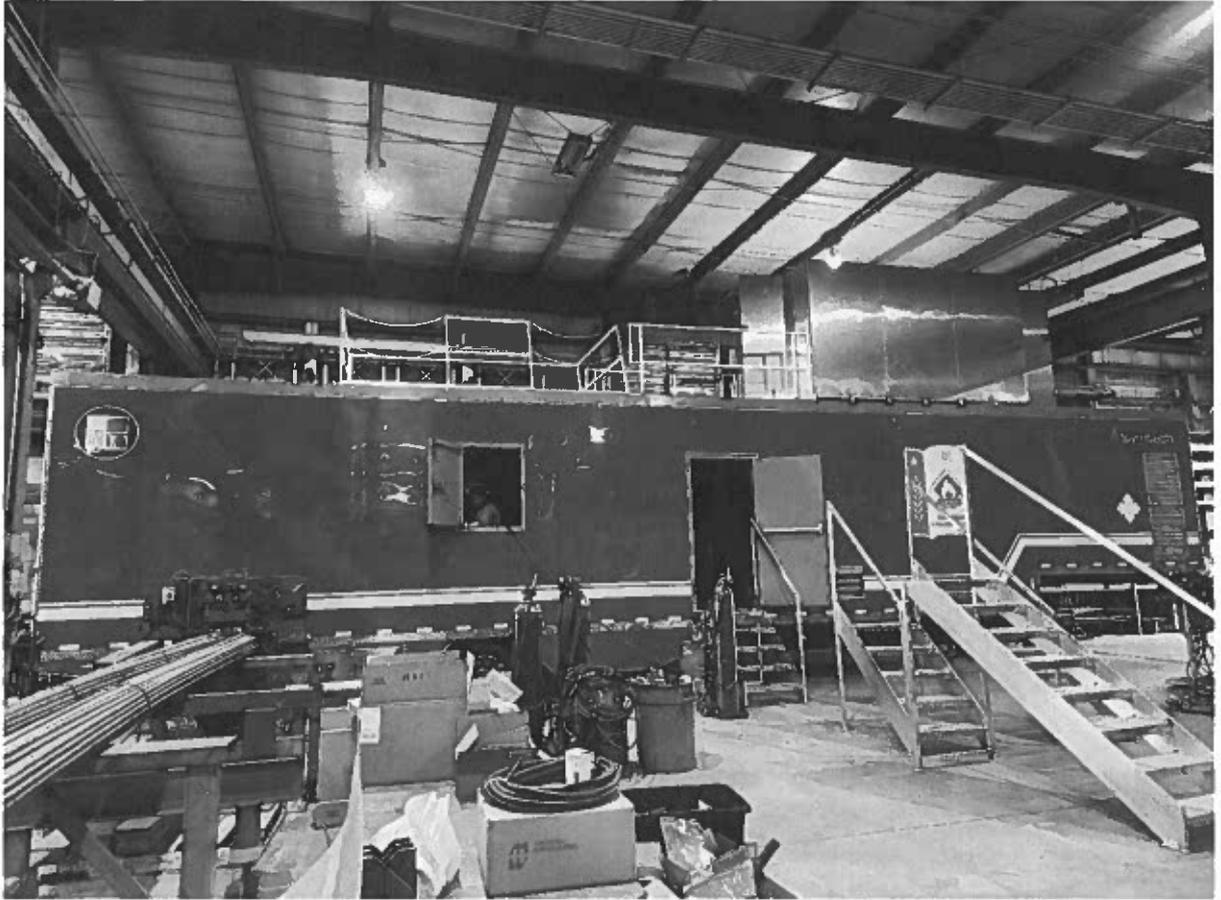
Moving trailer(s) from Glen Allen, VA to NJ or PA and back following completion of work.

Any trailer repairs not mentioned including, but not limited to thermal liner and gas piping.

Payment/performance bond, taxes, duties, permits, local licenses and any misc. fees, if applicable.

**Mobile Structural Fire Simulator ST-PRO**

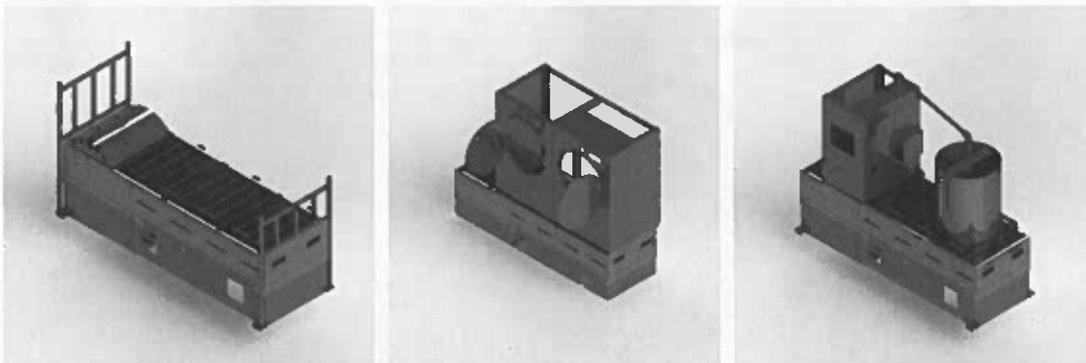




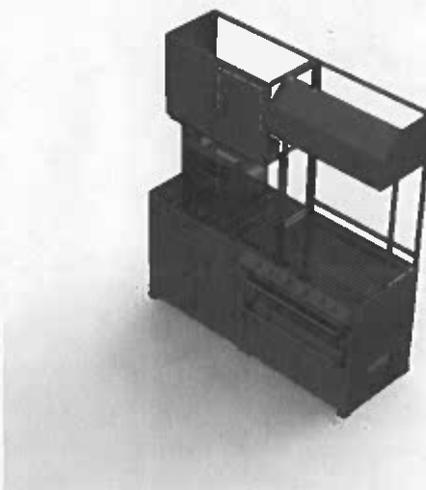




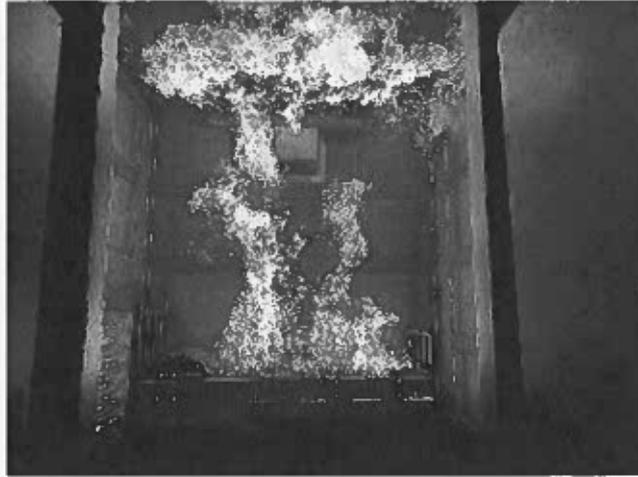




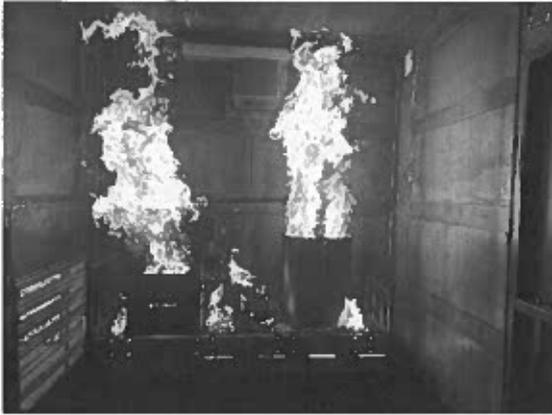
*Interchangeable Mockup Platform incl. Bed, Clothes Dryer, and Boiler/Water Heater Props*



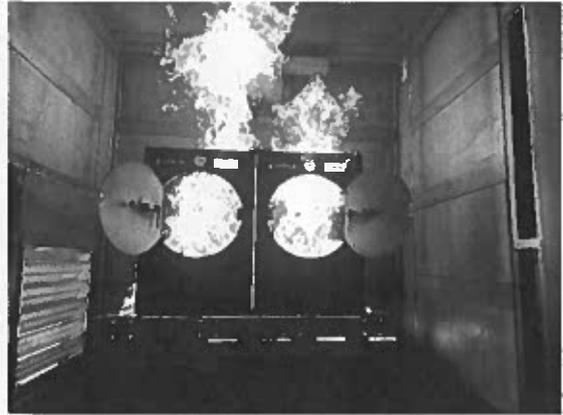
*Interior Stove Prop ST*



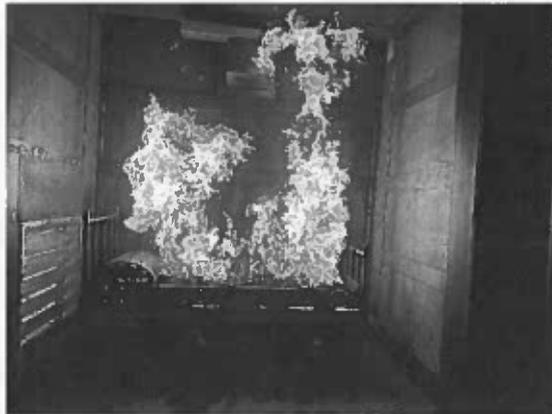
*70,000 cfm Burn Room Smoke Generation System*



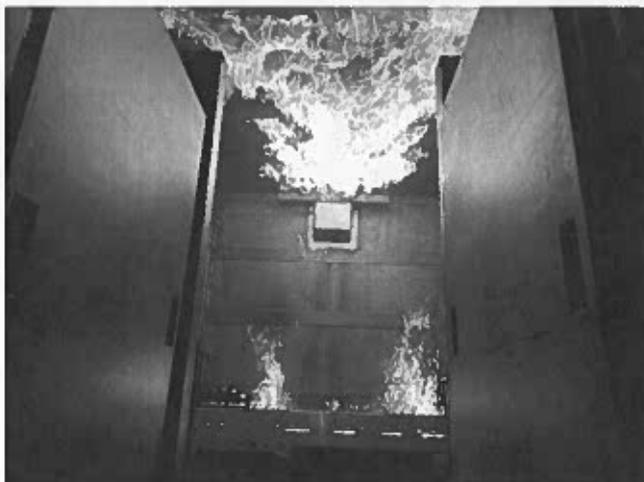
*Interchangeable Platform w/ Boiler/Water Heater Prop*



*Interchangeable Platform w/ Clothes Dryer Prop*



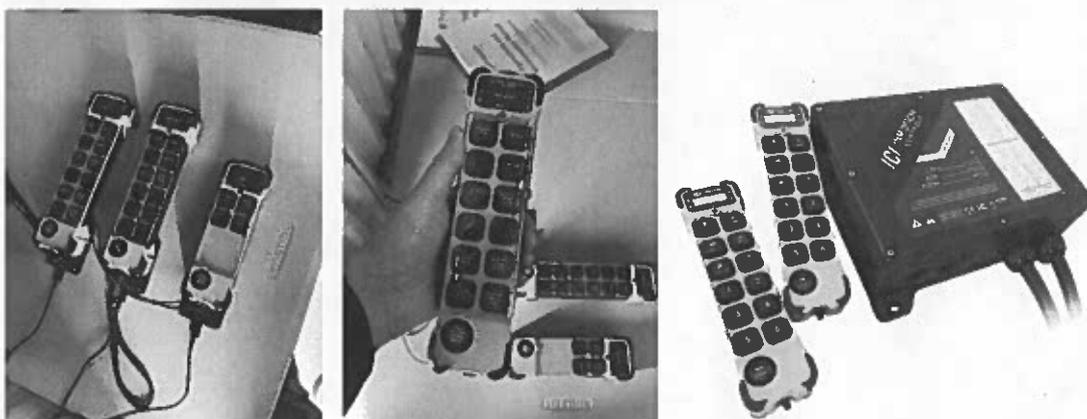
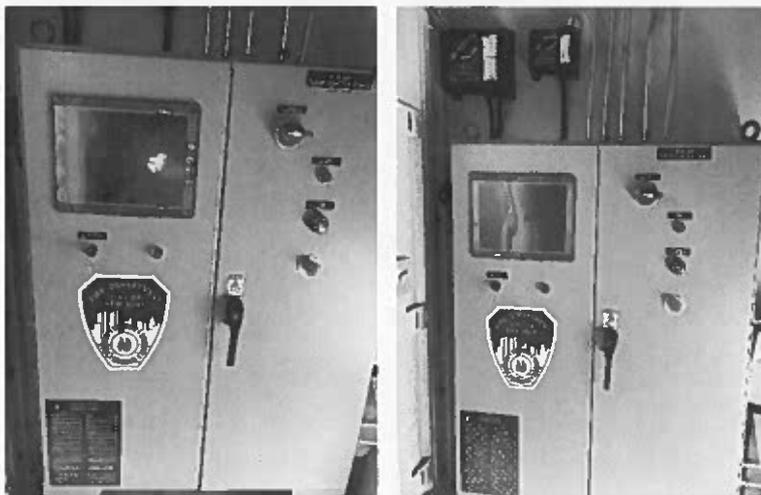
*Interchangeable Platform w/ Twin Bed Prop*



*Burn Room Rollover Simulator ST*



*Main Control Panel / Hardware w/ 15" Touchpanel*



*Local Wireless Controls w/ Wireless Re-charging*

## FY-2024 Fire Programs Fund Aid to Localities Payments

Pay Cycle	Date Pymt. Requested	No. of Localities	% of Localities	Amount	% of Funds
1	9/22/2023	107	33.2%	\$15,606,285	38.5%
2	12/22/2023	69	21.4%	\$8,972,480	22.1%
3			0.0%		0.0%
4			0.0%		0.0%
			0.0%		0.0%
Funds Released		176	54.7%	\$24,578,765	60.6%
Total Funds Not Released		146	45.3%	\$15,952,065	39.4%
ATL Total		322	100.0%	\$40,530,830	100.0%

# FY2024 Live Structural Proposed Budget:

Carried forward Balance from FY23	4,560,417
FY24 Annual Appropriation	975,000
VFIRS FY23 Carryover	8,900
<b>Total FY 24 Funding</b>	<b>5,544,317</b>

	Total Project Awarded	Prior Year Payments	FY24 Estimated Payments	FY24 Actual Payments	Obligation Balance
<u><i>Burn Building Construction Projects</i></u>					
FLUVANNA, County FY18	480,000	112,500	0		367,500
HANOVER County FY20	450,000	112,500	337,500		337,500
SUFFOLK County FY21	480,000		112,500		480,000
GOOCHLAND County FY23	480,000		112,500		480,000
RICHMOND City FY23	480,000		0		480,000
HALIFAX County FY24	480,000		0		480,000
HOPEWELL City FY24	480,000		0	-	480,000
	<u>3,330,000</u>	<u>225,000</u>	<u>562,500</u>	<u>0</u>	<u>3,105,000</u>
<u><i>Burn Building Renovation / Repair Projects</i></u>					
Lynchburg City (repair) FY22	38,849		38,849	38,849.00	0
Virginia Beach City (repair) FY22	34,549		34,549	34,549.00	0
Buckingham County (repair) FY22	8,820		8,820	8,820.00	0
Roanoke City (repair) FY23	78,909		78,909	78,909.00	0
Wise Town (repair) FY24	12,800		12,800		12,800
Chilhowie Town (repair) FY24	17,800		17,800		17,800
	<u>191,727</u>	<u>0</u>	<u>191,727</u>	<u>161,127.00</u>	<u>30,600</u>
<u><i>Impingement Project estimated Budget over 5yrs (Repair-Thermal Lining FY22)</i></u>					
Winchester City (renovation) FY24 award	150,000		150,000		150,000
	<u>732,284</u>	<u>0</u>	<u>150,000</u>	<u>0</u>	<u>732,284</u>
<u><i>Regional Fire Services Training Facilities Projects</i></u>					
Richmond City FY22	50,000		50,000		50,000
Rockingham County FY22	50,000		50,000	50,000	-
King and Queen County FY24	50,000		0	-	50,000
	<u>150,000</u>	<u>0</u>	<u>100,000</u>	<u>50,000</u>	<u>100,000</u>
<u><i>DFP BBldg Supt - A/E Contract</i></u>					
DFP BBldg - Inspections A/E Contract	525,000	-	250,000	10,175	514,825
DFP BBldg - Consulting	75,000		75,000		75,000
DFP (DIRECT) BBldg - Mobile Burn Cells	0	-	0	-	-
	<u>600,000</u>	<u>0</u>	<u>325,000</u>	<u>10,175</u>	<u>589,825</u>
NEW Construction Projects	3,330,000	225,000	562,500	0	3,105,000
RENOV / REPAIR Projects	191,727	0	191,727	161,127	30,600
Impingement Project (Repair-Thermal Lining)	732,284	0	150,000	0	732,284
RFSTG Projects	150,000	0	100,000	50,000	100,000
DFP <b>direct</b> BBldg Support	600,000	0	325,000	10,175	589,825
<b>Total Multi-Year Awards</b>	<b><u>5,004,011</u></b>	<b><u>225,000</u></b>	<b><u>1,329,227</u></b>	<b><u>221,302</u></b>	<b><u>4,557,709</u></b>

Estimate Cash on hand 1/1/24 5,323,015

**Unobligated 765,306**



# COUNTY OF FLUVANNA

*"Responsive & Responsible Government"*

132 Main Street  
P.O. Box 540  
Palmyra, VA 22963  
(434) 591-1910  
Fax (434) 591-1911  
www.fluvannacounty.org

## BOARD OF SUPERVISORS

Mozell H. Booker  
Chair  
*Fork Union District*

Patricia B. Eager  
Vice Chair  
*Palmyra District*

John M. "Mike" Sheridan  
*Columbia District*

Anthony P. "Tony" O'Brien  
*Rivanna District*

Christopher Fairchild  
*Cunningham District*

## COUNTY ADMINISTRATION

Eric M. Dahl  
*County Administrator*

Caitlin Solis  
*Clerk to the Board*

August 11, 2023

Theresa Hunter  
Interim Assistant Chief of Administration  
Virginia Department of Fire Programs  
1005 Technology Park Drive  
Glen Allen, VA 23059-4500

Dear Ms. Hunter;

I am writing on behalf of Fluvanna County and the Fluvanna County Fire and Rescue Association to request the Virginia Fire Services Board's (VFSB) consideration for approval for the use of a container type structure for our live fire training structure grant that was awarded in August 2017. In addition, we are requesting a "No Cost Extension" through November 15, 2025 to complete our project.

Fluvanna County and the Fluvanna Fire and Rescue Association have been working continuously on this project since the grant was received to design and construct a cost-effective structure to meet our County's critical fire training needs. Over the years, the County encountered multiple unsuccessful and/or costly solicitation results, engaged in multiple needed cost saving redesign efforts to cut costs and have still encountered increased construction costs.

We do have a building design plan completed and a building permit issued for the project. However, the redesign and most recent solicitation for the project has yet to accomplish a cost effective project less than a million dollars. This outcome has left our small rural county once again going back to the drawing board to look at alternatives.

Our local live fire training building committee and I recently received a presentation and some preliminary pricing for a container type fire training structure. We understand approvals have been granted by the VFSB for other localities, namely the City of Richmond and Goochland County within the last 6 months to utilize a container type structure (Prototype IV Class B). Fluvanna County respectfully requests the same consideration could be granted to us to bring this needed project to fruition. Fluvanna County is interested in constructing a Prototype IV Class A structure that could provide additional valuable data for heat and training.

Fluvanna County and the Fluvanna Fire and Rescue Association thank you in advance for your thoughtful consideration and we appreciate your assistance with this request to present to the VFSB at the September meeting. Please feel free to reach out if you have any questions at all.

Respectfully  
Submitted,

Eric M. Dahl  
County Administrator

## Summary of Open Project 2-01-2024

### Burn Building Construction Projects: 7 open

FLUVANNA County awarded FY18 480,000

- Locality would like a two year extension and building type change. On agenda for February Committee meeting. This would be their 5<sup>th</sup> extension request.

HANOVER County awarded FY20 450,000

- Project complete. Received closeout paperwork.

SUFFOLK County awarded FY21 480,000

- TSG is reviewing the building drawing.

RICHMOND City awarded FY23 480,000

- On the agenda for and extension.

GOOCHLAND County awarded FY23 480,000

- TSG's Cursey review was sent to locality with items to be addressed by locality engineer. Locality has no plans to obtain an A&E firm. TSG's last review identified local official isn't certified engineer.

HALIFAX County awarded FY24 480,000

- Working with vendor on building drawing.

HOPEWELL City awarded FY24 480,000

- Orientation meeting was conducted in January.

### Burn Building Renovation / Repair Projects

Town of Wise (repair) FY24 awarded \$12,800

- A repair grant award was issued in June 2023. The locality has until June 2024 to complete the repairs outlined in the application.

Town of Chilhowie (repair) FY24 awarded \$17,800

- A repair grant award was issued in June 2023. The locality has until June 2024 to complete the repairs outlined in the application.

Winchester City (renovation) FY24 awarded \$150,000

- A renovation grant award was issued September 2023. The locality has until September 22, 2024 to complete the renovations outlined in the application.



CITY OF RICHMOND

**DEPARTMENT OF FIRE  
AND EMERGENCY  
SERVICES**

February 2, 2024

Executive Director Creasy  
Virginia Department of Fire Programs  
1005 Technology Park Dr  
Glen Allen, VA 23059

Dear Director Creasy,

The Richmond Department of Fire and Emergency Services is requesting a 12 month extension to complete the Live Fire Training Structure Grant activities. We have selected the prototype but are still finalizing the final cost estimate for the Draeger system in order for us to move forward at this time.

Thank you for your consideration in this matter. If you have any questions, feel free to contact Assistant Chief Travis Ford at 804-564-7425 or via email at [travis.ford@va.gov](mailto:travis.ford@va.gov).

Sincerely,

Melvin D. Carter  
Chief of Fire

# **Project Manual**

**for**

## **Live Fire Training Structures**



**January 31, 2024  
(2018 Edition of the VUSBC)**

## SUMMARY OF LIVE FIRE TRAINING STRUCTURE GRANT PROGRAM

### I. Program Description

The Live Fire Training Structure Grant Program was established to provide defined grants to Virginia localities seeking to construct, renovate (including additions), or repair permanent live fire training structures. The purpose of these unoccupied structures is to provide live fire training to fire service personnel in support of Fire Fighter 1 and Fire Fighter 2 Training throughout the Commonwealth of Virginia per the NFPA 1001 & 1403 Training Standards.

Grant disbursements to eligible jurisdictions are administered by the Virginia Department of Fire Programs (VDFP) from the Commonwealth's Fire Programs Fund consistent with the policy guidance provided by the Virginia Fire Services Board (VFSB). This policy guidance is set forth in the VFSB Live Fire Training Structure Program. The current edition of the VFSB Live Fire Training Structure Grant Policy is available on the Virginia Department of Fire Program's web site.

Any eligible jurisdiction may submit a Live Fire Structure Grant Application by the requested deadlines stated in the VFSB Live Fire Training Structure Policy. Also, the application must be fully completed and submitted to the Budget and Grants Manager with the VDFP. The application is also available on the VDFP's web site.

To be eligible for any grant award to construct a new or replacement Live Fire Training Structure, the recipient shall agree to expend such funds to construct either the prototype from plans provided by the VDFP modified by the locality/municipality's licensed design professional for the site specific project or a Live Fire Training Structure that meets or exceeds the outline/performance Specifications in accordance with NFPA 1402 and as provided in Prototype Drawings and Specifications as noted in the Project Manual provided by the VDFP. Please note that grant funds may not be used for anything other than Live Fire Training Structures and related direct costs within 15 feet of the Live Fire Training Structure.

Prototype 1 is defined as a concrete structure which may be constructed to utilize either Class A (Prototype 1A) or Class B (Prototype 1B) fuels. Prototype 2 is defined as a pre-manufactured steel structure which may also be constructed to utilize Class A (Prototype 2A) or Class B (Prototype 2B) fuels. Prototype 3B is defined as a pre-engineered steel mobile live fire training trailer structure utilizing Class B fuel as provided and maintained by the VDFP. Prototype 4B is defined as a modular/intermodal shipping container building utilizing Class B fuel.

### II. Program Criteria

To be eligible for receipt of grant funds, the Live Fire Training Structure must meet or exceed the following usage criteria:

1. The Live Fire Training Structure's super structure must have a minimum design life span of 20 years under the intended specified use.
2. The Live Fire Training Structure shall meet current NFPA, OSHA, federal, state, and local codes, and standards at time of design submittal to the board.
3. The Live Fire Training Structure must be suitable for live fire, Class "A" or Class "B" fuel burns.
4. Maximum number of live fire training days per year: 120 for Class "A" fuel; Unlimited for Class "B" fuel
5. Maximum number of live fire training evolutions per day: 10
6. Maximum duration of each live fire training evolution: 20 minutes

7. Maximum sustained temperature in burn room(s) during live fire training: 1,200° F Class "A" fuel; 550° F Class "B" fuel
8. Maximum temperature spike in burn room(s) during live fire training: 1,500° F Class "A" fuel; 700° F Class "B" fuel
9. Live fire training shall be in accordance with NFPA 1403 and the written guidelines of the VDFP.
10. No training that includes tear gas, explosives, or firearms shall occur within or near the Live Fire Training Structure.
11. Minimum height: two (2) stories
12. Minimum first floor area: 986 s.f. for Prototype 1A and 1B; 1,100 s.f. for Prototype 2A and 2B; 937 s.f. for Prototype 4B
13. Minimum second floor area: 744 s.f. for Prototype 1A and 1B; 781 s.f. for Prototype 2A and 2B; 621 s.f. for Prototype 4B
14. Minimum lower roof area: 306 s.f. for Prototype 1A and 1B; 318 s.f. for Prototype 2A and 2B; 306 s.f. for Prototype 4B
15. Minimum upper roof area: 1,190 s.f. for Prototype 1A and 1B; 436 s.f. for Prototype 2A and 2B; 612 s.f. for Prototype 4B
16. Minimum exterior apron width: 15' width along all elevations for Prototypes 1 and 2; 10' width along all elevations for Prototype 4
17. Minimum rooms within Live Fire Training Structure: 8
18. Minimum burn rooms: 2
19. Minimum burn rooms per floor: 1
20. Minimum area per burn room: 144 s.f.
21. Minimum number of exterior stairs: 1
22. Minimum number of interior stairs: 1
23. All windows shall have hinged shutters.
24. All exterior openings shall have operable shutters and/or doors.
25. All window and door openings shall have coated metal frames.
26. Minimum number of windows: 5
27. Minimum number of exterior doors: 3
28. Minimum number of interior doors: 1
29. Minimum number of roof access openings: 2
30. Minimum number of means of egress per room: 2
31. All floors must pitch to drain water from interior of the live fire training structure.
32. First floor and exterior apron shall be cast-in-place concrete slab on grade.
33. Two (2) separate roof systems must be provided to achieve a flat and sloped roof training surface.
34. An access opening must be provided through each roof surface.
35. The Live Fire Training Structure must limit light penetration and be weathertight.
36. Exterior metal surfaces shall be coated to protect from exterior environmental exposure.
37. Interior metal surfaces shall be coated to protect surface from environmental exposure, expected use, and life span of the Live Fire Training Structure.
38. The Live Fire Training Structure shall have mounted written user guidelines on each elevation which provides egress into the building indicating proper usage according to NFPA, local code, and maximum temperature recommendations.
39. No vehicles other than vehicles involved in the live fire training shall be allowed within fifteen feet of the Live Fire Training Structure.
40. Exterior rollover thermal protection along the jambs and headers of window and door openings leading into burn rooms.
41. Interior thermal protection along the underside of the ceiling above burn rooms.
42. Interior thermal protection along the vertical surfaces of burn rooms.

43. Interior rollover thermal protection along the jambs and headers of interior door openings leading into burn rooms.
44. Interior thermal protection along the floor surface throughout burn rooms.
45. Temperature monitoring devices in each burn room.
46. Temperature monitoring devices integrated into a central data recorder to record maximum spike and sustained temperatures during each live fire training evolution.
47. Flat and sloped roofs used for training, floors, and stairs designed for a minimum 100psf live load.
48. Minimum lateral loads, including wind, seismic, and flood loads, designed in accordance with site specific criteria.
49. Intermodal shipping containers repurposed for use as structural components in the construction of live fire training structures shall bear an existing data plate as required by ISO 6346, Freight Containers – Coding, Identification, and Marking, and shall be verified by an approved agency. A report of the verification process and findings shall be provided for review and approval.
50. Intermodal shipping containers repurposed for use as structural components shall conform to ISO 1496-1, Series 1 Freight Containers – Specifications and Testing, and shall be designed in accordance with Chapters 16 and 31 of the International Building Code (IBC).

### III. Prototype Description

These Prototype Drawings and Project Manual have been designed to meet the requirements of the VDFP to provide adequate minimum facilities for Fire Fighter I and II Training per NFPA 1001 & 1403 Training Standards and the NFPA 1402 Design Standard. Therefore, please note that the VFSB Live Fire Training Structure Grant Program is designed to cover the Live Fire Training Structure to provide adequate minimum facilities for Fire Fighter I and II Training per NFPA 1001 & 1403 Training Standards. Additional features which are above and beyond the basic minimum structure will need to be financed by the locality/municipality.

As such, the Prototype Drawings have only one (1) burn room on each floor of the structure. If the locality/municipality wishes to add additional features to their specific Live Fire Training Structure, such as an additional burn room on each floor, the drawings must be modified by the licensed design professional contracted by the locality/municipality to create the site specific Live Fire Training Structure contract documents. A copy of the VFSB Live Fire Training Structure Grant Program may be found at the Virginia Department of Fire Program's website located at the location listed above.

Please note that the Prototype Drawings and Specifications are for reference guidelines for materials and construction purposes only and are not to be used as final construction documents. Grant recipients shall retain a licensed professional to provide site specific contract documents pertaining to site adaptation, including Drawings and Specifications following these guidelines suitable for use as the basis of construction.

These Prototype Drawings have been prepared for live fire training structures to be constructed within the various localities. However, the requirements for wind speed, frost depth, seismic values, etc. within the Commonwealth of Virginia are site dependent. Therefore, the design professional shall verify all site related values with the local jurisdiction and modify the Prototype drawings accordingly. The guideline Specifications have been provided as performance based guidelines with the use of as-equal for product specific materials utilized in the different areas of the Commonwealth. Specific manufacturers and/or products have not been delineated in the Specifications.

The guideline Specification sections contained within this Project Manual are reference Specifications edited for the five (5) Prototypes (Prototype 1 Class A Fuel, Prototype 1 Class B Fuel, Prototype 2 Class A Fuel, Prototype 2 Class B Fuel, and Prototype 4 Class B Fuel). Therefore, not all Specification sections will be necessary for any one (1) project. For your convenience, we have included five (5) unique Specification Section 000110 Table of Contents, one (1) for each of the different Prototypes.

Therefore, we recommend that the Table of Contents and Specification sections that do not apply to a specific project be removed from the Project Manual. Additionally, projects at a specific site may require additional Specification sections not included in the Project Manual. The Specifications shall be further modified by the licensed design professional on a project by project basis. The licensed design professional contracted by the locality/municipality shall provide a complete site specific Project Manual with all of the necessary Specifications for that specific job. Further each Specification section should be fully edited for the specific site conditions of that particular job.

For reference, the guideline Specifications found within this reference manual were created using standardized SpecText and/or MasterSpec Specification forms. Use of these specific Specifications is limited to licensed SpecText and/or MasterSpec subscribers. These standardized Specifications are supported by Deltek. If the licensed design professional intends to utilize the provided Specifications as the basis of his or her Project Manual, then the licensed design professional shall contact Deltek directly at [Deltek.com](http://Deltek.com) or 800-456-2009 to inquire about a subscription.

Additionally, it should be noted the grant recipient most likely will be required by their locality to retain a licensed professional to create a Site Plan, Civil Drawings, and Civil Specifications to accompany the above referenced site specific contract documents. These services and the construction related civil construction items, such as roads and infrastructure, such as water, electrical, and sewer/stormwater, are not part of the eligible funding through the VFSB Live Fire Training Structure Grant Program.

**LIVE FIRE TRAINING STRUCTURE PROTOTYPE 1**  
**CLASS A FUELS**

**000110 TABLE OF CONTENTS**

**BIDDING REQUIREMENTS**

- 001116 Invitation to Bid
- 002115 Instructions to Bidders - EJCDC
- 004113 Bid Form – Stipulated Sum (Single-Prime Contract)

**CONTRACTING REQUIREMENTS**

- 005215 Agreement - EJCDC
- 007215 General Conditions - EJCDC
- 007314 Supplementary Conditions - EJCDC

**DIVISION 1 - GENERAL REQUIREMENTS**

- 010000 General Requirements
- 011000 Summary
- 012000 Price and Payment Procedures
- 013000 Administrative Requirements
- 013216 Network Analysis Schedules
- 013300 Submittal Procedures
- 014000 Quality Requirements
- 015000 Temporary Facilities and Controls
- 016000 Product Requirements
- 017000 Execution Requirements

**DIVISION 2 – EXISTING CONDITIONS**

**DIVISION 3 - CONCRETE**

- 033000 Cast-In-Place Concrete

**DIVISION 4 - MASONRY**

- 040503 Masonry Mortaring and Grouting
- 042016 Reinforced Unit Masonry

**DIVISION 5 - METALS**

- 055000 Metal Fabrications
- 055100 Metal Stairs
- 055200 Metal Railings

DIVISION 6 - WOOD AND PLASTICS

061000 Rough Carpentry

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

071400 Fluid-Applied Waterproofing  
078000 Fire and Smoke Protection  
079000 Joint Protection

DIVISION 8 - OPENINGS

DIVISION 9 - FINISHES

DIVISION 10 - SPECIALTIES

DIVISION 11 – EQUIPMENT

DIVISION 12 - FURNISHINGS

DIVISION 13 - SPECIAL CONSTRUCTION

DIVISION 14 - CONVEYING EQUIPMENT

DIVISION 15 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 20

DIVISION 21 – FIRE SUPPRESSION

211200 Fire-Suppression Standpipes

DIVISION 22 – PLUMBING

220500 Common Work Results for Plumbing

DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

DIVISION 24 – RESERVED FOR FUTURE EXPANSION

DIVISION 25 – INTEGRATED AUTOMATION

DIVISION 26 – ELECTRICAL

260500 Common Work Results for Electrical  
262416 Panelboards

DIVISION 27 – COMMUNICATIONS

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

DIVISION 29 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 30

DIVISION 31 – EARTHWORK

310513 Soils for Earthwork  
310516 Aggregates for Earthwork  
311000 Site Clearing  
312000 Earth Moving  
312323 Fill

DIVISION 32 – EXTERIOR IMPROVEMENTS

DIVISION 33 – UTILITIES

DIVISION 34 – TRANSPORTATION

DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

DIVISION 36 – RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 39

DIVISION 40 – PHYSICAL PROCESS MEASUREMENT DEVICES

409119 Temperature Monitoring Equipment

END OF SECTION

**LIVE FIRE TRAINING STRUCTURE PROTOTYPE 1**  
**CLASS B FUELS**

**000110 TABLE OF CONTENTS**

**BIDDING REQUIREMENTS**

- 001116 Invitation to Bid
- 002115 Instructions to Bidders - EJCDC
- 004113 Bid Form – Stipulated Sum (Single-Prime Contract)

**CONTRACTING REQUIREMENTS**

- 005215 Agreement - EJCDC
- 007215 General Conditions - EJCDC
- 007314 Supplementary Conditions - EJCDC

**DIVISION 1 - GENERAL REQUIREMENTS**

- 010000 General Requirements
- 011000 Summary
- 012000 Price and Payment Procedures
- 013000 Administrative Requirements
- 013216 Network Analysis Schedules
- 013300 Submittal Procedures
- 014000 Quality Requirements
- 015000 Temporary Facilities and Controls
- 016000 Product Requirements
- 017000 Execution Requirements

**DIVISION 2 – EXISTING CONDITIONS**

**DIVISION 3 - CONCRETE**

- 033000 Cast-In-Place Concrete

**DIVISION 4 - MASONRY**

- 040503 Masonry Mortaring and Grouting
- 042016 Reinforced Unit Masonry

**DIVISION 5 - METALS**

- 055000 Metal Fabrications
- 055100 Metal Stairs
- 055200 Metal Railings

DIVISION 6 - WOOD AND PLASTICS

061000 Rough Carpentry

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

071400 Fluid-Applied Waterproofing  
078000 Fire and Smoke Protection  
079000 Joint Protection

DIVISION 8 - OPENINGS

DIVISION 9 - FINISHES

DIVISION 10 - SPECIALTIES

DIVISION 11 – EQUIPMENT

DIVISION 12 - FURNISHINGS

DIVISION 13 - SPECIAL CONSTRUCTION

DIVISION 14 - CONVEYING EQUIPMENT

DIVISION 15 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 20

DIVISION 21 – FIRE SUPPRESSION

211200 Fire-Suppression Standpipes

DIVISION 22 – PLUMBING

220500 Common Work Results for Plumbing

DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

231100 Facility Fuel Piping

DIVISION 24 – RESERVED FOR FUTURE EXPANSION

DIVISION 25 – INTEGRATED AUTOMATION

DIVISION 26 – ELECTRICAL

260500 Common Work Results for Electrical  
262416 Panelboards

DIVISION 27 – COMMUNICATIONS

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

DIVISION 29 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 30

DIVISION 31 – EARTHWORK

310513 Soils for Earthwork  
310516 Aggregates for Earthwork  
311000 Site Clearing  
312000 Earth Moving  
312323 Fill

DIVISION 32 – EXTERIOR IMPROVEMENTS

DIVISION 33 – UTILITIES

DIVISION 34 – TRANSPORTATION

DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

DIVISION 36 – RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 39

DIVISION 40 – PHYSICAL PROCESS MEASUREMENT DEVICES

409119 Temperature Monitoring Equipment

END OF SECTION

**LIVE FIRE TRAINING STRUCTURE PROTOTYPE 2**  
**CLASS A FUELS**

**000110 TABLE OF CONTENTS**

**BIDDING REQUIREMENTS**

- 001116 Invitation to Bid
- 002115 Instructions to Bidders - EJCDC
- 004113 Bid Form – Stipulated Sum (Single-Prime Contract)

**CONTRACTING REQUIREMENTS**

- 005215 Agreement - EJCDC
- 007215 General Conditions - EJCDC
- 007314 Supplementary Conditions - EJCDC

**DIVISION 1 - GENERAL REQUIREMENTS**

- 010000 General Requirements
- 011000 Summary
- 012000 Price and Payment Procedures
- 013000 Administrative Requirements
- 013216 Network Analysis Schedules
- 013300 Submittal Procedures
- 014000 Quality Requirements
- 015000 Temporary Facilities and Controls
- 016000 Product Requirements
- 017000 Execution Requirements

**DIVISION 2 – EXISTING CONDITIONS**

**DIVISION 3 - CONCRETE**

- 033000 Cast-In-Place Concrete

**DIVISION 4 - MASONRY**

**DIVISION 5 - METALS**

- 055000 Metal Fabrications
- 055100 Metal Stairs
- 055200 Metal Railings

DIVISION 6 - WOOD AND PLASTICS

061000 Rough Carpentry

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

071400 Fluid-Applied Waterproofing  
078000 Fire and Smoke Protection  
079000 Joint Protection

DIVISION 8 - OPENINGS

DIVISION 9 - FINISHES

DIVISION 10 - SPECIALTIES

DIVISION 11 – EQUIPMENT

DIVISION 12 - FURNISHINGS

DIVISION 13 - SPECIAL CONSTRUCTION

133419 Pre-Engineering Building

DIVISION 14 - CONVEYING EQUIPMENT

DIVISION 15 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 20

DIVISION 21 – FIRE SUPPRESSION

211200 Fire-Suppression Standpipes

DIVISION 22 – PLUMBING

220500 Common Work Results for Plumbing

DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

DIVISION 24 – RESERVED FOR FUTURE EXPANSION

DIVISION 25 – INTEGRATED AUTOMATION

DIVISION 26 – ELECTRICAL

260500 Common Work Results for Electrical  
262416 Panelboards

DIVISION 27 – COMMUNICATIONS

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

DIVISION 29 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 30

DIVISION 31 – EARTHWORK

310513 Soils for Earthwork  
310516 Aggregates for Earthwork  
311000 Site Clearing  
312000 Earth Moving  
312323 Fill

DIVISION 32 – EXTERIOR IMPROVEMENTS

DIVISION 33 – UTILITIES

DIVISION 34 – TRANSPORTATION

DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

DIVISION 36 – RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 39

DIVISION 40 – PHYSICAL PROCESS MEASUREMENT DEVICES

409119 Temperature Monitoring Equipment

END OF SECTION

**LIVE FIRE TRAINING STRUCTURE PROTOTYPE 2**  
**CLASS B FUELS**

**000110 TABLE OF CONTENTS**

**BIDDING REQUIREMENTS**

- 001116 Invitation to Bid
- 002115 Instructions to Bidders - EJCDC
- 004113 Bid Form – Stipulated Sum (Single-Prime Contract)

**CONTRACTING REQUIREMENTS**

- 005215 Agreement - EJCDC
- 007215 General Conditions - EJCDC
- 007314 Supplementary Conditions - EJCDC

**DIVISION 1 - GENERAL REQUIREMENTS**

- 010000 General Requirements
- 011000 Summary
- 012000 Price and Payment Procedures
- 013000 Administrative Requirements
- 013216 Network Analysis Schedules
- 013300 Submittal Procedures
- 014000 Quality Requirements
- 015000 Temporary Facilities and Controls
- 016000 Product Requirements
- 017000 Execution Requirements

**DIVISION 2 – EXISTING CONDITIONS**

**DIVISION 3 - CONCRETE**

- 033000 Cast-In-Place Concrete

**DIVISION 4 - MASONRY**

**DIVISION 5 - METALS**

- 055000 Metal Fabrications
- 055100 Metal Stairs
- 055200 Metal Railings

DIVISION 6 - WOOD AND PLASTICS

061000 Rough Carpentry

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

071400 Fluid-Applied Waterproofing  
078000 Fire and Smoke Protection  
079000 Joint Protection

DIVISION 8 - OPENINGS

DIVISION 9 - FINISHES

DIVISION 10 - SPECIALTIES

DIVISION 11 – EQUIPMENT

DIVISION 12 - FURNISHINGS

DIVISION 13 - SPECIAL CONSTRUCTION

133419 Pre-Engineering Building

DIVISION 14 - CONVEYING EQUIPMENT

DIVISION 15 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 20

DIVISION 21 – FIRE SUPPRESSION

211200 Fire-Suppression Standpipes

DIVISION 22 – PLUMBING

220500 Common Work Results for Plumbing

DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

231100 Facility Fuel Piping

DIVISION 24 – RESERVED FOR FUTURE EXPANSION

DIVISION 25 – INTEGRATED AUTOMATION

DIVISION 26 – ELECTRICAL

260500 Common Work Results for Electrical  
262416 Panelboards

DIVISION 27 – COMMUNICATIONS

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

DIVISION 29 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 30

DIVISION 31 – EARTHWORK

310513 Soils for Earthwork  
310516 Aggregates for Earthwork  
311000 Site Clearing  
312000 Earth Moving  
312323 Fill

DIVISION 32 – EXTERIOR IMPROVEMENTS

DIVISION 33 – UTILITIES

DIVISION 34 – TRANSPORTATION

DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

DIVISION 36 – RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 39

DIVISION 40 – PHYSICAL PROCESS MEASUREMENT DEVICES

409119 Temperature Monitoring Equipment

END OF SECTION

**LIVE FIRE TRAINING STRUCTURE PROTOTYPE 4**  
**CLASS B FUELS**

**000110 TABLE OF CONTENTS**

**BIDDING REQUIREMENTS**

- 001116 Invitation to Bid
- 002115 Instructions to Bidders - EJCDC
- 004113 Bid Form – Stipulated Sum (Single-Prime Contract)

**CONTRACTING REQUIREMENTS**

- 005215 Agreement - EJCDC
- 007215 General Conditions - EJCDC
- 007314 Supplementary Conditions - EJCDC

**DIVISION 1 - GENERAL REQUIREMENTS**

- 010000 General Requirements
- 011000 Summary
- 012000 Price and Payment Procedures
- 013000 Administrative Requirements
- 013216 Network Analysis Schedules
- 013300 Submittal Procedures
- 014000 Quality Requirements
- 015000 Temporary Facilities and Controls
- 016000 Product Requirements
- 017000 Execution Requirements

**DIVISION 2 – EXISTING CONDITIONS**

**DIVISION 3 - CONCRETE**

- 033000 Cast-In-Place Concrete

**DIVISION 4 - MASONRY**

**DIVISION 5 - METALS**

- 055000 Metal Fabrications
- 055100 Metal Stairs
- 055200 Metal Railings

DIVISION 6 - WOOD AND PLASTICS

061000 Rough Carpentry

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

071400 Fluid-Applied Waterproofing  
078000 Fire and Smoke Protection  
079000 Joint Protection

DIVISION 8 - OPENINGS

DIVISION 9 - FINISHES

DIVISION 10 - SPECIALTIES

DIVISION 11 – EQUIPMENT

DIVISION 12 - FURNISHINGS

DIVISION 13 - SPECIAL CONSTRUCTION

131440 Modular/Intermodal Shipping Containers

DIVISION 14 - CONVEYING EQUIPMENT

DIVISION 15 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 20

DIVISION 21 – FIRE SUPPRESSION

211200 Fire-Suppression Standpipes

DIVISION 22 – PLUMBING

220500 Common Work Results for Plumbing

DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

231100 Facility Fuel Piping

DIVISION 24 – RESERVED FOR FUTURE EXPANSION

DIVISION 25 – INTEGRATED AUTOMATION

DIVISION 26 – ELECTRICAL

260500 Common Work Results for Electrical  
262416 Panelboards

DIVISION 27 – COMMUNICATIONS

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

DIVISION 29 - RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 30

DIVISION 31 – EARTHWORK

310513 Soils for Earthwork  
310516 Aggregates for Earthwork  
311000 Site Clearing  
312000 Earth Moving  
312323 Fill

DIVISION 32 – EXTERIOR IMPROVEMENTS

DIVISION 33 – UTILITIES

DIVISION 34 – TRANSPORTATION

DIVISION 35 – WATERWAY AND MARINE CONSTRUCTION

DIVISION 36 – RESERVED FOR FUTURE EXPANSION  
through  
DIVISION 39

DIVISION 40 – PHYSICAL PROCESS MEASUREMENT DEVICES

409119 Temperature Monitoring Equipment

END OF SECTION

SECTION 001116

INVITATION TO BID

***This invitation to bid has been included as a sample invitation to bid for the project and may be used, modified, or discarded in its entirety at the direction of the architectural/engineering firm under contract for the locality. The sample invitation to bid is not to be construed as an endorsement or approval of the sample invitation to bid by The Virginia Department of Fire Programs.***

The **locality/municipality** will receive sealed bids, in duplicate, for the construction of **locality/municipality** live fire training structure located at **street address, city, Virginia zip code** in person or by registered mail at the office of the **licensed design professional firm/locality's/municipality's representative** for the **locality/municipality** live fire training structure located at **street address, city, Virginia zip code** until **time** prevailing local time, **day, date**. Bids will be publically opened and bidders will be notified of the results by **time, day, date**.

A pre-bid conference shall be held at **time, day, date** at the **location street address, city, Virginia zip code**.

Proposed forms of contract documents, including plans and specifications, are on file at the **locality/municipality** located at **street address, city, Virginia zip code**. Requests for contract documents shall be accompanied by a deposit check of **amount**, made payable to **locality/municipality**, for each set of documents obtained. Such deposit will be refunded to each contractor who returns the documents in good condition within seven (7) days after submitting a bonda fide bid prior to bid opening. Additionally, a copy of the contract documents is also available for review at the office of the **licensed design professional firm** located at **street address, city, state zip code**. Further, the **locality/municipality** has made copies of the plans available at the following plan rooms for review:

McGraw Hill Construction Dodge Plan Center 9 North third Street Richmond, VA 23219 804/343-2034	Reed Construction Data 30 Technology Parkway South, Ste. 500 Norcross, GA 30092 800/925-6541
The Plan Room Valley Construction News 308 Turner Road, Suite D Richmond, VA 23225 804/674-0118	Peninsula Builders Exchange 615 Dresden Drive Newport News, VA 23601 757/594-0340
Richmond Builders Exchange 3207 Hermitage Road Richmond, VA 23227 804/353-2788	Norfolk Builders Exchange 1118 Azalea Garden Road Norfolk, VA 23502-5612 757/858-0680

A certified check or bank draft, payable to **locality/municipality**, U.S. Government bonds, or satisfactory bid bond executed by the bidder and acceptable sureties in an amount equal to five (5) percent of the bid shall be submitted with each bid.

The successful bidder will be required to furnish and pay for satisfactory performance and payment bonds in accordance with the General Conditions of the Construction Contract.

The **locality/municipality** reserves the right to reject any or all bids or to waive any informalities in the bidding.

SECTION 002115

INSTRUCTIONS TO BIDDERS

EJCDC DOCUMENT NO. 1920-12

1.1 SUMMARY

A. Section Includes:

1. Defined terms.
2. Copies of Bidding Documents.
3. Qualifications of Bidders.
4. Examination of Bidding Documents, other related data, and site.
5. Pre-Bid conference.
6. Site and other areas.
7. Interpretations and Addenda.
8. Bid security.
9. Contract Times.
10. Liquidated damages.
11. Substitute and "or-equal" items.
12. Subcontractors, suppliers, and others.
13. Preparation of Bid.
14. Basis of Bid; comparison of Bids.
15. Submittal of Bid.
16. Modification and withdrawal of Bid.
17. Opening of Bids.
18. Bids to remain subject to acceptance.
19. Evaluation of Bids and award of Contract.
20. Contract security and insurance.
21. Signing of Agreement.
22. Sales and use taxes.
23. Retainage.
24. Contracts to be assigned.

B. Related Sections:

1. Section 001116 - Invitation To Bid.
2. Section 004113 - Bid Form
3. Section 007314 - Supplementary Conditions - EJCDC:
  - a. Definitions.
  - b. Contract Times identification.
  - c. Contractor's fees for changes.
  - d. Contractor's liability insurance.
  - e. Bond types and values.

1.2 DEFINED TERMS

A. [\_\_\_\_\_].

1.3 COPIES OF BIDDING DOCUMENTS

A. [\_\_\_\_\_].

END OF SECTION

FOR REFERENCE ONLY

SECTION 004113

BID FORM

Project: Locality/Municipality Live Fire Training Structure

To: Locality/Municipality  
Street Address  
City, Virginia, Zip Code

From: \_\_\_\_\_ (Bidder's Name and Address)

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

The Undersigned, having carefully examined the drawings and Project Manual dated **(date)**, as well as the premises and conditions affecting the work, proposes to provide all materials, labor, equipment, and services required to complete the project in accordance with the contract documents, within the time set forth herein and at the amount stated below:

**A. BID SCHEDULE**

1. **Live Fire Training Structure** To Include: All materials, equipment, and labor to construct the Live Fire Training Structure and the 15 foot wide concrete apron surrounding the building prop to include but not be limited to excavating, footings, structural, electrical, and mechanical components and finishes, etc.

**LIVE FIRE TRAINING STRUCTURE BASE BID:**

\_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_ )

2. **Site Work** To Include: All materials, equipment, and labor to prepare the site work related to but outside the 15 foot concrete apron of the Live Fire Training Structure surrounding the building prop to include but not be limited to clearing, earthwork, erosion and sediment control, roadway/parking, utilities, storm drainage, site finishes, etc.

**USER NOTE** (delete prior to issuing): Grant funds will not be approved for any civil engineering site plan implementation or any other ancillary costs assumed as overhead or ordinary cost of managing a capital project. Examples of site plan implementation, or ordinary costs of managing a capital project include but are not limited to site clearing, grubbing, excavation with the exception of the foundation, back filling with the exception of the foundation, seeding, fencing, or any other form of site restoration, site surveys, site layouts, water testing, soil testing, water run-off analysis, air quality analysis, access roads, paving/graveling, easement or land lease costs, running lines or conduit for electrical supply or water source, bonding for contractors or jurisdictions, or any other overhead expense that is not directly related to the construction/erection, renovation, or repair of the Live Fire Training Structure.

**SITE WORK BASE BID:**

\_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_ )

3. **Total Project Base Bid** To Include: Additive cost of Live Fire Training Structure bid and site work base bid.

**TOTAL PROJECT BASE BID (Live Fire Training Structure + Site Work):**

\_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_ )

**B. UNIT PRICES**

For changing quantities of work items from those indicated by the contract documents and upon written instructions from the engineer, the following unit prices will prevail for credit and addition.

Descriptions & Units	Quantity	Bid Price
1. Excavation (CY)		\$ /CY
2. Excavation in Trenches and Footings (CY)		\$ /CY
3. Mass Rock Excavation (CY)		\$ /CY
4. Rock Excavation in Trenches and Footings (CY)		\$ /CY
5. Controlled Fill		\$ /CY
6. VDOT Aggregates – various TN		\$ /Ton
7. Woven Geotextile Fabric SY		\$ /SY
8. Concrete		\$ /CY
9. Thermal Liners		\$ /SF

The above unit prices shall include all labor, materials, overhead, profit, insurance, etc. to complete the finished work called for.

**C. BID ALTERNATES**

**USER NOTE** (delete prior to issuing): For providing additional components beyond the minimum requirements set forth in the Program Criteria portion of the Summary of Live Fire Training Structure Grant Program, provide separate alternatives, such examples as shown below.

1. Install Dry Hydrant, Standpipe, and Sprinkler as detailed on Sheet A2.0.  
 \_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_ )

2. Install Epoxy Coated Reinforcing Steel as noted on Sheet A0.2 as note 8 under concrete.  
 \_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_ )

3. Additional Burn Rooms (Firebrick on Floors, Thermal Lining on Walls and Ceiling)  
\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_ )

4. \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_ )

**Note:** If the Bid from the lowest responsible Bidder exceeds available funds, the **Locality/Municipality** reserves the right to negotiate with the low Bidder to obtain a contract price within available funds provided by locality/municipality.

**D. RECEIPT OF ADDENDA**

The following Addenda are acknowledged (if no Addenda are issued, write the word "None"):

ADDENDUM#                      DATE

---

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**E. TIME OF CONSTRUCTION**

If awarded a Contract, the Undersigned agrees to be Substantially Complete with all work within the following consecutive calendar days from the date of receipt of written Notice to Proceed.

1. Substantial Completion: **Number** calendar days.

In arriving at the estimated time of completion and in determining its Bid, the Bidder has relied upon local historical climatological records. The Bidder recognizes the liquidated damages clause of \$\_\_\_\_/day for completion beyond the stated completion date.

**F. BID SECURITY**

The Bidder understands that the Owner reserves the right to reject any or all Bids and to waive any informalities in the bidding.

The Bidder agrees that this Bid shall be valid and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving Bids.

Upon receipt of written Notice of Acceptance of this Bid, the Bidder will execute the formal contract attached within 7 days and deliver a Surety Bond or Bonds as required by the General Conditions.

The Bid security attached in the sum of \_\_\_\_\_  
\_\_\_\_\_ (\$ \_\_\_\_\_) is to become the  
property of the Owner in the event the contract and bond are not executed within the time set forth, as  
liquidated damages for the delay and additional expense to the Owner caused thereby.

Attached hereto is a Bid Bond for 5% of the undersigned base Bid made payable to the  
**Locality/Municipality.**

**G. CONTRACTOR REGISTRATION**

If a contract for construction, removal, repair, or improvement of a building or other real property is of  
\$70,000 or more, or if the total value of all such contracts undertaken by a Bidder within any 12 period  
of \$500,000 or more, the Bidder is required under Title 54.1, *Code of Virginia* (1950), as amended, to be  
licensed by the State Board of Contractors as a 'CLASS A CONTRACTOR.' If such a contract is for \$7,500  
or more (\$1,000 for electrical, plumbing, and HVAC work) but less than \$70,000, the Bidder is required  
to be licensed as a "CLASS B CONTRACTOR." If such a contract is for \$1,000 or more but less than \$7,500  
and is not for electrical, plumbing, and HVAC work, the Bidder is required to be licensed as a 'CLASS C  
CONTRACTOR.' The Contractor license shall have the appropriate specialty classification that is  
predominant for the respective work. The Bidder shall place on the outside of the envelope containing  
the Bid/proposal and shall place in the Bid/proposal over his signature whichever of the following  
notations is appropriate, inserting his Contractor license number.

Licensed Class A Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

Licensed Class B Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

Licensed Class C Virginia Contractor No. \_\_\_\_\_ Specialty \_\_\_\_\_

If the Bidder shall fail to provide this information on his Bid or on the envelope containing the Bid and  
shall fail to promptly provide said Contractor license number to the **Locality/Municipality** in writing  
when requested to do so before or after the opening of Bids, he shall be deemed to be in violation of  
Section 54.1-1115 of the *Code of Virginia* (1950), as amended, and his Bid will not be considered.

If a Bidder shall fail to obtain the required license prior to submission of his Bid, the Bid shall not be  
considered.

**H. NON-COLLUSION AND DISCRIMINATION STATEMENT**

My signature below certifies that the accompanying Bid is not the result of or affected by, any act of  
collusion with another person or company engaged in the same line of business or commerce, or any act  
of fraud punishable under Title 18.2, Chapter 12, Article 1.1 of the *Code of Virginia*, 1950, as amended.  
Furthermore, I understand that fraudulent and collusive bidding is a crime under the Virginia  
Governmental Frauds Act, the Virginia Government Bid Rigging Act, the Virginia Anti-Trust Act, and  
Federal Law and can result in fines, prison sentences, and civil damage awards. I hereby certify that I am  
authorized to sign this Bid for the Bidder.

In accordance with Section 11-51 of the *Code of Virginia*, every contract for goods or services over  
\$10,000 shall include the following provisions:

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

- a. The Contractor will not discriminate against any employee or applicant for employment because of disability or because of race, religion, sex, or national origin except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
  - b. The Contractor, in solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The Contractor shall include the provisions of the foregoing paragraphs A, B, and C in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Fed. ID No.: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_\_ Fax No.: (\_\_\_\_) \_\_\_\_\_

AFFIX CORPORATE SEAL

**END OF BID FORM**

SECTION 005215

AGREEMENT

EJCDC Document No. C-520

1.1 SUMMARY

- A. Section Includes:
  - 1. Agreement.
- B. Related Sections:
  - 1. Section 004113 - Bid Form
  - 2. Section 007215 - General Conditions – EJCDC Document No. C-700
  - 3. Section 007314 - Supplementary Conditions – EJCDC Document No. C-800

1.2 AGREEMENT

- A. EJCDC No. C-520 (2018 Edition), Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), forms the basis of Agreement between the Owner and Contractor.

END OF DOCUMENT

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

## AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared By



Endorsed By



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

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

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

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# **GUIDELINES FOR USE OF EJCDC® C-520, AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

## **1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT**

This Agreement form is specifically intended for stipulated price (fixed price) contracts—that is, contracts in which Owner and Contractor identify specific lump sums and unit prices as Contractor’s compensation for performing the Work. For construction contracts in which the Contract Price is primarily based on costs incurred during construction, users should select EJCDC® C-525, Agreement between Owner and Contractor for Construction Contract (Cost-Plus-Fee) (2018).

In construction contracting, as a general matter the “agreement” is the legal instrument executed (signed) by the project owner and the construction contractor, binding the parties to the terms of the contract. See CSI Project Delivery Practice Guide (2011), Section 11.1.2, p. 210, and CSI Construction Specification Practice Guide (2011), Section 5.1, p. 75. This EJCDC Agreement form serves that basic function, by identifying the parties and the Contract Documents, and establishing the Contract Price and Contract Times.

This Agreement form is drafted to be flexible enough to be used on projects that are competitively bid, and for public and private contracts that are negotiated or awarded through a proposal process or otherwise. On competitively bid projects, the following documentary information would typically be made available to bidders:

- Bidding Requirements, which include the Advertisement or invitation to bid, the Instructions to Bidders, and the Bid Form that is suggested or prescribed, all of which provide information and guidance for all Bidders, and Bid Form supplements (if any) such as Bid Bond and Qualifications Statement.
- Contract Documents, which include the Agreement, performance and payment bonds, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications.
- Documents referred to in the Supplementary Conditions or elsewhere as being of interest to bidders for reference purposes, but which are not Contract Documents.

Together, the Bidding Requirements and the Contract Documents are referred to as the Bidding Documents. (The terms “Bidding Documents,” “Bidding Requirements,” and “Contract Documents” are defined in Article 1 of the General Conditions.) The Bidding Requirements are not Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter. Many contracts are awarded without even going through a bidding process, and thus have no Bidding Requirements, illustrating that the bidding items are typically superfluous to the formation of a binding and comprehensive construction contract. In some cases, however, a bid or proposal will contain numerous line items and their prices; in such case the actual bid or proposal document may be attached as an exhibit to the Agreement to avoid extensive rekeying.

## **2.0 OTHER DOCUMENTS**

As noted above, before selecting C-520 for a specific project, confirm that the Contract will be based on lump sum (stipulated price) (which may include unit prices), and not on cost plus fee—for cost plus fee contracts, use C-525.

EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.

While preparing this document for use on a specific project, the user may decide to revise or supplement some of the standard provisions. When such changes are made, the user should review whether corresponding changes are needed in the following related EJCDC documents:

EJCDC Doc. No.	Document Title	Edition
C-200	Instructions to Bidders for Construction Contract	2018
C-410	Bid Form for Construction Contract	2018
C-700	Standard General Conditions of the Construction Contract	2018
C-800	Supplementary Conditions of the Construction Contract	2018

Other documents that provide additional information or guidance for the use of this document include the following:

EJCDC Doc. No.	Document Title	Edition
C-001	Commentary on the 2018 EJCDC Construction Documents	2018

### 3.0 ORGANIZATION OF INFORMATION

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, [www.ejcdc.org](http://www.ejcdc.org), and from the websites of EJCDC’s sponsoring organizations.

If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.

### 4.0 GUIDANCE NOTES AND NOTES TO USER

EJCDC Documents include Guidance Notes and Notes to User to provide guidance regarding the preparation of Project specific documents. These notes are intended for use by the User in the preparation of the document and are not intended to be included in the completed document. Guidance Notes and Notes to User are lightly shaded to distinguish them from the proposed text of the Agreement. As a project-specific Agreement is prepared and made ready for issuance to bidders or execution by the parties, all shaded text (Guidance Notes and Notes to Users) should be deleted.

Guidance Notes provide information regarding the paragraphs which follow, including reasons for the paragraphs, discussions of best practices, and alternate approaches for different situations.

Notes to User provide specific information for editing the document. When alternate paragraphs for different situation are presented, explanations on how to select the most appropriate alternate will be provided, with direction to delete those paragraphs not used.

## 5.0 EDITING THIS DOCUMENT

5.1 It is intended that this document be edited for each Contract. Guidelines for editing include:

- A. Remove the cover pages which consist of the title pages and these Guidelines for Use.
- B. Type in required information as indicated by brackets ([ ]). Bracketed text will usually provide instructions for what is to be inserted in place of the brackets. Delete brackets and change formatting to match existing text after project specific text has been added, e.g. change “[Project Name]” to “Peach Street Renovation” (without brackets or bold, or quotation marks).
- C. Fill in blanks, if any. It will be more common for information to be inserted by user to be indicated by a prompt in brackets, as described in Paragraph B above, rather than by an underline-style blank.
- D. Most Notes to User are presented before the text to which they apply; some Notes to Users are interspersed in the text, usually within brackets. Delete all “Notes to User” after reviewing each note and taking appropriate action. Delete all associated numbering and brackets.
- E. Complete tables.
- F. Delete Guidance Notes.

## 6.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at [www.ejcdc.org](http://www.ejcdc.org) and the websites of EJCDC’s sponsoring organizations.

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between [name of contracting entity] (“Owner”) and [name of contracting entity] (“Contractor”).

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

Owner and Contractor hereby agree as follows:

## ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **[Brief description of Work]**

## ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **[Brief description of Project]**

## ARTICLE 3—ENGINEER

**Guidance Notes**—If an entity or individual other than the design engineer will serve as Owner’s representative during construction, then make appropriate revisions and additions to this Agreement, the General Conditions, the Supplementary Conditions, and other Contract Documents regarding the construction-phase roles and duties of the design engineer and such other entity or individual. Such revisions may include using a designation other than “Engineer” for the representative named in Paragraph 3.01 below, and expressly naming the design firm (for example, “ABC Engineering, Inc.”) instead of referring to “Engineer” in Paragraph 3.02.

3.01 The Owner has retained **[insert name of engineering firm]** (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by **[insert “Engineer” if an entity has been identified as such in Paragraph 3.01, and that same entity prepared the design; or indicate by name the entity other than Engineer that prepared the design]**.

## ARTICLE 4—CONTRACT TIMES

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.

### Notes to User

Select one of the two Contract Times paragraphs (either Paragraph 4.02 or Paragraph 4.03), and delete the other. The first option, Paragraph 4.02, uses dates for the time of completion; Paragraph 4.03 uses

number of days. (References in these Notes will be to paragraph numbers as published—the final numbering will change as paragraphs, such as either 4.02 or 4.03, are deleted during the finalization process.)

1. Paragraph 4.04, which establishes binding intermediate Milestones, may be used with either Paragraph 4.02 or Paragraph 4.03; or Paragraph 4.04 may be deleted if the Contract does not impose Milestone requirements.
2. In the common case in which Owner elects to predetermine fixed dates or a fixed number of days for completion of the Work, such dates or number of days should be inserted in the selected Contract Times paragraph (either Paragraph 4.02 or Paragraph 4.03) below prior to the bidding or other contractor selection process. If the time for completion will be determined through negotiation or a bidding process that allows bidders to specify the time for completion (for example, a price-plus-time—A + B—award process), then leave the blanks below open until the Contract is finalized (typically after the Successful Bidder has been determined and its proposed completion time accepted).
3. If the Work is divided into individual sections that have differing completion dates (or number of days for completion), then the selected Contract Times paragraph (either Paragraph 4.02 or Paragraph 4.03) below should be expanded to specify the completion dates (or number of days) for each section. Such completion dates may be categorized as Milestones under Paragraph 4.04.

#### 4.02 *Contract Times: Dates*

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

#### 4.03 *Contract Times: Days*

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

#### **Notes to User**

1. “Milestone” in Paragraph 4.04 is a defined term.
2. For each Milestone, indicate the event that must be attained, such as “Substantial Completion of Lift Station 1” and the date or number of days from commencement by which the event must be attained.
3. In Paragraph 4.04 use a specific date for attainment of the Milestone if Paragraph 4.02 above (Contract Times: Date) has been selected; use the number of days from commencement of Contract Times for the Milestone if Paragraph 4.03 (Contract Times: Days) has been selected.
4. If the Contract does not include Milestones, delete Paragraph 4.04.

#### 4.04 *Milestones*

- A. Parts of the Work must be substantially completed on or before the following Milestone(s):
  1. Milestone 1 **[event & date/days]**

2. Milestone 2 [event & date/days]
3. Milestone 3 [event & date/days]

#### Guidance Notes—Liquidated Damages

1. Liquidated damages are commonly used to address unexcused late completion of the Work. The topic is discussed in the Commentary. Delete Paragraph 4.05, Liquidated Damages, if such damages will not be established in the specific Contract.
2. At Substantial Completion, the Owner is able to use the Work for its intended purpose, by definition. See General Conditions, Paragraph 1.01.A. Achieving Substantial Completion is typically a critical deadline, and the associated damages for missing this deadline are typically significant. Paragraph 4.05.A.1 is the location for stating a liquidated amount for such damages, usually on a per-day basis.
3. The subsequent failure to complete the punch list tasks and bring the Work to a complete close by the final completion date may also result in some degree of damages to Owner—though typically these damages are significantly less than the daily damages for not achieving Substantial Completion on time. Some users may choose to establish liquidated damages only for the failure to achieve Substantial Completion. If that is the case, delete Paragraph 4.05.A.2 below.
4. If failure to achieve a Milestone on time is of such consequence that the assessment of liquidated damages is warranted for the failure to reach the Milestone on time, then retain and complete Paragraph 4.05.A.3; if not, delete it. Add additional similar paragraphs for any additional Milestones subject to a liquidated damages assessment. Liquidated damages for Milestones might, in some cases, be additive to liquidated damages for failing to timely attain Substantial Completion; if so Paragraphs 4.05.A.3 and 4.05.A.4 should be revised accordingly.

#### 4.05 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
  1. *Substantial Completion*: Contractor shall pay Owner \$[number] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$[number] for each day that expires after such time until the Work is completed and ready for final payment.
  3. *Milestones*: Contractor shall pay Owner \$[number] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial

Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.

4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

**Notes to Users**—If early completion would be a benefit to Owner, then consider retaining and completing the bonus clause below as Paragraph 4.05.C. The daily bonus for early completion need not be exactly the same as the daily post-Substantial Completion liquidated damages amounts, but presumably the two amounts will be reasonably compatible. If no bonus will be offered, then delete 4.05.C.

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

**Deleted**

#### **Guidance Notes—Special Damages**

If liquidated damages are used to address late completion by Contractor, EJCDC recommends developing daily liquidated damages amounts that comprehensively account for the full range of Owner's damages, including but not limited to loss of beneficial use; extended financing expenses; costs of additional engineering, construction observation, inspection, and administrative services; and potential fines or penalties. This comprehensive approach is well established and generally enforceable. If the recommended and conventional path is followed, and a comprehensive daily liquidated damages amount has been established in Paragraph 4.05 above, then delete the clause that follows, Paragraph 4.06, Special Damages, and rely solely on Paragraph 4.05, Liquidated Damages, to cover the full scope of damage done by late Contractor completion.

1. Some Owners prefer to charge a Contractor that has not completed the Work on schedule for Owner's additional hard-dollar costs in specified categories, such as regulatory fines and penalties, or extended engineering, construction observation, inspection, and administrative services; these charges (referred to here as "special damages") are levied on top of the daily liquidated damages amount. Those users that choose the "liquidated damages plus specified actual hard dollar costs" (special damages) approach may use the following Paragraph 4.06, Special Damages, revised as needed to reflect the intended scope of the special damages, together with the liquidated damages provisions in Paragraph 4.05, Liquidated Damages, above. It is very important if this approach is followed to be certain that the liquidated damages amount does not already include or rely in part on the potential for incurring these very same special damages costs.
2. Finally, note that Paragraph 4.06.B below does not refer to fines or penalties imposed by third parties. In the typical case, such fines and penalties are linked to Substantial Completion, and are not applicable to delays in final completion of the Work.

#### 4.06 *Special Damages*

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

### ARTICLE 5—CONTRACT PRICE

#### Guidance Notes—Contract Price

1. Depending upon the particular Contract's pricing structure, use Paragraph 5.01.A alone (lump sum with no Unit Price Work items); Paragraphs 5.01.A, 5.01.B, and 5.01.C together (lump sum plus Unit Price items); Paragraph 5.01.B alone (Unit Prices for all Work); or Paragraph 5.01.D alone (price based on contents of incorporated Contractor's Bid), and delete those not used and renumber accordingly. If Paragraph 5.01.D is used, Contractor's Bid is attached as an exhibit and listed as a Contract Document in Article 7 below.
2. With respect to Paragraph 5.01.B concerning Unit Prices, if adjustment prices for variations from stipulated Base Bid or other baseline quantities have been agreed to, insert appropriate provisions.
3. Performance Requirements and Damages. In some cases, the construction contract will contain performance requirements that must be met by the equipment, systems, or facilities constructed or furnished by Contractor. Performance provisions most commonly will be located in the Specifications. On some projects the Owner and Contractor may contractually stipulate specific damages for failure to meet the performance requirements. It may be useful to provide a cross-reference to such provisions here in Article 5 of the Agreement (as a new Paragraph 5.02), or in some cases to expressly state the stipulated damages amounts here because of their importance to the pricing of the Contract, which is one of the primary subjects of the Agreement.

In addition to, or as an alternative to imposition of stipulated damages to compensate Owner for not receiving its full contractual performance entitlement, the performance provisions in the Specifications may identify other Owner remedies for Contractor's failure to meet the performance requirements, such as rejection of the items in question; correction remedies; exercise of warranty rights; recovery of actual damages; and acceptance of the underperforming items coupled with a reduction in Contract Price.

Typical damages for underperformance might be for reduced production or treatment, or for the costs of increased electricity or chemical consumption over the life of the equipment. It is important when drafting damages provisions to clarify whether the availability of underperformance damages is

meant to close off other potential remedies that will be owed in the event of specific levels of underperformance.

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

A. For all Work other than Unit Price Work, a lump sum of \$[number].

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

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

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

C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$[number].

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

**ARTICLE 6—PAYMENT PROCEDURES**

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor’s Applications for Payment on or about the [ordinal number, such as 5th] day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the

Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

#### Guidance Notes—Retainage

1. In Paragraph 6.02.A.1.a, the percentage stated should be that percentage to be paid to Contractor. Thus, if retainage is 10%, indicate “90” in Paragraph 6.02.A.1.a.
2. Paragraph 6.02.A.1.a(1) provides that after the Work is 50% complete (based on value of Work completed), Owner will no longer take retainage from progress payments, if performance of the Work has been satisfactory. This practice rewards and incentivizes good work and compliance with the schedule. If Owner is not able or willing to offer this incentive, delete Paragraph 6.02.A.1.a(1).
3. Although Paragraph 6.02.A.1.a(1), if utilized, provides for retainage to be reduced after 50% of the Work is complete, the standard provisions in Paragraph 6.02 do not provide for an early return of retainage—Contractor’s first opportunity to receive retained funds occurs at Substantial Completion (see Paragraph 6.02.B). If a specific project involves partial utilization of a portion of the Work or other special factors, the user may wish to include a supplemental provision that allows for a partial early return of retainage, under specified conditions.
4. As an alternative to retainage, some Owners allow the Contractor to receive 100% of each progress payment, provided that the Contractor has provided an irrevocable letter of credit or similar instrument that allows the Owner access to the Contractor’s funds under prescribed conditions. Any such alternative mechanism requires custom drafting and participation of legal counsel.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. ~~[number]~~95 percent of the value of the Work completed (with the balance being retainage).

- 1) ~~If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~

**Deleted**

- b. ~~[number]~~95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

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

B. Upon Substantial Completion **of the entire construction to be provided under the construction Contract Documents**, Owner shall pay an amount sufficient to increase total payments to Contractor to **[number]** percent of the Work completed, less such amounts set

off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **[number]** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

A. All amounts not paid when due will bear interest at the rate of **[number]** percent per annum.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

A. The Contract Documents consist of all of the following:

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

1. This Agreement.
2. Bonds:
  - a. Performance bond (together with power of attorney).
  - b. Payment bond (together with power of attorney).
3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the project manual (copy of list attached).

**Notes to Users**—Use either Paragraph 6 or 7, delete the paragraph not used.

6. Drawings (not attached but incorporated by reference) consisting of **[number]** sheets with each sheet bearing the following general title: **[title on Drawings]**.
7. Drawings listed on the attached sheet index.

**Notes to Users**—In the following paragraph list the numbers and dates of those Addenda that modified the Contract Documents; do not list Addenda that only affected the Bidding Requirements, and therefore should not be Contract Documents. See EJCDC® C-001 Commentary on the 2018 EJCDC Construction Documents (2018).

8. Addenda (numbers [number] to [number], inclusive).

**Guidance Notes—Exhibits that are Contract Documents**

1. In the following paragraph list exhibits (if any) to the Agreement that merit the status of Contract Documents.
2. As noted in the introduction to this Agreement, in the typical case bidding-related documents such as the Instructions to Bidders and Bid are not included as Contract Documents. Include Contractor’s Bid as a Contract Document here only as a matter of necessity, for example if the Bid contains numerous line items and their prices, and rekeying such information would be burdensome and susceptible to error.
3. List other required attachments (if any), such as documentation submitted by Contractor prior to Notice of Award and documents required by funding or lending agencies.
4. If Contractor is required in this Contract to accept assignment of a procurement contract, previously entered into by Owner (as “Buyer”) with a manufacturer or distributor (as “Seller”) for the direct purchase of goods (most commonly equipment) and related special services, include the procurement contract as a Contract Document by listing it as a lettered item under Paragraph 7.01.A.9—“Assigned Procurement Contract between Owner (Buyer) and Seller, dated [date].” The contractual wording governing the assignment of a procurement contract should be located in the Supplementary Conditions; see Supplementary Conditions, Paragraph SC-18.08.B. For additional information on assigning a procurement contract, refer to EJCDC® P-001, Commentary on the EJCDC Procurement Documents.
5. If a Geotechnical Baseline Report or a Geotechnical Data Report is used, include these reports as Contract Documents by listing them as lettered items under Paragraph 7.01.A.9. For a further discussion of GBRs and GDRs see EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

9. Exhibits to this Agreement (enumerated as follows):

- a. **[list exhibits]**

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

- a. Notice to Proceed.
- b. Work Change Directives.
- c. Change Orders.
- d. Field Orders.
- e. Warranty Bond, if any.

- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

### 8.01 Contractor's Representations

**Notes to Users**—Modify the following representations to suit the specific Project. For example: change or delete Paragraph 8.01.A.2 if Contractor was restricted from visiting the Site prior to entering into the Contract; change or delete Paragraph 8.01.A.4 and 5 if there are no reports or drawings of the type referred to.

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

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

This Agreement will be effective on **[indicate date on which Contract becomes effective]** (which is the Effective Date of the Contract)

Owner:

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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

Contractor:

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

*(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: \_\_\_\_\_

DOCUMENT 007215

GENERAL CONDITIONS

EJCDC Document No. C-700

1.1 SUMMARY

- A. Section Includes:
  - 1. General Conditions.
- B. Related Sections:
  - 1. Section 004113 - Bid Form
  - 2. Section 005215 - Agreement – EJCDC Document No. C-520
  - 3. Section 007314 - Supplementary Conditions – EJCDC Document No. C-800

1.2 GENERAL CONDITIONS

- A. EJCDC No. C-700 (2018 Edition) - Standard General Conditions of the Construction Contract, is the General Conditions of the Contract.

1.3 SUPPLEMENTARY CONDITIONS

- A. Refer to Section 007314 - Supplementary Conditions - EJCDC Document No. C-800 for amendments and supplements to General Conditions.

END OF DOCUMENT

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

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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

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

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

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# **GUIDELINES FOR USE OF EJCDC® C-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

## **1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT**

EJCDC® C-700, Standard General Conditions of the Construction Contract (2018), is the foundation document for the EJCDC Construction Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Contractor, and establish how the Contract is to be administered.

## **2.0 OTHER DOCUMENTS**

EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.

These General Conditions have been prepared for use with either EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), or EJCDC® C-525, Agreement Between Owner and Contractor for Construction Contract (Cost-Plus-Fee) (2018 Editions). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018).

The full EJCDC Construction series of documents is discussed in the EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

## **3.0 ORGANIZATION OF INFORMATION**

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, [www.ejcdc.org](http://www.ejcdc.org), and from the websites of EJCDC's sponsoring organizations.

If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.

## **4.0 EDITING THIS DOCUMENT**

Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.

Although it is permissible to revise the Standard EJCDC Text of C-700 (the content beginning at page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of C-700 intact and unaltered, with modifications and supplementation of C-700's provisions set forth in EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018). If the Standard Text itself is revised, the

user must comply with the terms of the License Agreement, Paragraph 4.0, Document-Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

1. The term “Standard EJCDC Text” for C-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.
2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using “Track Changes” (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.
3. If C-700 has been revised or altered and is subsequently presented to third parties (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.
4. Once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any “Track Changes,” redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

## **5.0 LICENSE AGREEMENT**

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at [www.ejcdc.org](http://www.ejcdc.org) and the websites of EJCDC’s sponsoring organizations.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  17. *Cost of the Work*—See Paragraph 13.01 for definition.
  18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

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

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

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

#### B. *Resolving Discrepancies*

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

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

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

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

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

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

### 5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
  - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
  - F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
  - G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
  - H. Contractor shall require:
    - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
    - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
  - I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
  - J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
  - K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

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

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

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

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) 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) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will 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 the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

#### 7.09 *Permits*

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

#### 7.10 *Taxes*

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

#### 7.11 *Laws and Regulations*

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

#### 7.12 *Record Documents*

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

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or

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

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

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

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

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

### **9.02 *Replacement of Engineer***

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

### **9.03 *Furnish Data***

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

### **9.04 *Pay When Due***

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

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
  - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
  - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
  - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

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

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

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

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

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

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

#### B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

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

### **ARTICLE 12—CLAIMS**

#### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price (“changed Work”), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder’s risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor’s fee.

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

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

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

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

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

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

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

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

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

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

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

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Payment Becomes Due***

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

**E. *Reductions in Payment by Owner***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

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

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

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

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

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

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

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 *Computation of Times***

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SECTION 007314

SUPPLEMENTARY CONDITIONS

EJCDC Document No. C-800

1.1 SUMMARY

- A. Section Includes:
  - 1. Supplementary Conditions.
- B. Related Sections:
  - 1. Section 004113 - Bid Form.
  - 2. Section 005215 - Agreement – EJCDC Document No. C-520
  - 3. Section 007215 - General Conditions – EJCDC Document No. C-700

1.2 SUPPLEMENTARY CONDITIONS

- A. These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC No. C-700, 2018 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.
- B. The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract, EJCDC No. C-700, 2018 Edition, have the meanings assigned to them in the General Conditions.

SC-1.01.A Add the following new paragraph immediately after paragraph 1.01.A.32

32.A.	Products: Means materials and equipment that Contractor furnishes and provides, other than labor and services.
-------	--

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

2.03.A.	Contract Times commence on the date established in Notice To Proceed and continue for 365 days.
---------	---

SC-3.01.D Add the following new paragraph immediately after paragraph 3.01.C:

3.01.D.	Sections of Division 01 - General Requirements govern the execution of the work of all sections of the specifications.
---------	--

SC-5.01.A Amend paragraph 5.01.A to require bond values as follows:

	Furnish a Performance Bond in the amount of [_____] percent of Contract Price.
	Furnish a Payment Bond in the amount of [_____] percent of Contract Price.

SC-5.01.B Add the following language at the end of paragraph 5.01.B:

1.	Furnish Performance Bond on EJCDC No. C-610 bond form.
2.	Furnish Payment Bond on EJCDC No. C-615 bond form.

SC-12.01.C Amend paragraph 12.01.C.1 to read as follows:

1.	The Agreement identifies the following:
a.	Overhead and profit fees applicable to Changes in the Work, whether additions to or deductions from the Work on which the Contract Price is based.
b.	Fees for changes in subcontract work (both additions and deductions).
c.	The Contractor shall apply fees as noted, to the Subcontractor's gross (net plus fee) costs on additional work.

END OF DOCUMENT

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

## SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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

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

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

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# GUIDELINES FOR USE OF EJCDC® C-800, SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

## 1.0 PURPOSE AND INTENDED USE OF THE DOCUMENT

### 1.1 *General*

The Engineers Joint Contract Documents Committee® (EJCDC®) has prepared and publishes standard contract forms for construction contracts, as well as bidding-related documents. The principal forms are listed in Table 1. EJCDC has also prepared other documents that may be useful in preparing construction contract documents. Some of the principal ones are listed in Table 2. For the most recent editions of these forms, guides, and other documents, please refer to EJCDC's website at [www.ejcdc.org](http://www.ejcdc.org).

**Table 1—Principal EJCDC Standard Forms for Construction Contracts**

Name	Number	Short Title/Abbreviation
Instructions to Bidders for Construction Contract	C-200	Instructions/I
Bid Form for Construction Contract	C-410	Bid Form/BF
Agreement between Owner and Contractor for Construction Contract (Stipulated Price)	C-520	Stipulated Price Agreement/A
Agreement between Owner and Contractor for Construction Contract (Cost-Plus-Fee)	C-525	Cost-Plus Agreement/A
Standard General Conditions of the Construction Contract	C-700	General Conditions/GC
Supplementary Conditions of the Construction Contract	C-800	Supplementary Conditions/SC

**Table 2—Principal EJCDC Documents Relating to Preparation of Construction Documents**

Name	Number	Short Title
Commentary on the 2018 EJCDC Construction Documents	C-001	Commentary
Uniform Location of Subject Matter	N-122	Locator Guide
Bidding Procedures and Construction Contract Documents	C-050	Bidding Procedures
Engineer's Letter to Owner Requesting Instructions Concerning Bonds and Insurance	C-051	Engineer's Letter to Owner Concerning Bonds and Insurance
Owner's Instructions to Engineer Concerning Bonds and Insurance	C-052	Owner's Instructions Concerning Bonds and Insurance

### 1.2 *Mandatory Supplementary Conditions*

- A. Several provisions of the General Conditions expressly indicate that essential Project-specific information will be set out in a corresponding Supplementary Condition. For example, Paragraph 6.03.A of the General Conditions indicates that the specific requirements for insurance to be carried by Contractor will be stated in the Supplementary Conditions. Every EJCDC based construction contract should include, at a minimum, the following Supplementary Conditions, edited for the specific project:

1. Paragraph SC-5.03, concerning reports and drawings of conditions at the Site that contain Technical Data on whose accuracy the Contractor may rely;
  2. Paragraph SC-5.06, disclosing reports and drawings regarding Hazardous Environmental Conditions at the Site, and identifying any Technical Data in those reports and drawings on whose accuracy the Contractor may rely;
  3. Paragraph SC-6.03, identifying specific insurance coverage requirements; and
  4. One of the two alternatives presented in SC-10.03 (either the Engineer will provide Resident Project Representative services on the Project, with specific authority and responsibilities, or Engineer will not provide Resident Project Representative services).
- B. Other suggested Supplementary Conditions are mandatory under specific circumstances: for example, on projects in which the Contractor will be responsible for compliance with Owner's safety program, SC-7.13 would be mandatory.
- C. In describing a Supplementary Condition as “mandatory” EJCDC is indicating that it is essential to furnish the information that is the subject of the Supplementary Condition; however, the drafter is not restricted from modifying the wording and content of the proposed Supplementary Condition as needed.

### 1.3 *Relationship of Supplementary Conditions to Other Contract Documents*

Supplementary Conditions are modifications to the General Conditions—additions, deletions, changes. This is as the term is defined by EJCDC and the Construction Specification Institute (CSI). Other organizations use their supplementary conditions to modify a broader range of contract documents, such as agreement forms and standard specifications.

This Guide and the other Construction-related documents prepared and issued by EJCDC assume use of the CSI MasterFormat™ concept, which provides an organizational format for location of all documentary information for a construction project: Bidding Requirements, contract forms (Agreement, Bonds, and certificates), General Conditions, Supplementary Conditions, and Specifications. Under the CSI MasterFormat™, the last grouping, Specifications, is divided into 49 Divisions, the first of which, Division 01, is entitled “General Requirements.”

The standard fundamental provisions affecting the rights and duties of the parties appear in the General Conditions. Language to modify the fundamental relationships between the parties, supplement the framework set forth in the General Conditions, or change the language of the General Conditions, should appear in the Supplementary Conditions. Examples of this are a change in Contractor’s Site responsibilities, and a supplemental clause specifying the details of insurance coverages and limits for the Project.

Price terms, monetary terms such as liquidated damages clauses, and completion dates should all be set forth in the Agreement (C-520—Stipulated Sum, or C-525—Cost-Plus-Fee), and should not be included in the Supplementary Conditions.

### 1.4 *Arrangement of Subject Matter*

This Supplementary Conditions document is arranged in the same order as the 2018 edition of the General Conditions, and the proposed Supplementary Conditions Paragraphs bear comparable addresses to those of the General Conditions. A discussion of the purpose and function of these suggested Supplementary Conditions is included in EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

## 1.5 *Use of this Document*

The text in this document is suggested contract language for some commonly used Supplementary Conditions. Most of the suggested Supplementary Conditions are accompanied by Guidance Notes that discuss the purpose or usage of the Supplementary Condition. These Guidance Notes are often just the first step in determining whether to use the Supplementary Condition, and if so whether revisions are needed to suit the specific project. The drafter should bear in mind that most contractual provisions have important legal consequences. Consultation with legal counsel before finalization of any amendment or supplement is recommended.

There may be notes, prompts, or “fill in the blanks” within the text of a suggested Supplementary Condition. These should be read and followed, then removed when the document is finalized. See Paragraph 4.0, Finalizing a Specific Project’s Supplementary Conditions, below.

Many sets of supplementary conditions examined by EJCDC contain typical or “boilerplate” provisions that have accumulated like moss over the years, appear to have no practical significance for the particular project, and may produce unintended and surprising legal consequences. Such provisions are usually there because someone saw similar terms in other contract documents and it “sounded good.” Selecting contract terms in that manner is not recommended. Provisions of the Supplementary Conditions should address a particular point in the General Conditions or cover a particular topic. The Supplementary Conditions should not be a repository for general language of vague meaning for which another location cannot be readily found.

This Supplementary Conditions document assumes a general familiarity with the other Construction Series (C-Series) documents prepared by EJCDC and, when drafting language, specific attention to them is encouraged. Standard documents or prescribed forms issued by governmental bodies and other owners may differ materially from the documents of EJCDC so that careful correlation of any amending or supplementing language is essential. The practice of stating that any provision in one document that is inconsistent with another is superseded, or that one document always takes precedence over another in the event of a conflict in language or requirements, is sometimes necessary, but generally discouraged. The resulting legal consequences of such provisions are frequently difficult to decipher and may be very different from what was anticipated.

The EJCDC General Conditions use carefully chosen language and set forth the basic responsibilities of the parties with respect to fundamental matters and legal consequences. Their provisions should be altered only where mandated by the specific requirements of a given project and the consequences of any modification are thoroughly understood.

Caution should be exercised when making any change in the standard documents. They have been carefully prepared, terms are used uniformly throughout and are consistent with the terms in other EJCDC documents. Their provisions have been carefully integrated, and are dependent on one another. A change in one document may necessitate a change in another, and a change in one paragraph may necessitate a change in other language of the same document. No change should be made until its full effect on the rest of the General Conditions and other Contract Documents has been considered.

Lastly, remember that an engineer is neither qualified nor licensed to give advice to others on the legal consequences of contracts. All of the Contract Documents have important legal consequences. Similarly, many portions of the documents involve insurance, bonding, and other

subjects that are outside the scope of an engineer’s services. Owners are encouraged to seek the advice of an attorney (and risk managers, insurance consultants, and other specialists) before accepting any modification of the published forms, before the documents are sent out for bidding, and most assuredly before signing any agreement.

## **2.0 STANDARD PREFATORY LANGUAGE AND TRADITIONAL FORMAT FOR SUPPLEMENTARY CONDITIONS**

Suggested format and wording conventions for Supplementary Conditions appear below.

### **2.1 *Table of Contents***

The inclusion of a table of contents will benefit the user of the Supplementary Conditions, especially if additional articles (beyond the 18 Articles of the General Conditions) are added.

### **2.2 *Pagination***

If CSI’s MasterFormat™ is being used for the Contract Documents, consult MasterFormat™ for the appropriate section number and number the pages accordingly.

### **2.3 *Format for Complete Paragraph Change***

When completely superseding a paragraph of the General Conditions, the following example language may be used:

“SC-5.09 Delete Paragraph 5.09.B in its entirety and insert the following in its place:

**[Text to be inserted]”**

### **2.4 *Format for Change within a Paragraph***

When changing language within a paragraph of the General Conditions, the following example language may be used:

“SC-6.21 Amend the second sentence of Paragraph 6.21.A **[to read as follows] [by striking out the following words]:**

**[Text to be modified]”**

### **2.5 *Format for Additional Language***

When adding language to an existing paragraph of the General Conditions, the idea may be expressed as in the following example:

“SC-9.03 Add the following language at the end of the second sentence of Paragraph 9.03:

**[Text to be added]”**

### **2.6 *Format for Additional Paragraph***

If it is desired to add a new paragraph to the General Conditions, the thought may be expressed as in the following example:

“SC-8.06 Add the following new paragraph immediately after Paragraph 8.06.B:

**C. [Paragraph text to be added]”**

### 3.0 ALTERNATIVE FORMAT FOR SUPPLEMENTARY CONDITIONS

Electronic files are commonly used for transmittal and storage of the text of standard documents. In fact, EJCDC no longer publishes printed documents. Because it is easy to modify documents electronically, it is increasingly common for practitioners to integrate the text of desired Supplementary Conditions into the text of the General Conditions. Most word processing programs have line-out and underlining features that accurately show deletions, changes, and additions. Users of EJCDC's General Conditions are contractually obligated, through the terms of the purchase of the document, to clearly delineate all changes made to the standard text of the General Conditions to other parties in interest (for example, if Owner makes changes, Owner should show these changes to prospective bidders). It would be misleading to users (and a violation of the License Agreement) to imply or represent that the General Conditions are EJCDC's General Conditions if changes are not properly and clearly identified during the contract formation process.

### 4.0 FINALIZING A SPECIFIC PROJECT'S SUPPLEMENTARY CONDITIONS

#### 4.1 *Key Steps*

- A. Review Paragraphs 1.0, 2.0, and 3.0 above, especially Paragraph 1.5, Use of this Document.
- B. Read the Guidance Notes that accompany the proposed Supplementary Conditions.
- C. Retain those Supplementary Conditions that are applicable to the specific Project; revise the standard wording as needed; supply required information such as insurance policy limits.
- D. Delete all proposed Supplementary Conditions that do not apply to the Project and delete Paragraphs 1.0 through 3.0 and all Guidance Notes.
- E. Add any additional Supplementary Conditions specific to the Project.
- F. Check cross-references back to the General Conditions.
- G. Delete this Paragraph 4.0 after confirming that Paragraphs 1.0, 2.0 and 3.0, all Guidance Notes, and all other notes have been removed.
- H. Remove the cover pages (title pages).
- I. Update or delete the Table of Contents.

#### 4.2 *Editing the Supplementary Conditions Text*

- A. Type in required information as indicated by brackets ([ ]). Bracketed text will usually provide instructions for what is to be inserted in place of the brackets. Delete the brackets and change formatting to match surrounding text after the project specific text has been added, e.g. change “[**Project Name**]” to “Peach Street Renovation” (without brackets or bold, or quotation marks).
- B. Fill in blanks, if any (more commonly information to be inserted by user will be indicated by a prompt in brackets, as described in Paragraph A above, rather than by an underline-style blank).
- C. Some Notes to Users are interspersed in the text, usually within brackets. Delete all “Notes to User” after reviewing each note and taking appropriate action. Delete all associated numbering and brackets.

D. Fill in all tables.

## 5.0 ORGANIZATION OF INFORMATION

All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, [www.ejcdc.org](http://www.ejcdc.org), and from the websites of EJCDC's sponsoring organizations.

If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.

## 6.0 GUIDANCE NOTES AND NOTES TO USER

EJCDC Documents include Guidance Notes and Notes to User to provide assistance in the preparation of Project-specific documents. These notes are intended for use by the user in the preparation of the document and are not intended to be included in the completed document. Guidance Notes and Notes to User are lightly shaded to distinguish them from the proposed text of the Instructions themselves. As project-specific Instructions to Bidders are prepared and made ready for issuance to bidders, all shaded text (Guidance Notes and Notes to Users) should be deleted.

A Guidance Note provides information regarding the suggested Supplementary Condition that follows, including reasons for the suggested SC, discussions of best practices, and alternate approaches for different situations.

Notes to User provide specific information for editing the text of a suggested Supplementary Condition. When alternate wording is presented, explanations on how to select the most appropriate alternate will be provided, with direction to delete the wording not used.

## 7.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at [www.ejcdc.org](http://www.ejcdc.org) and the websites of EJCDC's sponsoring organizations.

# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

**Guidance Note—Introductory Statement**—The following is a suggestion for use at the beginning of the Supplementary Conditions for a specific project:

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

~~No suggested Supplementary Conditions in this Article.~~

**SC-1.01.A.8 – Add the following at the end of the Paragraph:**

**The Change Order form to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.**

**SC-1.01.A.30 – Add the following at the end of the Paragraph:**

**For the purposes of Rural Development, this term is synonymous with the term "applicant" as defined in 7 CFR 1780.7 (a) (1), (2) and (3) and is an entity receiving financial assistance from the federal programs.**

**SC-1.01.A.50 – Add the following at the end of the Paragraph:**

**The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.**

**SC-1.01.A.51 – Add the following new paragraph immediately after Paragraph 1.01.A.50:**

**51. Agency - The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices; therefore, the Agency for these documents is USDA Rural Development.**

SC-1.01.A.52 – Add the following new paragraph with the title “American Iron and Steel Definitions” immediately after Paragraph 1.01.A.51:

**52.a *American Iron and Steel (AIS)*** - Requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference for “iron and steel products,” meaning the following products, if made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials. AIS requirements apply in each of the several states, the District of Columbia, and each federally recognized Tribe, but not the U.S. Territories.

**52.b *Coating*** - A covering that is applied to the surface of an object. If a Coating is applied to the external surface of a domestic iron or Steel component, and the application takes place outside of the United States, said product would be considered a compliant product under the AIS requirements. Any Coating processes that are applied to the external surface of Iron and Steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the Coating processes occur, provided that final assembly of the product occurs in the United States. This exemption only applies to Coatings on the *external surface* of Iron and Steel components. It does not apply to Coatings or linings on internal surfaces of Iron and Steel products, such as the lining of lined pipes. All Manufacturing Processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.

**52.c *Construction Materials*** - Those articles, materials, or supplies made primarily of iron and/or steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. Note: Mechanical and electrical components, equipment and systems are not considered Construction Materials. See definitions of Mechanical Equipment and Electrical Equipment.

**52.d *Contractor’s Certification*** - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all Iron and Steel products installed were Produced in the United States.

**52.e *De Minimis*** - Various miscellaneous, incidental low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. Examples of *De Minimis* components could include small washers, screws, fasteners (such as “off the shelf” nuts and bolts), miscellaneous wire, corner bead, ancillary tube, signage, trash bins, door hardware etc. Costs for such *De Minimis* components cumulatively may comprise no more than a total of five percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of the materials used in and incorporated into a project.

**52.f *Electrical Equipment*** - Typically any machine powered by electricity and includes components that are part of the electrical distribution system. AIS does not apply to Electrical Equipment.

**52.g *Engineer's Certification*** - Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with AIS.

**52.h *Iron and Steel products*** - The following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials. Only items on the above list made primarily of iron or steel, permanently incorporated into the project must be Produced in the United States. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. iron or steel.

**52.i *Manufacturer*** - A Supplier, fabricator, distributor, materialman, or vendor is an entity with which the Owner, Contractor or any subcontractor has contracted to furnish materials or equipment to be incorporated in the project by the Owner, Contractor or a subcontractor.

**52.j *Manufacturer's Certification*** - Documentation provided by the Manufacturer stating that the Iron and Steel products to be used in the project are produced in the United States in accordance with American Iron and Steel (AIS) Requirements. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.

**52.k *Manufacturing Processes*** - Processes such as melting, refining, pouring, forming, rolling, drawing, finishing, and fabricating. Further, if a domestic Iron and Steel product is taken out of the United States for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a Coating are similarly not covered. Non-iron or Steel components of an Iron and Steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-Iron and Steel components do not have to be of domestic origin. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-U.S. sources.

**52.l *Mechanical Equipment*** - Typically equipment which has motorized parts and/or is powered by a motor. AIS does not apply to Mechanical Equipment.

**52.m *Minor Components*** - Components *within* an iron and/or Steel product otherwise compliant with the American Iron and Steel requirements; this waiver is typically used by Manufacturers. It differs from the *De Minimis* definition in that *De Minimis* pertains to the entire project and the minor component definition pertains to a single product. This waiver allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an

otherwise domestically produced Iron and Steel product. However, unless a separate waiver for a product has been approved, all other Iron and Steel components in said product must still meet the AIS requirements. This waiver does not exempt the whole product from the AIS requirements only Minor Components within said product and the iron or Steel components of the product must be produced domestically. Valves and hydrants are also subject to the cost ceiling requirements described here. Examples of Minor Components could include items such as pins and springs in valves/hydrants, bands/straps in couplings, and other low-cost items such as small fasteners etc.

**52.n *Municipal Castings*** - Cast iron or Steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and solid waste infrastructure.

**52.o *Primarily Iron or Steel*** - A product is made of greater than 50 percent iron or Steel on a materials cost basis. An exception to this definition is reinforced precast concrete (see Definitions). All technical specifications and applicable industry standards (e.g. NIST, NSF, AWWA) must be met. If a product is determined to be less than 50 percent iron and/or steel, the AIS requirements do not apply. For example, the cost of a fire hydrant includes:

- The cost of materials used for the iron portion of a fire hydrant (e.g. bonnet, body and shoe); and
- The cost to pour and cast to create those components (e.g. labor and energy).

Not included in the cost are:

- The additional material costs for the non-iron or Steel internal workings of the hydrant (e.g. stem, coupling, valve, seals, etc.); and
- The cost to assemble the internal workings into the hydrant body.

**52.p *Produced in the United States*** - The production in the United States of the iron or Steel products used in the project requires that all Manufacturing Processes must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives.

**52.q *Reinforced Precast Concrete*** – Reinforced Precast Concrete structures must comply with AIS, regardless of whether or not it consists of at least 50 percent iron or steel. The reinforcing bar and wire must be Produced in the United States and meet the same standards as for any other iron or Steel product. Additionally, the casting of the concrete product must take place in the United States. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered Construction Materials and must be Produced in the United States.

**52.r *Steel*** - An alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of Steel for the purpose of enhancing properties such as

corrosion resistance, hardness, or strength. The definition of Steel covers carbon steel, alloy steel, stainless steel, tool steel, and other specialty steels.

**52.s Structural Steel** - Rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees, and zees. Other shapes include but are not limited to, H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

**Guidance Notes—Furnishing Copies of Insurance Policies—** Paragraph 2.01.B of the General Conditions requires that Contractor furnish certificates of insurance and copies of endorsements. Paragraph 6.02.D states that upon request by Owner or other additional insureds, Contractor must provide evidence of insurance such as copies of required policies, and documentation of applicable self-insured retentions and deductibles, such as a copy of the portion of the insurance policy establishing the retention or deductible amount. Parallel provisions (GC-2.01.C; GC-6.02.E) apply to Owner and the insurance that Owner is required to provide. Rather than relying on this two-step process (delivery of certificates of insurance and endorsements at the outset; subsequent requests for additional evidence of insurance), some contract drafters may elect to require from the outset that copies of the insurance policies, rather than certificates of insurance, be delivered to the other party. If exchange of copies of insurance policies is required, the following should be used:

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

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

### 2.02 *Copies of Documents*

**Guidance Notes—Furnishing Contract Documents to Contractor—**GC-2.02.A indicates that Owner will furnish four printed (hard) copies of the Contract Documents, and one PDF copy.

If Owner is not furnishing PDF or other electronic files of the Contract Documents, then (1) revise GC-2.02.A to indicate that Owner is not providing the PDF files, and (2) include a Supplementary Condition that deletes Paragraph 3.01.C in its entirety (see SC-3.01 below). SC-2.02 below is used to accomplish

item (1), and may also be used to change the number of printed copies of the Contract Documents to be provided, if the number is not four.

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

Owner shall furnish to Contractor ~~[number]~~**five** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **[one copy] [none]** in electronic portable document format (PDF).

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

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

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

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

- A. Owner shall furnish to Contractor **5** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

## 2.06 *Electronic Transmittals*

**Guidance Notes—Electronic Documents Protocol (EDP)**—GC-2.06.A authorizes the electronic transmittal of Electronic Documents (commencing with the 2018 edition of the C-Series, Electronic Documents is a defined term in the General Conditions), and GC-2.06.B indicates that if the Contract does not establish protocols for such transmittals, then Owner, Engineer, and Contractor will jointly develop such protocols. The following Supplementary Conditions may be used to contractually establish transmittal protocols, eliminating the need for joint development after the Contract is underway.

The Supplementary Conditions establishing the Electronic Documents Protocol (“EDP” or “Protocol”) define the relationships between the parties relative to responsibilities and limitations governing use of

Electronic Documents on the Project. The drafter of the Protocol, with assistance of Owner and Engineer, will need to customize for Project-specific management, system, data, and technical needs.

Software and data formats for exchange of Electronic Documents will vary depending on the preferences of the Owner and the needs of the Project. A sample set of basic software and data formats, commonly seen for exchanging information on many horizontal construction projects, has been included in Exhibit A, Software Requirements for Electronic Document Exchange, as a starting point for Project information exchange standards. **[Exhibit A is located at the end of C-800, with other exhibits.]** No representation is made that these standards will be applicable to any particular project, and each user must review and modify Exhibit A as needed.

The Protocol addresses the limited data exchange functions intended by the basic software and data formats described in Exhibit A, but the Protocol does not directly address the exchange of “native” design files between the parties for more robust uses beyond such data exchange, nor does it address special issues associated with use of “native” design files, not the least of which is suitability for uses not necessarily intended or anticipated by the file author. While nothing precludes the exchange of “native” files under this Protocol, it is up to the Parties to define how such “native” files may be used and modify the Protocol for criteria of use and any limitations to such use.

Many entities have developed their own data organization standards for “native” files, including such criteria as data model element organization, drawing layer conventions, Building Information Modeling (BIM) and Civil Integrated Management Model protocols, Geographic Information System schema, and integrated and cross-referenced data sets. Additionally, several institutions and design/construction industry organizations have developed and published more comprehensive technical criteria, schemas and plans for use as guides to data organization standards.

Here again, where the data standards require a broader and, generally more collaborative, review and definition of the obligations of the parties, it is up to the parties to significantly modify this Protocol considering such matters as: 1) party responsible for managing models or system; 2) maintaining integrity of the models or system; 3) ownership of the model or system; 4) enhanced system infrastructure, software, access and security standards; 5) responsibility and liability of respective parties in the role of adding or using elements of common models; 6) additional protocols for quality control and quality assurance; and many other factors.

Some projects feature a Project Website as a part of the EDP. The EDP below includes a clause that may be used to set standards for such a website:

1. *Project Website Established by Owner:* If Owner, either directly or through the Engineer or a third party, elects to establish and operate a Project Website or other electronic information management system during the Project, with or without the project document archive described in SC-2.06.B.2.e, then include and modify Paragraph SC-2.06.B.2.h as appropriate to set forth any standards applicable to use of the website.
2. *Project Website Established by Contractor:* Under the less common condition in which the operation of the Project Website is delegated by Owner to the Contractor, Paragraph SC-2.06.B.2.h will need to be modified significantly and include the method of compensation, if any, to be paid to Contractor for Project Website services.

To include an Electronic Documents Protocol (EDP), use the following Supplementary Condition:

SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

B. *Electronic Documents Protocol*: The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol (“EDP” or “Protocol”) for exchange of electronic transmittals.

1. *Basic Requirements*

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.
- e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party’s use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions (“System Infrastructure”) at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.

- 1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **[number]** MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.
  - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology (“IT”) for maintaining operations of its System Infrastructure during the Project, including coordination with the party’s individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
  - c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.
  - d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.
  - e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.
  - f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
  - g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the

Electronic Document or use an alternative delivery method to complete the communication.

- h. The Owner will operate a Project information management system (also referred to in this EDP as “Project Website”) for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:
  - 1) Describe the period of time during which the Project Website will be operated and be available for reliance by the parties;
  - 2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website;
  - 3) Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.); and
  - 4) Include any other Project Website attributes that may be pertinent to Contractor’s use of the facility and pricing of such use.

C. *Software Requirements for Electronic Document Exchange; Limitations*

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
  - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

**Guidance Notes—Requests by Contractor for Electronic Documents in Other Formats:** SC-2.06.B and SC-2.06.C above constitute an Electronics Document Protocol for transmittal of Electronic Documents. When the Owner desires to retain the option to allow certain documents to be made available to Contractor in formats other than those described in SC-2.06.C of the Protocol, the Owner should add the following Supplementary Condition and release language:

SC-2.06 Supplement Paragraph 2.06 of the General Conditions by adding the following paragraph:

D. *Requests by Contractor for Electronic Documents in Other Formats*

1. Release of any Electronic Document versions of the Project documents in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be at the sole discretion of the Owner.
2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project documents and other Project information requested by Contractor ("Request") in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which Contractor agrees:
  - a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer's purposes solely, and is being provided to Contractor on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, Contractor is advised and acknowledges that the content may not be suitable for Contractor's application, or may require substantial modification and independent verification by Contractor. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.
  - b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to Contractor under the request are only for convenience of Contractor. Any conclusion or information obtained or derived from such data will be at the Contractor's sole risk and the Contractor waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.
  - c. Contractor shall indemnify and hold harmless Owner and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from Contractor's use, adaptation, or distribution of any Electronic Documents provided under the Request.
  - d. Contractor agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to Contractor's subcontractors. Contractor warrants that subsequent use by Contractor's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.
3. In the event that Owner elects to provide or directs the Engineer to provide to Contractor any Contractor-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to Contractor, the Owner shall be reimbursed by Contractor on an hourly basis (at \$[number] per hour) for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

**Guidance Notes—Furnishing Contract Documents to Contractor**—GC-2.02.A indicates that Owner will furnish four printed (hard) copies of the Contract Documents, and one PDF copy. (See Guidance Note for Paragraph 2.02.) GC-3.01.C states that if there is a discrepancy between the electronic version of the Contract Documents and the printed (hard copy) version, then the printed version controls. If Owner is not furnishing PDF or other electronic files of the Contract Documents, then GC-3.01.C becomes superfluous, and the following may be used:

SC-3.01 Delete Paragraph 3.01.C in its entirety.

## ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

### SC-4.01.A – Delete the last sentence of paragraph.

### 4.05 *Delays in Contractor’s Progress*

**Guidance Notes—Defining Weather-related Delays**—GC-4.05 is arguably one of the most important provisions in the General Conditions because it allocates the risk of delays in the Work. Delays may be costly to the Contractor and Owner, and detrimental to the success of the Project. Delays beyond the Contract Times have the potential to result in the imposition of liquidated and special damages included in the Contract. When there is any change in the allocation of risks for delays from what is included in GC-4.05, a corresponding SC-4.05 is required.

Particular attention should be paid to the provisions of GC-4.05.C, which is the Contract’s force majeure clause governing allocation of risks for delays that are beyond the control of both the Contractor and the Owner. Because weather-related delays are so common, the drafter of the Supplementary Conditions may want to consider including a more specific provision regarding weather-related delays, particularly in cases where adherence to the Contract Times is extremely important and where the Work will be of such a nature as to be susceptible to weather-related delays. Sample contract language is presented below as SC-4.05.C. As the following commentary indicates, other approaches are possible and should be considered.

The General Conditions indicate at GC-4.05.C.2 that the Contractor will be entitled to an equitable adjustment in Contract Times if the Work is delayed by “abnormal weather conditions.” This standard will be sufficient in most situations, and is applicable to the full range of possible bad weather events. However, the drafter of the specific Contract may wish to define “abnormal weather” by reference to objective, measurable weather factors. To draft a supplemental weather-delay provision that defines abnormal weather, the drafter must consider the threshold level of severity of weather that may affect the progress of the Work—the Contractor must anticipate and cope with the weather up to the defined threshold, and if the threshold is reached or exceeded, the Contractor will be entitled to additional time to complete the Work. One such threshold level of severity could be specified to apply to the entire construction (this is the approach taken in the sample SC-4.05.C), or separate levels could be specified for different elements of the Work. As an example of the second alternative, and while it is acknowledged that the parties may not know specific construction activities at the time the initial Contract Documents are prepared, presumed weather severities could be tailored to the materials or type of construction

involved. For example, if the Work involves reinforced concrete, the weather conditions that could delay concrete pouring might not reasonably delay erection of formwork or placement of reinforcing steel. The possibility of lingering effects should be considered when drafting such provisions.

In some localities there may be well established and widely accepted procedures for monitoring and evaluating the weather impacts on a construction project, such as the procedures set forth in municipal or state department of transportation standard specifications. The drafter of the Contract Documents may wish to adopt such procedures if relevant to the specific project, as an alternative to the sample procedures set out in the optional SC-4.05.C.

SC-4.05.C, if adopted, ties the definition of “abnormal weather” to two factors, precipitation and temperature. The drafter must establish a threshold amount of daily precipitation that is tolerable in the specific location—any day that incurs an amount at or above the threshold is a bad weather day. Similarly, the drafter must define acceptable temperature thresholds—dropping below the minimum or rising above the maximum will result in categorization as a bad weather day. Finally, the drafter must define how many bad weather days in each category (precipitation, excessively cold weather, excessively hot weather) are foreseeable (essentially “normal” or tolerable) in each month. In most locations, the normal expectation for bad weather in a month will vary with the seasons.

Even if the parties anticipate a short project duration, the table (Exhibit B—Foreseeable Bad Weather Days) that is incorporated in SC-4.05.C should encompass the entire calendar year to ensure that, regardless of postponements, suspensions, or delays, the Work as actually performed is contractually covered by SC-4.05.C. **[SC-4.05.C includes and incorporates the table identified as Exhibit B—Foreseeable Bad Weather Days (located with other exhibits at the end of C-800)].**

An important step in drafting a supplemental clause regarding weather delays is establishing the source for actual weather records and site conditions (for lingering effects) and the required content of such records. A variety of sources may be viable options for weather records, but in general it is better when the weather monitoring site is relatively close to the Site. Sources may include the National Weather Service, media outlets that maintain weather-monitoring networks, certain schools and universities, and possibly wastewater conveyance utilities. Before specifying the source of data, verify that the data is available, and the type of data collected.

The text of SC-4.05.C, defining “abnormal weather” based on precipitation and temperature extremes, is indicated below. If the drafter elects to use this optional Supplementary Condition, edit the example language to suit the Project, and provide the weather thresholds required in the text and in the Exhibit B table.

A few specific Guidance points for SC-4.05.C:

1. Edit Paragraphs SC-4.05.C.5.b “(1).i)” and “(1).ii)”, to suit the Project; the times specified in Paragraph “(1).i)” are presumed times for wet weather to render the Site inoperable for the following workday.
2. Based on recorded weather data available from the weather station indicated in Paragraph SC-4.05.C.5.b “(2)”, insert in SC-4.05.C.5.b “(1).i)” and “(1).ii)” the threshold one-day precipitation quantity and the threshold temperatures (minimum and maximum).
3. Insert in the appropriate blanks in Paragraph SC-4.05.C.5.b “(2)” below the entity operating and maintaining the weather station, and the location of the weather station; for example, “National Weather Service weather monitoring station at the Buffalo-Niagara International Airport.” For the selected entity and site, verify the data types and frequency available for the particular weather monitoring station.

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4. Based on data from the weather monitoring station indicated in Paragraph SC-4.05.C.5.b “2)”, fill in all the cells in the table identified as Exhibit B—Foreseeable Bad Weather Days. Optimally, data indicated should be averaged over a period of not less than five years although other durations may be appropriate. Edit the sample language when other foreseeable weather factors can affect the construction, such as high winds or other factors.

**SC-4.05 Paragraph is mandatory for WWD projects.**

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

- a. If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled. **Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b.**
- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
  - 1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:
    - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **[threshold precipitation quantity]** of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.
    - ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: **[temperature]** degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: **[temperature]** degrees Fahrenheit.
  - 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by **[name of the entity operating the weather station]** weather monitoring station at **[location of the weather monitoring station]**.

- 3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit **[exhibit number]**—Foreseeable Bad Weather Days.
- 4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit **[exhibit number]**—Foreseeable Bad Weather Days will be considered as “abnormal weather conditions.” The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor’s then-current Progress Schedule’s critical path for the Project.

## **ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.03 *Subsurface and Physical Conditions***

#### **Guidance Notes—Reports and Drawings Containing Technical Data (Subsurface; Physical Conditions)**

1. This is a mandatory Supplementary Condition. Paragraph 5.03, Subsurface and Physical Conditions, of the General Conditions requires the identification of reports and drawings that contain Technical Data regarding subsurface and physical conditions at or adjacent to the Site. See GC-5.03.A.1 and 2. This will typically include current and recent geotechnical reports, drawings of existing subsurface and surface conditions (including structures such as buildings and foundations), and any other documents that Owner or Engineer has determined to contain reliable Site information. GC-5.03.A.3 requires the identification of the specific Technical Data in the reports and drawings. This is an important task because only the Technical Data is entitled to reliance by Contractor—the remainder of the contents of the reports and drawings does not receive this elevated status.
2. Typical examples of the contents of Site-related reports and drawings that might be categorized by Owner or Engineer as Technical Data for contractual purposes are:
  - a. boring logs;
  - b. recorded measurements of subsurface water levels;
  - c. assessments of the condition of subsurface facilities;
  - d. laboratory test results; and
  - e. mapping based on remote sensing.
3. Use SC-5.03, presented immediately below, for the purpose of identifying the Site condition documents that contain Technical Data, and the specific Technical Data contained in each report and drawing.
4. In a change from the two previous editions of the EJCDC Construction Series documents (2013 and 2007), the user should not list all archival and other documents concerning the Site here in the Supplementary Conditions—as of 2018, for GC/SC-5.03 list in the Supplementary Conditions only those documents determined by Owner or Engineer to contain Technical Data.

5. *Filling in the tables:* SC-5.03.E contains a table for listing reports that contain Technical Data, and identifying that data; and SC-5.03.F contains a table for listing drawings that contain Technical Data. Examples of a completed row from each table follow, for illustrative purposes only:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Results of Investigation of Subsoil Conditions and Geotechnical Recommendations—Riverside Wastewater Treatment Plant	August 8, 2018	Boring Log, Test Site 1, at page 32 of Report.

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
Record Drawings: Route 24 Overpass Abutment Project	November 30, 2012	All information in drawings, with the exception of the contents of Drawings 001 and 005.

6. In addition to requiring the identification of Technical Data in SC-5.03, EJCDC also requires that Owner identify and disclose to Bidders archival and other Site-related documents known to Owner (but that do not contain Technical Data and therefore are not listed here in the Supplementary Conditions), in a list distributed with the Instructions to Bidders. See Instructions to Bidders, Article 5. The Bidders may then review documents of interest, and perhaps glean information useful to them in fashioning a bid and planning the Work. There is no requirement, however, that Bidders or the Contractor review the documents disclosed in the Instructions to Bidders, nor are they held accountable for any data or information in such documents; similarly, Owner has not verified the data or information in these documents, and is not responsible for their accuracy. The requirement that Contractor review and take responsibility for Site information is limited to information in (1) the Contract Documents and (2) the Technical Data.
7. If the Supplementary Conditions neglect to expressly identify the Technical Data entitled to reliance, then certain data in documents such as a geotechnical report, environmental report, or similar investigative report prepared for the current Project are, by default definition, Technical Data upon whose accuracy Contractor may rely. See the default definition of Technical Data, GC-1.01.A.46.b.
8. Paragraph GC-5.03.B clarifies that Underground Facilities are shown or indicated in the Drawings. Requirements with respect to Underground Facilities are set forth in Paragraph GC-5.05.
9. Paragraph GC-5.06 requires disclosure of documents relating to Hazardous Environmental Conditions at the Site. Note that these requirements differ from the requirements regarding disclosure of documents relating to subsurface and physical conditions in GC-5.03, and here in SC-5.03.
10. If Owner elects to furnish a Geotechnical Baseline Report (GBR), use the alternate SC/GBR-5.03 and SC/GBR-5.04 presented in Exhibit C to this document, rather than the SC-5.03 version immediately following. **[Exhibit C is located at the end of C-800.]**

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

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely: **[If there are no such reports, so indicate in the table.]**

Report Title	Date of Report	Technical Data
		<b>[Identify Technical Data]</b>

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely: **[If there are no such drawings, so indicate in the table.]**

Drawings Title	Date of Drawings	Technical Data
		<b>[Identify Technical Data]</b>

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

5.06 *Hazardous Environmental Conditions*

**Guidance Notes—Reports and Drawings Regarding Hazardous Environmental Conditions—**This is a mandatory Supplementary Condition. Paragraph 5.06 of the General Conditions contemplates that Owner will identify all known documents regarding Hazardous Environmental Conditions (HEC) that have been identified at or adjacent to the Site. It also requires the identification of Technical Data (upon whose accuracy Contractor may rely) contained in such documents. Use SC-5.06, presented immediately below, to identify the known HEC documents. Refer to Guidance Note 5 preceding SC-5.03 for examples of completed rows of tables similar to the tables in SC-5.06. Also note that if either a geotechnical report or environmental report has been prepared for the Project, and the Supplementary Conditions neglect to expressly identify reports or drawings or reports’ or drawings’ Technical Data upon whose accuracy Contractor may rely, then the default definition of Technical Data in Paragraph GC-1.01.A.46.b of the General Conditions will apply.

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely: **[If there are no such reports, so indicate in the table]**

Report Title	Date of Report	Technical Data
		<b>[Identify Technical Data]</b>

Report Title	Date of Report	Technical Data

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely: **[If there are no such drawings, so indicate in the table]**

Drawings Title	Date of Drawings	Technical Data
		[Identify Technical Data]

## ARTICLE 6—BONDS AND INSURANCE

### 6.01 Performance, Payment, and Other Bonds

#### SC-6.01 – Disregard EJCDC Guidance Notes – Performance and Payment Bonds, Note 1. Performance and Payment Bonds are required for WEP projects.

#### Guidance Notes—Performance and Payment Bonds

1. *Deletion of Performance/Payment Bond Requirement:* Paragraph 6.01.A of the General Conditions requires that Contractor furnish a performance bond and a payment bond. If performance and payment bonds are not required for a specific Contract, include a Supplementary Condition that deletes the GC-6.01.A requirement.
2. *Performance/Payment Bond Forms:* Paragraph 6.01.C requires that all bonds be “in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract...” Some Owners may have in-house bond forms that must be used, or in some instances state or local law may mandate a specific bond form. In all other cases, EJCDC recommends that its standard performance and payment bond forms, EJCDC® C-610, Performance Bond (2018), and EJCDC® C-615, Payment Bond (2018), be included or specified. These bond forms were developed in collaboration by EJCDC with other principal design, construction, and surety organizations, and as a result contain industry-standard wording, organization, and terminology. (The 2010, 2013, and 2018 editions of these two bonds are essentially identical, and interchangeable.) Most sureties and bond producers have templates of the EJCDC bonds and can issue them readily.
3. If the EJCDC performance and payment bonds are required, EJCDC recommends that prospective Bidders or contractors be given sample copies of the two bond forms (typically as a part of the Bidding Documents), and buttress the requirement with an express Supplementary Condition specifying the use of the standard EJCDC bonds. The Supplementary Condition for that purpose follows.

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

**SC-6.01 – EJCDC Guidance Notes – “Other Bonds,” Warranty Bond, Note 1. RD does not require a Warranty Bond, and RD will not accept a Warranty Bond in place of a Performance and Payment Bond. The decision to include a Warranty Bond is made by the Owner and their counsel. Please refer to EJCDC.**

### **Guidance Notes—“Other Bonds,” Warranty Bond**

#### *1. Other Bonds*

Paragraph 6.01.B states that if Contractor is required to provide a bond other than a performance or payment bond, the requirement will be set forth in the Supplementary Conditions. This statement is not relevant or related to a requirement that a Bidder must furnish a Bid Bond: such a requirement (if any) is part of the bidding process that occurs before entry into the construction contract, and the bid bond requirement would be included in the Instructions to Bidders. See Instructions to Bidders, Article 8. Rather, the reference is to any special purpose bond that is required.

#### *2. Warranty Bond*

Perhaps the most common “other” or special purpose bond that might be required is the warranty bond (also called a maintenance bond). A warranty bond provides assurance that Contractor (or if necessary the surety) will meet the contractual correction period obligations during a specified period of time after construction has been completed.

SC-6.01.B.1 presents model wording for requiring that Contractor furnish a warranty bond. EJCDC’s standard form for such a bond is EJCDC® C-612, Warranty Bond (2018); if SC-6.01.B.1 is used, the Warranty Bond form should be provided to bidders or prospective contractors with the Supplementary Conditions (typically as a part of the Bidding Documents).

The C-612 Warranty Bond is intended to be used to provide bonding for a period of time greater than one year after Substantial Completion. EJCDC® C-610, Performance Bond (2018) already obligates the surety with respect to the correction of defective Work (C-610, Paragraph 7.1), and has a duration sufficient to allow bond claims based on defects discovered during the standard one-year correction period (GC-6.01.A; C-610, Paragraph 11); and the purchase price charged for the performance bond is based on that bond remaining in effect during the one-year correction period. Thus, a warranty bond is not needed if the correction period remains the standard one year, and indeed would be redundant with the performance bond if used solely to cover that one-year correction period.

To avoid possible conflicts regarding responsibilities between the surety that issues the performance bond and the surety that issues the warranty bond, EJCDC recommends a requirement that the two bonds be issued by the same surety. See SC-6.01.B.3.

Although in theory a warranty bond could be furnished for a very lengthy duration (four or more years beyond Substantial Completion), such a lengthy bond would probably be commercially difficult to obtain and very expensive. EJCDC recommends an endpoint for the warranty bond of either two years after Substantial Completion (essentially extending the bonded coverage by one additional year) or three years after Substantial Completion (extending the bonded coverage by two additional years). These two recommended options are embedded in the C-612 Warranty Bond form.

By its terms the EJCDC warranty bond applies to the contractual correction obligation at GC-15.08. SC-6.01.B.2 extends that contractual correction period beyond its standard one-year duration—the contractual extension should match the Warranty Bond duration. For the sake of clarity, EJCDC recommends a cross-reference to Supplementary Condition SC-15.08.A—see Article 15 below.

Because correction period work is, in total, likely to cost only a modest fraction of the Contract Price, warranty bonds typically have a bond amount that is 10 or 15 percent of the Contract Price. The precise percentage required should be clearly indicated in the Supplementary Condition.

The suggested wording to extend the correction period and require that Contractor furnish a warranty bond follows:

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be **[number—either 2, 3, or other]** years after Substantial Completion.
2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C-612, Warranty Bond (2018). The warranty bond must be in a bond amount of **[number—either 10, 15, or other]** percent of the final Contract Price. The warranty bond period will extend to a date **[number—either 2, 3, or other]** years after Substantial Completion of the Work. Contractor shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.
3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

#### 6.02 *Insurance—General Provisions*

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

In some states, not all worker’s compensation insurers obtain A.M. Best ratings. The Owner may wish to include the following optional exception (modified to meet applicable provisions in the state) to the requirement in Paragraph 6.02.B:

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

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

**Guidance Notes—Specifying Insurance to be carried by Subcontractors and Suppliers**—GC-6.02.H indicates that Contractor must require its Subcontractors and Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project. This provision intentionally gives Contractor considerable latitude in risk management with respect to its Subcontractors and Suppliers. In

most cases the Contractor will have more familiarity than Owner with the risks associated with particular types of subcontracted work, with the Subcontractors and Suppliers selected, and with the insurance coverage requirements that should be imposed. Occasionally, however, the Owner will choose to establish insurance requirements that apply to some or all Subcontractors or Suppliers. SC-6.02.H.3 may be used for that purpose.

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.H.2 of the General Conditions:

3. For the following Subcontractors, Suppliers, or categories of Subcontractor or Supplier, Contractor shall require the following specified insurance, with policy limits as stated:  
**[Identify Subcontractors, Suppliers, or categories of same, and insert specific insurance requirements and policy limits]**

### 6.03 Contractor's Insurance

**Guidance Notes—Specifying Contractor's Insurance, Including Coverage Limits**—This is a mandatory Supplementary Condition, because it is the location for specifying the insurance policies, coverages, and endorsements to be maintained by Contractor (other than builder's risk and other property insurance, which are addressed in SC-6.04), and the minimum coverage limits. However, not all components of SC-6.03 will be used for the specific Contract that is being drafted, and many parts may need to be modified or revised to meet specific insurance requirement objectives. Consultation with risk managers, insurance specialists, and legal counsel is a necessity.

The information set forth in this Supplementary Condition (and in all other contractual provisions regarding bonds and insurance) is typically provided by Owner, either directly or through written instructions given to Engineer (see EJCDC® C-051, Engineer's Letter to Owner Requesting Instructions Concerning Bonds and Insurance (2018), and EJCDC® C-052, Owner's Instructions to Engineer Concerning Bonds and Insurance (2018)).

The user should refer to the following Guidance points with respect to specific features of SC-6.03, including categories of insurance with unique features (such as Umbrella or Excess Liability insurance, SC-6.03.K), or that are required only under specific circumstances (such as Railroad Protective Liability insurance, SC-6.03.O):

1. *Deciding Whether to Require Umbrella/Excess Insurance:* SC-6.03.K, Umbrella or Excess Liability, is a standard insurance provision that requires Contractor to carry an Umbrella or Excess Liability policy. Some Owners do not require that Contractor carry Umbrella/Excess insurance, perhaps viewing the decision to obtain and maintain Umbrella/Excess, and the specific amount of Umbrella/Excess coverage, as risk management choices best left to the Contractor; and presumably in such cases the Owner accepts that the primary policies (most importantly Commercial General Liability), as specified, provide adequate protection.

If Owner revises the standard terms by deleting the requirement that Contractor provide Excess or Umbrella liability insurance, then Owner may wish to consider requiring (in SC-6.03.G, Commercial General Liability—Form and Content) that "The general aggregate limits under SC-6.03.I (Commercial General Liability—Minimum Policy Limits) be maintained fully available for this Contract by obtaining and maintaining a Designated Construction Project General Aggregate Limit endorsement, or equivalent."

2. *Allowing the Umbrella/Excess Insurance to Satisfy Underlying Coverage Requirements*

- a. The optional Supplementary Condition SC-6.03.L, Using Umbrella or Excess Liability to Meet CGL and Other Policy Limit Requirements, is used to contractually authorize the common practice in which an Owner allows Contractor to meet the required minimum policy limits for commercial general liability and other primary liability policies by attributing a portion of Umbrella/Excess coverage to the underlying policy or policies. For example, if the Contract requires \$5 million in CGL coverage; SC-6.03.L specifies (in the brackets in the last sentence) that a minimum of \$3 million of the Umbrella must remain unattributed to any underlying policy; and Contractor has a CGL policy of \$3 million and a \$10 million Umbrella policy, then \$2 million of the Umbrella could be attributed to the CGL, to meet the \$5 million CGL minimum. Under that example, such attribution would still leave a “balance” of \$8 million under the Umbrella, thus satisfying the requirement that a minimum of \$3 million of the Umbrella remain unattributed to any underlying policy.
- b. In those cases in which SC-6.03.L, Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements, is used, it is important fill in the brackets in the last sentence, specifying the unattributed balance that is the appropriate amount for the specific Contract.
- c. Not all Owners will choose to allow an Umbrella/Excess policy to provide partial satisfaction of a primary liability policy coverage requirement, preferring the simpler approach of Contractor providing an underlying policy (most notably, CGL) in the full amount required. When this is the preference, do not include SC-6.03.L, Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements.

3. *Combining Contractor’s Pollution and Professional Liability Policies:* Contractor’s Pollution Liability Insurance (SC-6.03.M) and Contractor’s Professional Liability Insurance (SC-6.03.N) are presented as two distinct required policies. However, Contractor’s Pollution Liability and Contractor’s Professional Liability policies are sometimes sold as a hybrid or combined policy. After consulting with its risk managers, Owner may wish to supplement the two provisions with a statement indicating that Contractor may provide such a combination policy, as an acceptable alternative to providing two separate policies, at a stated policy limit for the combination policy.
4. *Railroad Protective Liability Policy:* If any portion of the Work will take place within 50 feet of railroad-owned or controlled property, the railroad company will likely require that the Contractor obtain a railroad protective liability policy. Use Paragraph SC-6.03.O below if such a policy is required.

A railroad protective liability policy is for the benefit of the railroad company (not the Contractor or Owner), providing the railroad with protection from both liability and property damage it incurs because of the Contractor’s construction activities. The railroad protective policy is site-specific, and applies only when work is in progress—it does not include completed operations coverage.

The standard coverage includes bodily injury or property damage that arises out of the acts or omissions of railroad employees, to the extent the acts or omissions are related to or in connection with the Contractor’s activities. The coverage of physical damage to property should apply to real and personal property that is owned or leased by the railroad, including rolling stock, tracks, trestles, buildings, and structures.

The railroad will usually have specific requirements for the railroad protective policy, including per-claim and aggregate policy limits, coverages, and the formal names of the railroad and other related insureds. In most cases the railroad will require an indemnification from Contractor, in addition to the insurance policy. The Owner or other drafter should include all known railroad requirements here or elsewhere in the Contract, if the requirements are known at the time the Contract is drafted.

5. *Unmanned Aerial Vehicle Liability Insurance:* The use of aerial drones on construction projects is increasingly common. If there is a possibility that Contractor will use drones on the specific Project, Owner may wish to include SC-6.03.P, Unmanned Aerial Vehicle Liability Insurance.
6. *Other Required Insurance:* If Owner or its insurance advisors or risk managers have identified other insurance policies that Contractor should obtain and maintain, based on the Owner’s or Project’s specific needs, identify the required policies and minimum policy limits at SC-6.03.Q. Note that Builder’s Risk insurance is separately addressed in GC/SC-6.04.

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **[Here list by legal name (not category, role, or classification) other persons or entities to be included as additional insureds. See GC-6.03.C.]**
- E. *Workers’ Compensation and Employer’s Liability:* Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable, United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, stop-gap employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

<b>Workers’ Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers’ Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman’s)	Statutory
Foreign voluntary workers’ compensation (employer’s responsibility coverage), if applicable	Statutory
<b>Jones Act (if applicable)</b>	
Bodily injury by accident—each accident	\$
Bodily injury by disease—aggregate	\$
<b>Employer’s Liability</b>	
Each accident	\$
Each employee	\$
Policy limit	\$
<b>Stop-gap Liability Coverage</b>	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker’s compensation or commercial general liability policy with a minimum limit of:	\$

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.
  6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$
Products—Completed Operations Aggregate	\$
Personal and Advertising Injury	\$
Bodily Injury and Property Damage—Each Occurrence	\$

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Bodily Injury</b>	
Each Person	\$
Each Accident	\$
<b>Property Damage</b>	
Each Accident	\$
<b>[or]</b>	
<b>Combined Single Limit</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$
General Aggregate	\$

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$[specify amount] after accounting for partial attribution of its limits to underlying policies, as allowed above.

- M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

<b>Contractor's Pollution Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence/Claim	\$
General Aggregate	\$

- N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

<b>Contractor's Professional Liability</b>	<b>Policy limits of not less than:</b>
Each Claim	\$
Annual Aggregate	\$

- O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

**[Insert additional specific requirements, commonly set by the railroad, here.]**

<b>Railroad Protective Liability Insurance</b>	<b>Policy limits of not less than:</b>
Each Claim	\$
Aggregate	\$

- P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	\$
General Aggregate	\$

Q. *Other Required Insurance:* [Here list additional types and amounts of insurance that Contractor is required to carry.]

#### 6.04 *Builder’s Risk and Other Property Insurance*

**Guidance Notes—Owner Purchase of Builder’s Risk Insurance**—The General Conditions require the Contractor to purchase and maintain builder’s risk insurance. GC-6.04.A. The detailed requirements for the builder’s risk insurance are set forth here in the Supplementary Conditions, in provisions such as SC-6.04.F, G, and H. (The option of requiring the Contractor to purchase an installation floater, as an alternative to builder’s risk insurance, is presented in the alternate SC-6.04.A that follows the more commonly used builder’s risk clauses.)

In the event that the builder’s risk purchase requirement will be flipped, such that the Owner, rather than the Contractor, will purchase the builder’s risk insurance, use the following SC-6.04.A:

SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:

- A. Owner shall purchase and maintain builder’s risk insurance upon the Work on a completed value basis, in the amount of the Work’s full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder’s risk insurance are set forth in the Supplementary Conditions.

**Guidance Notes—Builder’s Risk Insurance Requirements**—The standard builder’s risk requirements in this Supplementary Condition may include some items that are not applicable to the specific Project. The user should revise the requirements based on knowledge of the Project, risk management analysis, and consultation with Owner’s insurance advisors and legal counsel. The requirements are intended to be used regardless of whether the Contractor purchases the builder’s risk insurance (the default assumption, as stated in GC-6.04.A), or the purchase responsibility is flipped to the Owner (see SC-6.04.A immediately above).

Some coverages, such as coverage of property in temporary storage, or coverage of property in transit, are commonly subject to sublimits—specific monetary caps on the amount of coverage. Although a sublimit may be appropriate (or at least tolerable) for some risk categories, the drafter should consult with an insurance advisor and specify a minimum for each sublimit, to avoid underinsuring the risk of a loss in such a coverage category. The provisions of SC-6.04.F indicate when a coverage category is likely to be subject to a sublimit, and provide a place for specifying an acceptable minimum. See SC-6.04.F.4, 5, and 12. SC-6.04.F.13 provides a location for specifying other sublimits.

SC-6.04.F.5 requires coverage of construction materials “in transit.” Specific policies may define this as being limited to domestic, overland transit, such as rail or truck transit. Because the risk of loss in transit will ultimately be borne by Contractor, a risk that is not within the scope of the specific builder’s risk insurance policy (a loss during shipment from overseas, for example) could be managed separately by Contractor in its purchase agreement with the vendor.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder's Risk Requirements:* The builder's risk insurance must:

1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
  - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
  - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of \$[amount].
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of \$[amount].
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.

9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds." In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:
  - a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder's risk policy as named insureds. It is generally recommended to list the insured's full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder's risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee.]**
11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
  - a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price.]**
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of \$[amount].
13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:
  - a. **[Here list a specific coverage, or cause of loss, that has been determined to be likely to be subject to a sublimit. If not applicable, then delete Paragraph SC-6.04.F.13 in its entirety.]** If this coverage is subject to a sublimit, such sublimit will be a minimum of \$[amount].

**Guidance Notes—Loss of Revenue and “Soft Cost” Coverage**—The basic coverage of a builder's risk policy provides compensation for direct physical loss or damage to the Work. Such loss or damage often has secondary impacts associated with delays in completion of the Work. One significant secondary impact is loss of revenue. Another broad category of secondary impacts is often referred to as “soft costs”—extended financing costs, management and engineering expenses, tax and permit costs, and insurance.

It is usually possible to expand the basic builder's risk coverage to insure against loss of revenue and soft cost losses. SC-6.04.G provides a starting point for doing so. This clause should be reviewed carefully and supplemented as needed to obtain the coverage needed for the specific Project. Substantial input from Owner, working in conjunction with an insurance broker or consultant, is necessary to identify specific soft cost exposures, and to quantify the scope of possible losses. Without such input, it would be impossible for the builder's risk underwriters to assess risks and develop an appropriate premium.

For example, if soft cost coverage will extend to loss of revenue of a processing facility if it is completed late (as the result of physical damage from a covered risk, such as a fire), then it will be essential for the builder's risk insurers or brokers who price out the insurance to have a reasonable estimate of anticipated daily revenue and other financial factors. In a competitive bidding setting, and assuming that the Contractor will procure the builder's risk insurance (and include or account for the premium in the bid price), this means that such information will need to be furnished to bidders, who can then communicate it to brokers, who will furnish quotes for premiums.

As an alternative, Owner may prefer to solicit bids based on a generic requirement (such as that stated in SC-6.04.G), and then work with the selected Contractor and its insurer to refine the scope of loss of revenue and soft cost coverage and the related premiums, and issue a Change Order to document the precise coverage and any resulting change in Contract Price.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

- G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

**Guidance Notes—Builder's Risk Deductibles**—Paragraph 6.04.A of the General Conditions requires builder's risk insurance on a completed value basis, subject to such deductible amounts as are provided by the Supplementary Conditions. SC-6.04.H provides a means of identifying a primary deductible; other specific deductibles may also be added. It is common for builder's risk policies to feature several different deductibles, typically including a primary deductible and specific deductibles applicable to specific types of loss, such as flood and earth movement.

In some cases, the Owner (as the party directing or specifying the content of the insurance-related Supplementary Conditions) will choose not to specify any deductibles, leaving establishment of the deductible amounts to the discretion of the purchasing party, which is responsible for payment of the deductibles. Even when a deductible is stipulated, it is typically a maximum amount; the purchaser may choose to purchase a policy with a lower deductible.

The builder's risk policies available for projects in coastal and other high-risk areas may have special deductible provisions for wind and flood damage (hurricanes), earthquakes, and other specific risks. Such deductibles are determined based on a percentage of the property value at the time of loss, rather than being stated as a specific dollar amount. SC-6.04.H should be revised to reflect coastal or other local conditions that change the approach to deductibles.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.
1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than \$[number] for direct physical loss in any one occurrence.

**Guidance Notes—Installation Floater**—An installation floater is insurance carried by a specific contractor, covering only the materials and equipment to be incorporated in the contractor’s work. It typically does not insure against losses that occur after installation. In most cases, builder’s risk insurance offers broader coverage, covers the Owner, Contractor, and Subcontractors, and is the preferred risk management instrument. On some projects, an installation floater may be an acceptable alternative to a builder’s risk policy. For example, on a pipeline project it may be sufficient from a risk management standpoint to insure against loss or damage to the piping until installation, at which time there is little further risk from standard insurable perils such as fire or windstorm. Because the Owner will typically not be an insured, the use of an installation floater also assumes a risk management decision that protecting the Contractor’s interest in the materials and equipment is sufficient to assure the best interests of the project. See EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).

If, after consultation with its risk managers, Owner elects to allow purchase of an installation floater rather than a builder’s risk policy, the following SC-6.04.A should be included as a Supplementary Condition; GC-6.04.B, GC-6.04.C, GC-6.04.D, and GC-6.04.E should be retained; SC-6.04.F, Builder’s Risk Requirements, should not be included; and SC-6.04.H, Builder’s Risk and other Property Insurance Deductibles, should be included. Owner should determine whether soft cost and related coverage is available and warranted, and if so modify the contents of SC-6.04.G, Coverage for Completion Delays, for the installation floater requirement.

SC-6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:

A. *Installation Floater*

1. Contractor shall provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (“Covered Property”). Coverage under the Contractor’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:
  - a. of the Contractor, and Covered Property of others that is in Contractor’s care, custody, and control;
  - b. while in transit to the Site, including while at temporary storage sites;
  - c. while at the Site awaiting and during installation, erection, and testing;
  - d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.
2. The installation floater coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable.
3. The installation floater coverage will be in an amount sufficient to protect Contractor’s interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.
4. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

## ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

### 7.03 Labor; Working Hours

**Guidance Notes—Defining “Regular Hours” and “Legal Holidays”**—Paragraph 7.03.C of the General Conditions restricts Contractor to working during “regular hours” Monday through Friday, and no work is permitted on “legal holidays.” To provide details regarding the meaning of the terms “regular hours” and “legal holidays,” consider specifically defining them by adding the following:

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **[Here insert schedule of regular working hours]**.
2. Owner's legal holidays are **[Here insert list of legal holidays]**.

**Guidance Notes—Days of the Week That May be Worked**—To modify the days of the week that Contractor may work, use the following:

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state “...all Work at the Site must be performed during regular working hours, **[day of the week]** through **[day of the week]**. Contractor will not perform Work on a **[day of the week]**, **[day of the week]**, or any legal holiday.”

**Guidance Notes—Unlimited Work Schedule**—If the Owner has no objections to the Contractor working multiple shifts, weekends, and legal holidays, use the following:

SC-7.03 Delete Paragraph 7.03.C in its entirety, and insert the following:

- C. In the absence of any Laws or Regulations to the contrary, Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion.

**Guidance Notes—Responsibility for Overtime Costs**—If Contractor is permitted to Work outside regular hours and on weekends and holidays, whether by a contractual provision or by Owner’s consent during the course of the Project, then it is good practice to address the issue of whether Owner may charge Contractor for engineering expenses associated with the non-regular schedule. Some Owners may prefer to absorb these costs to incentivize (or at least facilitate) an aggressive schedule and timely completion; and in many cases the net additional expense may be modest. Other Owners may prefer to establish and collect a charge for the engineering services. Add the following as SC-7.03.D, making a policy choice regarding responsibility in the beginning of the sentence:

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

- D. **[Contractor] [Owner] [choose one and delete the other]** shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer’s services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday,

Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

**Guidance Notes—Defining Overtime Costs**—If responsibility for costs in SC-7.03.D will be allocated to Contractor, Owner may wish to provide some specificity regarding the potential costs, through the addition of the following:

SC-7.03 Add the following new subparagraph immediately after Paragraph SC-7.03.D:

1. For purposes of administering the foregoing requirement, additional overtime costs are defined as **[Here insert parameters for compensated overtime hours]**.

**SC-7.04.D – Add the following new paragraph immediately after Paragraph 7.04.C:**

**D. All Iron and Steel products must meet American Iron and Steel requirements.**

**SC-7.04.E – Add the following new paragraph immediately after Paragraph 7.04.D:**

**E. For projects utilizing a *De Minimis* waiver, Contractor shall maintain an itemized list of non-domestically produced iron or steel incidental components and ensure that the cost is less than 5% of total materials cost for project.**

**SC-7.05.A – Amend the third sentence of paragraph by striking out the following words:**

**Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item is permitted,**

**SC-7.05.A.1.a.3 – Amend the last sentence of Paragraph a.3 by striking out “and;” and adding a period at the end of Paragraph a.3.**

**SC-7.05.A.1.a.4 – Delete paragraph in its entirety and insert “Deleted.”**

**SC-7.05.B – Add the following at the end of paragraph:**

**Contractor shall include a Manufacturer’s Certification letter for compliance with American Iron and Steel requirements in support data, if applicable. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-7.06.A.3.a.2 – Remove “and” from the end of paragraph.**

**SC-7.06.A.3.a.3 – Add “; and” to the end of paragraph.**

**SC-7.06.A.3.a.4 – Add the following new paragraph immediately after Paragraph 7.06.A.3.a.3:**

**4. Comply with American Iron and Steel by providing Manufacturer’s Certification letter of American Iron and Steel compliance, if applicable. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-7.07.A – Amend by adding the following to the end of the paragraph:**

**The total amount of work subcontracted by the Contractor shall not exceed fifty percent of the Contract price without prior approval from the Owner, Engineer and Agency.**

**SC-7.07.B – Delete paragraph in its entirety and insert “Deleted”.**

**SC-7.07.E – Delete the second sentence of paragraph and insert the following in its place:**

**Owner may not require that Contractor use a specific replacement.**

#### 7.10 *Taxes*

**Guidance Notes—Sales and Use Tax Exemptions**—If Owner qualifies for a state or local sales or use tax exemption in the purchase of certain materials and equipment, add the following Supplementary Condition, with any revisions necessary to meet the specific applicable exemption rules.

If instructions to bidders or proposers are used, confirm that the provisions here are consistent with the corresponding provisions in such instructions. See EJCDC® C-200, Instructions to Bidders for Construction Contracts (2018), Article 21.

**SC-7.10** Add a new paragraph immediately after Paragraph 7.10.A:

- A. Owner is exempt from payment of sales and compensating use taxes of the State of **[name of state where Project is located]** and of cities and counties thereof on all materials to be incorporated into the Work.
1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
  2. Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

**SC-7.12.A** Amend paragraph by adding the following after “written interpretations and clarifications,”:

**Manufacturers’ Certifications,**

#### 7.13 *Safety and Protection*

**Guidance Notes—Owner’s Safety Programs**—Some Owners have written safety programs with which construction contractors must comply. If such is the case, Paragraph 7.13.G of the General Conditions states that the safety program will be identified or included in the Supplementary Conditions or Specifications (and Paragraph 9.12.B requires Owner to provide a copy of such programs to Contractor).

If the identification of the Owner’s safety programs will occur in the Supplementary Conditions, use the following SC-7.13. If there is a Specification section (typically in Division 01) that addresses the Owner’s safety programs, then SC-7.13 is unnecessary, though it could be retained as a means of providing a cross-reference to the specific location in the Specifications.

SC-7.13 Insert the following after the second sentence of Paragraph 7.13.G:

The following Owner safety programs are applicable to the Work: **[Here expressly identify by title and/or date, any such Owner safety programs. If Owner’s safety programs are included in or addressed in the Specifications, SC-7.13 may be used to provide a cross-reference to the Specification section].**

**SC-7.16.A.1.c – Amend paragraph by deleting the last period and adding:**

**, including Manufacturer’s Certification letter for any item in the submittal subject to American Iron and Steel requirements and include the Certificate in the submittal. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-7.16.C.9 – Add new paragraph immediately after Paragraph 7.16.C.8:**

**9. Engineer’s review and approval of a Shop Drawing or Sample shall include review of Manufacturers’ Certifications in order to document compliance with American Iron and Steel requirements, as applicable.**

**SC-7.17.F – Add new paragraph immediately after Paragraph 7.17.E:**

**F. Contractor shall certify upon Substantial Completion that all Work and Materials have complied with American Iron and Steel requirements as mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Contractor shall provide said Certification to Owner. Refer to General Contractor’s Certification Letter provided in these Contract Documents.**

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.02 Coordination**

**Guidance Notes—Coordinating Other Work at Site**—Paragraph 8.02 of the General Conditions requires that if in addition to retaining Contractor, Owner will arrange to have others perform work at the Site, Owner must provide to Contractor specified information regarding coordination of construction activities. (Note that Owner should provide specific information about the other work—nature of the work, scope,

schedule, exact location—elsewhere in the Contract Documents or in other documentation.) When applicable, add the following to provide such information:

SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:

- C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.
  - 1. **[Here identify individual or entirety]** shall have authority and responsibility for coordination of the various contractors and work forces at the Site;
  - 2. The following specific matters are to be covered by such authority and responsibility: **[Here itemize such matters];**
  - 3. The extent of such authority and responsibilities is: **[Here provide the extent].**

## ARTICLE 9—OWNER’S RESPONSIBILITIES

### 9.13 *Owner’s Site Representative*

**Guidance Notes—Owner’s Site Representative**—The EJCDC Construction series documents assume that the Engineer will be Owner’s representative during construction. See EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) (2018), Paragraph 3.01, and GC-10.01. On many projects the Engineer will carry out duties at the Site through a Resident Project Representative (RPR), as addressed in GC-10.03. When that is the case, SC-10.03.C and SC-10.03.D should be included, as modified for the specific Project.

Paragraph 10.03.B of the General Conditions indicates that the Owner may designate a representative or agent who is not Engineer’s consultant, agent, or employee, to represent Owner at the Site (“Owner’s Site Representative”). In such case the Owner typically would not have the Engineer furnish a Resident Project Representative, and hence SC-10.03.B below would be used to indicate there is no Engineer’s Resident Project Representative; and typically SC-9.13 would be used for the identification of the Owner’s Site Representative.

Note that the following SC-9.13, if used, must be supplemented by customized text that explains the responsibilities of the Owner’s Site Representative, so far as such are relevant to Contractor. The content of Paragraphs SC-10.03.C below may be a helpful starting point in drafting such supplemental text. In addition, if Owner’s retention of an Owner’s Site Representative will affect other aspects of Engineer’s status during construction, other portions of Article 10 and many other parts of the General Conditions will need to be revised. In such cases it is typical for (and Laws and Regulations may require) the design engineer (as engineer of record) to at least retain a role with respect to design intent reviews of submittals and similar aspects of the Work.

SC-9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

### 9.13 *Owner’s Site Representative*

- A. Owner will furnish an “Owner’s Site Representative” to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner’s Site Representative is not Engineer’s consultant, agent, or employee. Owner’s Site Representative will be **[here**

**identify individual or entity].** The authority and responsibilities of Owner's Site Representative follow: **[Here describe the duties and activities of the Owner's Site Representative.]**

## **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

### 10.03 *Resident Project Representative*

**Guidance Notes—Engineer's Resident Project Representative (RPR)**—As indicated in Paragraph 10.03 of the General Conditions, in those cases in which the Engineer will provide a Resident Project Representative (RPR) during construction, the authority and responsibilities of the RPR with respect to the Contractor must be specified in the Supplementary Conditions. SC-10.03.C and SC-10.03.D, below, provide a mechanism for doing so.

In the alternative, in some cases Engineer will not provide RPR services, either because there will not be an RPR, or because a party other than Engineer will provide the site services. When such is the case, SC-10.03.A.1 below should be used.

As indicated in Paragraph 10.03 of the General Conditions, the Owner may designate a representative or agent who is not Engineer's consultant, agent, or employee, to represent Owner at the Site. In such case, in addition to using SC-10.03.A.1, below, refer to the Guidance Note in Article 9 and use SC-9.13 above.

SC-10.03 Add the following new subparagraph immediately after Paragraph 10.03.A:

1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

**Guidance Notes—RPR Services**—As discussed, the most typical case is that the site representative is Engineer's consultant, agent, or employee, in which case SC-10.03.C and SC-10.03.D are mandatory. SC-10.03.C and SC-10.03.D focus on the role of the Resident Project Representative with respect to the Contractor. The RPR's scope of services and obligations to Owner are typically more extensive than the provisions here in the construction contract; they are spelled out in detail in Exhibit D to EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services. The following should be edited to indicate the specific RPR authority and responsibilities that apply to this Contract.

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
  1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
  3. *Liaison*
    - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
  4. *Review of Work; Defective Work*
    - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
    - b. Observe whether any Work in place appears to be defective.
    - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
  5. *Inspections and Tests*
    - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
    - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
  6. *Payment Requests:* Review Applications for Payment with Contractor.
  7. *Completion*
    - a. Participate in Engineer's visits regarding Substantial Completion.
    - b. Assist in the preparation of a punch list of items to be completed or corrected.
    - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
    - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
  2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
  3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

## **ARTICLE 11—CHANGES TO THE CONTRACT**

~~No suggested Supplementary Conditions in this Article.~~

### **SC-11.02.C – Add new paragraph immediately after Paragraph 11.02.B:**

**C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.**

### **SC-11.03.A.2 - Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:**

**2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.**

### **SC-11.05.B – Add the following at the end of this paragraph:**

**For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer's Certification(s) for materials subject to American Iron and Steel requirements except when sole-source is specified, in which case the Engineer will provide the Manufacturer's Certification(s).**

### **SC-11.09.B.2.c – Add new paragraph immediately after Paragraph 11.09.B.2.b:**

**c. Change orders involving materials subject to American Iron and Steel requirements shall include supporting data (name of Manufacturer, city and state where the product was manufactured, description of product, signature of authorized Manufacturer's representative) in the Manufacturer's Certification Letter, as applicable.**

## **ARTICLE 12—CLAIMS**

No suggested Supplementary Conditions in this Article.

## ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

### 13.01 *Cost of the Work*

**Guidance Notes—Equipment Rental Costs**—When Contractor’s compensation is determined in whole or in part on the basis of Cost of the Work, equipment rental charges, particularly with respect to Contractor-owned equipment, can sometimes lead to disagreements. GC-13.01.B.5.c.(2) addresses Contractor owned equipment rental costs, indicating that such costs will be governed by a rental rate book specified in the Supplementary Conditions. The following Supplementary Condition is the location to specify the governing rental rate book. As of 2018, commonly used rental rate books include the Rental Rate Blue Book for Construction Equipment, and the AED Green Book: Rental Rates & Specifications for Construction Equipment.

SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of **[name of equipment rental rate book]**.

**Guidance Notes—Defining “Small Tools and Hand Tools”**—GC-13.01.C.2 excludes the cost of “small tools and hand tools” from Cost of the Work. Providing more definition of what that term means in a Supplementary Condition may eliminate or reduce arguments about this aspect of Cost of the Work. One common approach is to define small tools and hand tools based on a price threshold, as follows:

SC-13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

- a. For purposes of this paragraph, “small tools and hand tools” means any tool or equipment whose current price if it were purchased new at retail would be less than \$500. **[or insert other threshold price.]**

**SC-13.02.C – Delete paragraph in its entirety and insert “Deleted”.**

### 13.03 *Unit Price Work*

**Guidance Notes—Variations from Estimated Quantities, Unit Price Work**—GC-13.03.E is a “variation in estimated quantities (VEQ)” clause that applies when the actual quantity of a unit price item varies “materially and significantly” from the estimated quantity. The following Supplementary Condition is a more specific and detailed VEQ clause. By providing a specific threshold for eligible categories of unit prices, and specifically defining the degree by which an actual quantity must vary from the estimated quantity, the Supplementary Condition is intended to simplify and facilitate the administrative resolution of situations where actual quantities of unit price items differ materially and significantly from estimated quantities. When such a VEQ clause is used, a common number for the first blank is 5 percent of the

Contract Price (based on estimated quantities), and a common number for the second blank is typically 15, 20, or 25 percent; however, other numbers may be appropriate in both locations.

**SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:**

**E. *Adjustments in Unit Price***

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the extended price of a particular item of Unit Price Work amounts to [number] percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than [number] percent from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

~~No suggested Supplementary Conditions in this Article.~~

**SC-14.03.G – Add new paragraph immediately after Paragraph 14.03.F:**

**G. Installation of materials that are non-compliant with American Iron and Steel requirements shall be considered defective work.**

**ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

**15.01 *Progress Payments***

**Guidance Notes—Coordinating Payments with Actual Progress of the Work**—Paragraph GC-15.01.A states that progress payments for “cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.” This contractual provision generally will be sufficient to result in a fair and orderly payment process on cost-plus contracts. However, on some projects the cost-based progress payments may outpace the actual progress of the Work, or may become substantially out of step with respect to the ultimate limits created by a Guaranteed Maximum Price. The following clause may be added to Paragraph 15.01 to allow Owner to require Contractor to adjust its progress payment requests to bring the payment flow back into balance.

**SC-15.01.B.4 – Add the following language at the end of paragraph:**

**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-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:**

**5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Agency must approve all Applications for Payment before payment is made.**

**SC-15.01.B.6 – Add new paragraph immediately after Paragraph 15.01.B.5:**

**6. By submitting an Application for Payment based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with American Iron and Steel requirements. Manufacturer’s Certification letter for materials satisfy this requirement. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-15.01.C.2.d – Add the following new paragraph immediately after Paragraph 15.01.C.2.c:**

**d. The materials presented for payment in an Application for Payment comply with American Iron and Steel requirements.**

**SC-15.01.D.1 – Delete paragraph in its entirety and insert the following in its place:**

**The Application for Payment with Engineer’s recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.**

**SC-15.01** Add the following new Paragraph 15.01.F:

- F.** For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

**Guidance Notes—Modifying the Standard Time in Which Owner Must Make Payments—** Paragraph GC-15.01.D states that Owner will pay Contractor within 10 days after receipt of Engineer’s recommendation of payment of a progress payment; GC-15.06.E requires Owner to make the final

payment within 30 days of the final Application for Payment. The user should confirm that these payment deadlines are acceptable to Owner. See EJCDC® C-050, Bidding Procedures and Construction Contract Documents (2018), Paragraph 5.06. If changes are appropriate, prepare Supplementary Conditions here in Article SC-15 to modify the number of days in which payments are due.

**SC-15.02.A – Amend paragraph by striking out the following text: “7 days after”.**

15.03 *Substantial Completion*

**Guidance Notes—Owner Recovery of Re-inspection Costs**—Paragraph 15.03.A of the General Conditions requires Contractor to give notice that the Work is substantially complete; Paragraph 15.03.B requires an inspection of the Work to determine whether Engineer agrees that the Work is substantially complete. If the Work is not substantially complete, and must be inspected again at a later point, then the following Supplementary Condition, if included in the Contract, would allow Owner to recover the cost of the re-inspection.

**SC-15.03.A – Modify by adding the following after the last sentence:**

**Contractor shall also submit the General (Prime) Contractor’s Certification of Compliance certifying that to the best of the Contractor’s knowledge and belief all substitutes, equals, and all Iron and Steel products proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, are either Produced in the United States or are the subject of an approved waiver under Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

**Guidance Notes—Lengthening the Correction Period**—Paragraph 15.08.A of the General Conditions refers to a one-year correction period following Substantial Completion. During that one-year time period, Contractor is obligated to return to the Site to correct defective Work. If a longer correction period is to be imposed, use SC-15.08.G. Note that often the lengthening of the correction period will be tied to the use of a warranty bond. See SC-6.01.B. The extension of the correction period set forth in SC-6.01.B is confirmed in the following Supplementary Condition by reference. In that case the sentence may be terminated after “...years set forth in SC-6.01.B.1.”

If the extension of the correction period is independent of a warranty bond or similar provision, then the user should accomplish the extension by filling in the number where indicated at the end SC-15.08.G.

If SC-15.08.G is not used, the correction period will retain the standard one year duration.

SC-15.08 Add the following new Paragraph 15.08.G:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be **[number]** years after Substantial Completion.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

No suggested Supplementary Conditions in this Article.

## **ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES**

### *17.02 Arbitration*

**Guidance Notes—Alternatives to Litigation as Final Dispute Resolution Method; Arbitration—** Paragraph 17.01.B of the General Conditions provides that for any dispute subject to final resolution under Article 17, Owner or Contractor may invoke the dispute resolution procedure called for in the Supplementary Conditions. Paragraph SC-17.02 is the location to identify any such primary dispute resolution procedure. If no procedure is identified here in the Supplementary Conditions, and the parties do not agree to a specific procedure, then the default resolution procedure will be litigation—the pursuit of rights in a court of competent jurisdiction. Note that before reaching the point of final resolution of disputes, in most cases the Owner and Contractor will already have engaged in the Claim process described in Article 12 of the General Conditions. That process allows for mediation of the dispute.

As an alternative to litigation, there are many other possible dispute resolution procedures, or combinations of procedures. One of the most common procedures for resolving construction disputes is arbitration; wording for an arbitration clause follows. A discussion of the pros and cons of the arbitration process (and there are many advocates on both sides) is beyond the scope of this Guide. Owner should consult with its legal counsel when considering the inclusion of an arbitration clause, or of any other dispute resolution procedure or combination of procedures.

The EJCDC arbitration clause is drafted to use the rules and administration of the American Arbitration Association. The user is free to substitute the rules and services of other dispute resolution organizations, and to customize the arbitration process to suit the needs of the specific Contract.

The arbitration option is as follows:

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

### *17.02 Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this

Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
  - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
  - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
  - 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
  - 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.

- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

#### 17.03 *Attorneys' Fees*

**Guidance Notes—Prevailing Party Attorneys' Fees Clause**—In most jurisdictions in the United States, as a general matter each party to a dispute is responsible for its own attorneys' fees, unless an express agreement provides to the contrary. Some legal authorities believe that this general rule encourages claims and disputes, because under the general rule claimants have little concern that they will be forced to pay for the opposing party's fees if the claim fails. Other authorities take the opposite view—that if a prevailing-party attorneys' fee rule is used instead of the general rule, then the enticing prospect of not only prevailing but also of having one's own fees paid by the opponent would encourage overly aggressive pursuit of claims (or overzealous defense against valid claims).

If an exception to the general United States rule is preferred for disputes subject to final resolution under Article 17, then add the following express agreement:

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02. [Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state "Add the following new Paragraph immediately after Paragraph 17.01" and revise the numbering accordingly].

#### 17.03 *Attorneys' Fees*

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

### ARTICLE 18—MISCELLANEOUS

#### 18.08 *Assignment of Contract*

**Guidance Notes—Assignment**—GC-18.08 restricts the assignment of the Contract by both Owner and Contractor. From the Contractor's perspective, it has elected to work for a specific project Owner, based on an evaluation of the Owner's ability to meet its obligations (especially payment of Contractor), and on Owner's reputation for how it administers construction contracts. From Owner's perspective, it has awarded the Contract to a specific Contractor based in part on that Contractor's eligibility to perform the

work with requisite competence, safety, and schedule compliance. GC-18.08 places some limitations on the ability of either party to transfer its duties without the consent of the other party.

If the parties anticipate during the drafting process that an assignment will occur (for example, a local sewer district that knows it soon will be transferring its infrastructure projects to a metropolitan authority), then a Supplementary Condition should be drafted to confirm the anticipated assignment and establish the parties' advance consent to the assignment, thereby avoiding possible disputes about granting consent.

Another possibility is an assignment of a contract or purchase order to the Contractor. This typically happens in the context of Owner's procurement of engineered equipment; if the procurement is in progress when the Contractor is selected, it may make sense to assign the procurement contract to the Contractor. SC-18.08.B may be used to implement such an assignment, and to establish the assignment's basic terms. SC-18.08.B is intended to be coordinated with the EJCDC Procurement Series (P-Series) documents.

The form to be attached as an exhibit to the Contract (meaning the construction contract of which these Supplementary Conditions are a part), as referred to in SC-18.08.B, is the Assignment of Contract; Consent to Assignment; and Acceptance of Assignment form that is attached to EJCDC® P-520, Agreement Between Buyer and Seller (2018).

SC-18.08 Add the following new paragraph immediately after Paragraph 18.08.A:

- B. The contract dated **[date]** between Owner as "buyer" and **[identify seller]** as "seller" for procurement of goods and special services ("procurement contract") **[is hereby] [will be]** assigned to Contractor by Owner, and Contractor **[accepts] [will accept]** such assignment. A form documenting the assignment is attached as an exhibit to this Contract.
1. This assignment will occur on the **[Effective Date of the Contract]**, and will relieve the Owner as "buyer" from all further obligations and liabilities under the procurement contract.
  2. Upon assignment, the "seller" will be a Subcontractor or Supplier of the Contractor, and Contractor will be responsible for seller's performance, acts, and omissions, as set forth in Paragraph 7.07 of the General Conditions just as Contractor is responsible for all other Subcontractors and Suppliers.
  3. Notwithstanding this assignment, all performance guarantees and warranties required by the procurement contract will continue to run for the benefit of the Owner and, in addition, for the benefit of the Contractor.
  4. Except as noted in the procurement contract, all rights, duties and obligations of Engineer to "buyer" and "seller" under the procurement contract will cease **[upon the assignment to Contractor]**.

SC-18.11 – Add new paragraph immediately after Paragraph 18.10:

**18.11 Tribal Sovereignty**

A. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the *[insert name of Tribe]* Tribe; affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between the United States and the Tribe.

SC-19 – Add the following new Article 19 immediately after Article 18:

#### Article 19 - FEDERAL REQUIREMENTS

##### 19.01 *Agency Not a Party*

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

##### 19.02 *Contract Approval*

A. Owner and Contractor will furnish Owner's attorney such evidence as required so that Owner's attorney can complete and execute the "Certificate of Owner's Attorney" (Exhibit G of this Bulletin) before Owner submits the executed Contract Documents to Agency for approval.

B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

##### 19.03 *Conflict of Interest*

A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings and Specifications has a corporate or financial affiliation with the Supplier or Manufacturer. 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 or other interest in or a tangible personal benefit from the Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

##### 19.04 *Gratuities*

A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or 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, Owner may, by written notice to Contractor,

terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which 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 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

#### **19.05     *Small, Minority and Women's Businesses***

A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

#### **19.06     *Anti-Kickback***

A. Contractor shall comply with the Copeland Anti-Kickback Act (40 USC 3145) 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 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. Owner shall report all suspected or reported violations to Agency.

**19.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended***

A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**19.08 *Equal Employment Opportunity***

A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**19.09 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)***

A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

**19.10 *Environmental Requirements***

A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:

1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, 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, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.

**3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:**

**a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:**

**i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.**

**ii. The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.**

**iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).**

**iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question**

may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.

v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.

vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.

vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.

4. Endangered Species – 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 Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.

5. Mitigation Measures – The following environmental mitigation measures are required on this Project: [*Insert mitigation measures from the Letter of Conditions here*].

**19.11 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles

ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**19.12      *Debarment and Suspension (Executive Orders 12549 and 12689)***

A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**19.13      *Procurement of recovered materials***

A. The Contractor will comply with 2 CFR Part 200.322, “Procurement of recovered materials.”

**19.14      *American Iron and Steel***

A. Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies an American Iron and Steel requirement to this project. All iron and steel products used in this project must be produced in the United States. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials.

B. The following waivers apply to this Contract:

1.      *De Minimis,*
2.      **Minor Components,**
3.      **Pig iron and direct reduced iron, and**
4.      *[add project specific waivers as applicable].*

## EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

**Guidance Notes—Exhibit A**—This exhibit is used with the Electronic Documents Protocol (EDP) presented in SC-2.06. If the Project-specific Supplementary Conditions do not include SC-2.06, then do not include Exhibit A. If Exhibit A is included, modify it to conform to Project-specific requirements.

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Contractors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.			
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.			
Key				
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version [number] or later			
DWG	Autodesk® AutoCAD .dwg format Version [number]			
DOC	Microsoft® Word .docx format Version [number]			
EXC	Microsoft® Excel .xls or .xml format Version [number]			
DB	Microsoft® Access .mdb format Version [number]			

**EXHIBIT B—FORESEEABLE BAD WEATHER DAYS**

**Guidance Notes—Exhibit B**—This exhibit is used with SC-4.05.C, which provides a definition of those “abnormal weather conditions” that result from excessive precipitation or extreme temperatures. If the Project-specific Supplementary Conditions do not include SC-4.05.C, then do not include Exhibit B. If Exhibit B is included, fill in the information in the table to establish the Project-specific number of foreseeable Bad Weather Days with respect to precipitation and temperature.

Month	Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1)	Ambient Outdoor Air Temperature (degrees F)	
		Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.)	Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
Notes:			
1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of “dry” powder snow equals one inch of rain.			

## EXHIBIT C—GEOTECHNICAL BASELINE REPORT SUPPLEMENT TO THE SUPPLEMENTARY CONDITIONS

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**Guidance Notes—Geotechnical Baseline Reports**—This supplement presents optional Supplementary Conditions that are used if Owner elects to issue a Geotechnical Baseline Report (GBR) for a specific Project. Do not include this supplement with a project’s Supplementary Conditions unless the GBR system is used.

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

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

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

If a GBR is used, it remains important to disclose known reports and tests regarding subsurface conditions; a place for doing so is provided in SC/GBR 5.03. If some Site conditions are outside the scope of the Geotechnical Baseline Report it will continue to be necessary to identify reliable Technical Data contained in such reports and drawings; however, if the Geotechnical Baseline Report or a related Geotechnical Data Report already establish the data that is worthy of reliance, it will not be necessary to make a redundant identification in SC/GBR 5.03.

If a GBR is used, then include the following GBR Supplementary Conditions, and do not use the Paragraph SC-5.03 in the main body of C-800:

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Exhibit C—Geotechnical Baseline Report Supplement to the Supplementary Conditions.  
EJCDC® C-800, Supplementary Conditions of the Construction Contract.  
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## 1.01 Definitions

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

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

## 5.03 Subsurface and Physical Conditions

SC-5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

### 5.03 Subsurface and Physical Conditions

- A. *Reports and Drawings*: The Supplementary Conditions hereby identify:
1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report) that contain Technical Data. Such reports are as follows:
    - a. *Report Title*: **[Exact title of the document]**
    - b. *Date of Report*: **[Date report was issued]**
    - c. *Technical Data in report upon which Contractor may rely*: **[Identify Technical Data (for example, “Boring Log, Test Site 3”) and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**
  2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data. Such drawings are as follows:
    - a. *Drawings Title*: **[Exact title of the drawings]**
    - b. *Date of Drawings*: **[Date drawings were issued]**
    - c. *Technical Data in drawings upon which Contractor may rely*: **[Identify Technical Data (for example, “Plan View of Rock Outcroppings”) in drawings, or state “All**

**information in drawing” if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer, at the cost of reproduction.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph SC-5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner’s archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
- E. *Geotechnical Baseline Report*
  1. This Contract contains a Geotechnical Baseline Report (“GBR”), identified as follows: **[Example: Geotechnical Baseline Report for Northwest Interceptor, dated February 12, 2013, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **[Example: Geotechnical Data Report for Northwest Interceptor, dated June 15, 2012, prepared by ABC Geotechnical Engineers, Inc., Sacramento, California]**.
  2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR’s terms prevail.

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

5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph SC-5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption or continuation of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption or continuation of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph SC-5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03 of the General Conditions; and
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice as required by Paragraph SC-5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment must be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of

Paragraphs SC-5.03 and SC-5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

SECTION 010000

GENERAL REQUIREMENTS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Summary:
1. Contract description.
  2. Contractor's use of premises.
  3. Specification conventions.
- B. Price and Payment Procedures:
1. Cash allowances.
  2. Contingency allowances.
  3. Testing and inspection allowances.
  4. Schedule of values.
  5. Applications for payment.
  6. Change procedures.
  7. Unit prices.
  8. Alternates.
- C. Administrative Requirements:
1. Coordination.
  2. Field engineering.
  3. Preconstruction Meetings.
  4. Progress meetings.
  5. Equipment electrical characteristics and components.
  6. Cutting and patching.
- D. Submittals:
1. Submittal procedures.
  2. Construction progress schedules.
  3. Proposed products list.
  4. Product data.
  5. Shop drawings.
  6. Samples.
  7. Manufacturer's instructions.
  8. Manufacturer's certificates.
- E. Quality Requirements:
1. Quality control.
  2. Tolerances.
  3. References.
  4. Labeling.

5. Testing and inspection laboratory services.
  6. Manufacturer's field services and reports.
  7. Examination.
  8. Preparation.
- F. Temporary Facilities and Controls:
1. Temporary electricity.
  2. Temporary lighting for construction purposes.
  3. Temporary heating and cooling.
  4. Temporary ventilation.
  5. Telephone and facsimile service.
  6. Temporary water service.
  7. Temporary sanitary facilities.
  8. Field offices and sheds.
  9. Access roads.
  10. Parking.
  11. Progress cleaning and waste removal.
  12. Project identification.
  13. Fire prevention facilities.
  14. Barriers and fencing.
  15. Enclosures.
  16. Protection of installed work.
  17. Security.
  18. Water control.
  19. Pollution and environmental control.
  20. Removal of utilities, facilities, and controls.
- G. Product Requirements:
1. Products.
  2. Delivery, handling, storage, and protection.
  3. Product options.
  4. Substitutions.
- H. Execution Requirements:
1. Closeout procedures.
  2. Final cleaning.
  3. Starting of systems.
  4. Demonstration and instructions.
  5. Testing, adjusting and balancing.
  6. Protecting installed construction.
  7. Project record documents.
  8. Operation and maintenance data.
  9. Spare parts and maintenance materials.
  10. Warranties.

1.2 CONTRACT DESCRIPTION

- A. Work of the Project includes construction of live fire training structure.
- B. Perform Work of Contract under a stipulated sum contract with Owner in accordance with Conditions of Contract.

1.3 CONTRACTOR'S USE OF PREMISES

- A. Limit use of premises to allow:
  - 1. Owner occupancy.

1.4 SPECIFICATION CONVENTIONS

- A. These specifications are written in imperative mood and streamlined form. This imperative language is directed to the Contractor, unless specifically noted otherwise. The words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

1.5 CASH ALLOWANCES

- A. Costs Included in Allowances: Cost of Product to Contractor or subcontractor, less applicable trade discounts; delivery to site and applicable taxes.
- B. Costs Not Included in Allowances But Included in Contract Sum/Price: Product delivery to site and handling at the site, including unloading, uncrating, and storage; protection of Products from elements and from damage and labor for installation and finishing.
- C. Difference in cost will be adjusted by Change Order.

1.6 CONTINGENCY ALLOWANCES

- A. Include in the Contract, stipulated amount of \$20,000 for use upon Owner's instruction.
- B. Contractor's costs for Products, delivery, installation, labor, insurance, payroll, taxes, bonding, equipment rental, overhead, and profit are included in Change Orders authorizing expenditure of funds from this Contingency Allowance.

1.7 TESTING AND INSPECTION ALLOWANCES

- A. Costs Not Included in Allowance:
  - 1. Incidental labor and facilities required to assist testing or inspection firm.
  - 2. Costs of re-testing upon failure of previous tests as determined by Architect/Engineer.
- B. Costs will be drawn from testing and inspection allowances by Change Order.

- C. Reports will be submitted by independent firm to Architect/Engineer, Contractor, and authority having jurisdiction, in duplicate, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.
    - 1. Submit final report indicating correction of Work previously reported as non-compliant.
  
  - D. Agency Reports: After each test, promptly submit 2 copies of report to Architect/Engineer, Contractor, and authority having jurisdiction. When requested by Architect/Engineer, provide interpretation of test results. Include the following:
    - 1. Date issued.
    - 2. Project title and number.
    - 3. Name of inspector.
    - 4. Date and time of sampling or inspection.
    - 5. Identification of product and specifications section.
    - 6. Location in Project.
    - 7. Type of inspection or test.
    - 8. Date of test.
    - 9. Results of tests.
    - 10. Conformance with Contract Documents.
- 1.8 SCHEDULE OF VALUES
- A. Submit schedule on EJCDC Form 1910-8-E. Contractor's standard form or electronic media printout will be considered.
  - B. Submit Schedule of Values in duplicate within 15 days after date established in Notice to Proceed.
- 1.9 APPLICATIONS FOR PAYMENT
- A. Submit 3 copies of each application on EJCDC Form 1910-8-E.
  - B. Content and Format: Utilize Schedule of Values for listing items in Application for Payment.
  - C. Payment Period: Monthly.
- 1.10 CHANGE PROCEDURES
- A. Stipulated Sum/Price Change Order: Based on Notice of Change and Contractor's fixed price quotation or Contractor's request for Change Order as approved by Architect/Engineer.
  - B. Change Order Forms: EJCDC 1910-8-B.
  - C. Unit Price Change Order: For pre-determined unit prices and quantities, Change Order will be executed on fixed unit price basis. For unit costs or quantities of units of work

which are not pre-determined, execute Work under Work Directive Change. Changes in Contract Sum/Price or Contract Time will be computed as specified for Time and Material Change Order.

**1.11 UNIT PRICES**

- A. Architect/Engineer will take measurements and compute quantities accordingly. Provide and assist in taking of measurements.
- B. Unit Price Schedule:
  - 1. [Item: [\_\_\_\_]]; Section [\_\_\_\_].]
  - 2. [Item: [\_\_\_\_]]; Section [\_\_\_\_].]
  - 3. [Item: [\_\_\_\_]]; Section [\_\_\_\_].]

**1.12 ALTERNATES**

- A. Alternates quoted on Bid Forms will be reviewed and accepted or rejected at Owner's option.
- B. Coordinate related Work and modify surrounding Work as required.

**1.13 COORDINATION**

- A. Coordinate scheduling, submittals, and Work of various sections of specifications to ensure efficient and orderly sequence of installation of interdependent construction elements.
- B. Verify utility requirement characteristics of operating equipment are compatible with building utilities.
- C. Coordinate space requirements and installation of mechanical and electrical work indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit, as closely as practicable.
- D. In finished areas, conceal pipes, ducts, and wiring within construction.

**1.14 FIELD ENGINEERING**

- A. Owner will Employ Land Surveyor to locate reference datum and protect survey control and reference points.
- B. Establish elevations, lines, and levels and certify elevations and locations of the Work conform with Contract Documents.
- C. Verify field measurements are as indicated on shop drawings or as instructed by manufacturer.

1.15 PRECONSTRUCTION MEETINGS

- A. Architect/Engineer will schedule preconstruction meeting after Notice of Award for affected parties.
- B. When required in individual specification section, convene preinstallation meeting at Project site prior to commencing work of section.

1.16 PROGRESS MEETINGS

- A. Schedule and administer meetings throughout progress of the Work at maximum monthly intervals.
- B. Preside at meetings, record minutes, and distribute copies within 2 days to those affected by decisions made.

1.17 EQUIPMENT ELECTRICAL CHARACTERISTICS AND COMPONENTS

- A. Motors: NEMA MG1 Type; specific motor type is specified in individual specification sections.
- B. Wiring Terminations: Terminal lugs to match branch circuit conductor; size terminal lugs to NFPA 70.
- C. Cord and Plug: Minimum 6 foot cord and plug including grounding connector; cord of longer length is specified in individual sections.

1.18 CUTTING AND PATCHING

- A. Employ skilled and experienced installer to perform cutting and patching new Work; restore Work with new Products.
- B. Submit written request in advance of cutting or altering structural or building enclosure elements.
- C. Execute cutting, fitting, and patching including excavation and fill, to complete Work, and to:
  - 1. Fit several parts together, to integrate with other Work.
  - 2. Uncover Work to install or correct ill-timed Work.
  - 3. Remove and replace defective and non-conforming Work.
  - 4. Remove samples of installed Work for testing.
  - 5. Provide openings in elements of Work for penetrations of mechanical and electrical Work.
- D. Cut masonry and concrete materials using masonry saw or core drill. Restore Work with new Products in accordance with requirements of Contract Documents.

- E. Fit Work tight to adjacent elements. Maintain integrity of wall, ceiling, or floor construction; completely seal voids.
- F. Fit Work tight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces.
- G. Refinish surfaces to match adjacent finishes.

**1.19 SUBMITTAL PROCEDURES**

- A. Submittal form to identify Project, Contractor, subcontractor or supplier; and pertinent Contract Document references.
- B. Apply Contractor's stamp, signed or initialed, certifying that review, verification of Products required, field dimensions, adjacent construction Work, and coordination of information is in accordance with requirements of the Work and Contract Documents.
- C. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of completed Work.
- D. Revise and resubmit submittals as required; identify changes made since previous submittal.

**1.20 CONSTRUCTION PROGRESS SCHEDULES**

- A. Submit initial progress schedule in duplicate within 15 days after date established in Notice to Proceed for Architect/Engineer review.
- B. Submit revised schedules with each Application for Payment, identifying changes since previous version. Indicate estimated percentage of completion for each item of Work at each submission.
- C. Submit horizontal bar chart with separate line for each major section of Work or operation, identifying first work day of each week.

**1.21 PROPOSED PRODUCTS LIST**

- A. Within 15 days after date of Notice to Proceed, submit list of major Products proposed for use, with name of manufacturer, trade name, and model number of each product.

**1.22 PRODUCT DATA**

- A. Product Data:
  - 1. Submitted to Architect/Engineer for review for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents.
  - 2. After review, provide copies and distribute in accordance with SUBMITTAL PROCEDURES article and for record documents purposes as specified.

- B. Submit number of copies which Contractor requires, plus 2 copies which will be retained by Architect/Engineer.
- C. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturer's standard data to provide information unique to this project.

**1.23 SHOP DRAWINGS**

- A. Shop Drawings:
  - 1. Submitted to Architect/Engineer for review for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents.
  - 2. After review, provide copies and distribute in accordance with SUBMITTAL PROCEDURES article and for record documents purposes as specified.
- B. When required by individual specification sections, provide shop drawings signed and sealed by professional engineer responsible for designing components shown on shop drawings.
  - 1. Include signed and sealed calculations to support design.
  - 2. Submit drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
  - 3. Make revisions and provide additional information when required by authorities having jurisdiction.
- C. Submit number of opaque reproductions Contractor requires, plus 2 copies which will be retained by Architect/Engineer.

**1.24 MANUFACTURER'S INSTRUCTIONS**

- A. When specified in individual specification sections, submit manufacturer printed instructions for delivery, storage, assembly, installation, adjusting, and finishing, in quantities specified for Product Data.

**1.25 MANUFACTURER'S CERTIFICATES**

- A. When specified in individual specification sections, submit certifications by manufacturer to Architect/Engineer, in quantities specified for Product Data.
- B. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.

**1.26 QUALITY CONTROL**

- A. Monitor quality control over suppliers, manufacturers, Products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with manufacturer's instructions.

- C. Comply with specified standards as minimum quality for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.

**1.27 TOLERANCES**

- A. Monitor fabrication and installation tolerance control of installed Products over suppliers, manufacturers, Products, site conditions, and workmanship, to produce acceptable Work. Do not permit tolerances to accumulate.
- B. Comply fully with manufacturer's tolerances.

**1.28 REFERENCES**

- A. Conform to reference standards by date of issue current as of date of Contract Documents.
- B. When specified reference standard conflict with Contract Documents, request clarification from Architect/Engineer before proceeding.

**1.29 LABELING**

- A. Attach label from agency approved by authority having jurisdiction for products, assemblies, and systems required to be labeled by applicable code.
- B. Label Information: Include manufacturer's or fabricator's identification, approved agency identification, and the following information, as applicable, on each label.
  - 1. Model number.
  - 2. Serial number.
  - 3. Performance characteristics.

**1.30 TESTING AND INSPECTION LABORATORY SERVICES**

- A. Owner will appoint, employ, and pay for specified services of independent firm to perform testing and inspection.
- B. Independent firm will perform tests, inspections, and other services as required.
- C. Cooperate with independent firm; furnish samples as requested.
- D. Re-testing required because of non-conformance to specified requirements will be charged to Contractor.

**1.31 MANUFACTURER'S FIELD SERVICES AND REPORTS**

- A. When specified in individual specification sections, require material or Product suppliers or manufacturers to furnish qualified staff personnel to observe site conditions and to initiate instructions when necessary.

- B. Report observations and site decisions or instructions that are supplemental or contrary to manufacturer's written instructions.

1.32 EXAMINATION

- A. Verify existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify utility services are available, of correct characteristics, and in correct location.

1.33 PREPARATION

- A. Clean substrate surfaces prior to applying next material or substance.
- B. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying new material or substance in contact or bond.

1.34 TEMPORARY ELECTRICITY

- A. Pay cost of electricity used. Provide separate metering and pay cost of electricity used.
- B. Provide temporary electricity and power outlets for construction operations, connections, branch wiring, distribution boxes, and flexible power cords as required. Do not disrupt Owner's need for continuous service.

1.35 TEMPORARY LIGHTING FOR CONSTRUCTION PURPOSES

- A. Provide and maintain temporary lighting for construction operations.
- B. Provide branch wiring from power source to distribution boxes with lighting conductors, pigtails, and lamps as required.
- C. Permanent building lighting may not be utilized during construction.

1.36 TEMPORARY HEATING AND COOLING

- A. Provide heating and cooling devices and heat and cool as needed to maintain specified conditions for construction operations.
- B. Pay cost of energy used.

1.37 TEMPORARY VENTILATION

- A. Ventilate enclosed areas to assist cure of materials, to dissipate humidity, and to prevent accumulation of dust, fumes, vapors, or gases.

1.38 TELEPHONE AND FACSIMILE SERVICE

- A. Provide, maintain, and pay for telephone and telephone facsimile service to field office at time of project mobilization. Allow Architect/Engineer incidental use.

1.39 TEMPORARY WATER SERVICE

- A. Provide, maintain, and pay for suitable quality water service required for construction operations.

1.40 TEMPORARY SANITARY FACILITIES

- A. Provide and maintain required facilities and enclosures.
- B. Maintain in clean and sanitary condition.

1.41 FIELD OFFICES AND SHEDS

- A. Office: Weather tight, with lighting, electrical outlets, heating, cooling, and ventilating equipment, and equipped with sturdy furniture and drawing display table.
- B. Provide space for Project meetings, with table and chairs to accommodate 6 persons.

1.42 ACCESS ROADS

- A. Construct and maintain temporary roads accessing public thoroughfares to serve construction area.
- B. Designated existing on-site roads may be used for construction traffic.

1.43 PARKING

- A. Provide temporary parking areas to accommodate construction personnel.

1.44 PROGRESS CLEANING AND WASTE REMOVAL

- A. Collect and maintain areas free of waste materials, debris, and rubbish. Maintain site in clean and orderly condition.

1.45 PROJECT IDENTIFICATION

- A. Provide 8 foot wide x 6 foot high project sign of exterior grade plywood and wood frame construction, painted, to Architect/Engineer's design and colors.
- B. Erect on site at location established by Architect/Engineer.

1.46 FIRE PREVENTION FACILITIES

- A. Prohibit smoking within buildings under construction. Designate area on site where smoking is permitted. Provide approved ashtrays in designated smoking areas.
- B. Establish fire watch for cutting and welding and other hazardous operations capable of starting fires. Maintain fire watch before, during, and after hazardous operations until threat of fire does not exist.
- C. Portable Fire Extinguishers: NFPA 10; 10 pound capacity, 4A-60B: C UL rating.
  - 1. Provide 1 fire extinguisher at each stair on each floor of buildings under construction.
  - 2. Provide minimum 1 fire extinguisher in every construction trailer and storage shed.

1.47 BARRIERS AND FENCING

- A. Provide fencing to prevent unauthorized entry to construction areas and to protect existing facilities and adjacent properties from damage.
- B. Construction: Contractor's option.
- C. Provide 6 foot high fence around construction site; equip with vehicular gates with locks.

1.48 ENCLOSURES

- A. Provide temporary weather tight closures to exterior openings to permit acceptable working conditions and protection of the Work.

1.49 PROTECTION OF INSTALLED WORK

- A. Protect installed Work and provide special protection where specified in individual specification sections.
- B. Prohibit traffic or storage upon waterproofed or roofed surfaces.

1.50 SECURITY

- A. Provide security and facilities to protect Work and Owner's operations from unauthorized entry, vandalism, or theft.

1.51 WATER CONTROL

- A. Maintain excavations free of water. Provide, operate, and maintain pumping equipment.
- B. Provide erosion control.

1.52 POLLUTION AND ENVIRONMENTAL CONTROL

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations.
- B. Provide dust control, erosion and sediment control, noise control, pest control, and rodent control to allow for proper execution of the Work.

1.53 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary utilities, equipment, facilities, materials, prior to Final Application for Payment review.
- B. Remove underground installations to minimum depth of 2 feet.
- C. Clean and repair damage caused by installation or use of temporary work.
- D. Restore existing facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

1.54 PRODUCTS

- A. Products: Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying, and erection of the Work.

1.55 DELIVERY, HANDLING, STORAGE, AND PROTECTION

- A. Deliver, handle, store, and protect Products in accordance with manufacturer's instructions.

1.56 PRODUCT OPTIONS

- A. Products Specified by Reference Standards or by Description Only: Any Product meeting those standards or description.
- B. Products Specified by Naming 1 or More Manufacturers: Products of manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming 1 or More Manufacturers with Provision for Substitutions: Submit request for substitution for manufacturers not named.

1.57 SUBSTITUTIONS

- A. Architect/Engineer will consider requests for Substitutions only within 15 days after date established in Notice to Proceed.

- B. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.
- C. Submit 3 copies of request for Substitution for consideration. Limit each request to 1 proposed Substitution.

**1.58 CLOSEOUT PROCEDURES**

- A. Submit written certification Contract Documents have been reviewed, Work has been inspected, and Work is complete in accordance with Contract Documents and ready for Architect/Engineer's inspection.
- B. Submit final Application for Payment identifying total adjusted Contract Sum/Price, previous payments, and amount remaining due.

**1.59 FINAL CLEANING**

- A. Execute final cleaning prior to final inspection.
- B. Clean interior and exterior surfaces exposed to view.
- C. Clean debris from site, roofs, and drainage systems.
- D. Remove waste and surplus materials, rubbish, and construction facilities from site.

**1.60 STARTING OF SYSTEMS**

- A. Ensure each piece of equipment or system is ready for operation.
- B. Execute start-up under supervision of responsible persons in accordance with manufacturer's instructions.
- C. Submit written report stating equipment or system has been properly installed and is functioning correctly.

**1.61 DEMONSTRATION AND INSTRUCTIONS**

- A. Demonstrate operation and maintenance of Products to Owner's personnel 2 weeks prior to date of final review.
- B. Demonstrate start-up, operation, control, adjustment, trouble-shooting, servicing, maintenance, and shutdown of each item of equipment at agreed-upon times, at equipment location.

**1.62 TESTING, ADJUSTING, AND BALANCING**

- A. Adjust operating products and equipment to ensure smooth and unhindered operation.

- B. Re-testing required because of non-conformance to specified requirements will be charged to Contractor.

**1.63 PROTECTING INSTALLED CONSTRUCTION**

- A. Provide temporary and removable protection for installed products. Control activity in immediate work area to prevent damage.
- B. Protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects, by protecting with durable sheet materials.
- C. Prohibit traffic or storage upon waterproofed surfaces. When traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- D. Prohibit traffic from landscaped areas.

**1.64 PROJECT RECORD DOCUMENTS**

- A. Maintain on site 1 set of Contract Documents to be utilized for record documents.
- B. Record actual revisions to the Work. Record information concurrent with construction progress.
- C. Specifications: Legibly mark and record at each Product section description of actual Products installed.
- D. Record Documents and Shop Drawings: Legibly mark each item to record actual construction.
- E. Submit documents to Architect/Engineer with claim for final Application for Payment.

**1.65 OPERATION AND MAINTENANCE DATA**

- A. Submit 2 sets prior to final inspection, bound in 8-1/2 x 11 inch text pages, 3 D side ring binders with durable plastic covers.
- B. Prepare binder cover with printed title "OPERATION AND MAINTENANCE INSTRUCTIONS" and title of project.
- C. Internally subdivide binder contents with permanent page dividers, logically organized, with tab titles legibly printed under reinforced laminated plastic tabs.
- D. Contents:
  - 1. Part 1: Directory, listing names, addresses, and telephone numbers of Architect/Engineer, Contractor, subcontractors, and major equipment suppliers.
  - 2. Part 2: Operation and maintenance instructions, arranged by system.
  - 3. Part 3: Project documents and certificates.

1.66 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Provide Products, spare parts, maintenance, and extra materials in quantities specified in individual specification sections.
- B. Deliver to Project site; obtain receipt prior to final payment.

1.67 WARRANTIES

- A. Provide duplicate notarized copies.
- B. Execute and assemble transferable warranty documents from subcontractors, suppliers, and manufacturers.
- C. Submit prior to final Application for Payment.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

Not Used.

END OF SECTION

SECTION 011000

SUMMARY

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Contract description.
- B. Work by Owner.
- C. Specification Conventions.

1.2 CONTRACT DESCRIPTION

- A. Work of the Project includes construction of the **locality/municipality** live fire training structure located at **street address, city**, Virginia, **zip code**.
- B. Perform Work of Contract under stipulated sum contract with Owner in accordance with Conditions of Contract.

1.3 WORK BY OWNER

- A. Items noted NIC (Not in Contract), will be furnished and installed by Owner after completion of construction by Contractor.

1.4 SPECIFICATION CONVENTIONS

- A. These specifications are written in imperative mood and streamlined form. This imperative language is directed to the Contractor, unless specifically noted otherwise. The words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SECTION 012000

PRICE AND PAYMENT PROCEDURES

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Cash allowances.
- B. Contingency allowances.
- C. Schedule of values.
- D. Applications for payment.
- E. Change procedures.
- F. Defect assessment.
- G. Unit prices.
- H. Alternates.

1.2 CASH ALLOWANCES

- A. Costs Included in Cash Allowances: Cost of product to Contractor or Subcontractor, less applicable trade discounts; delivery to site and applicable taxes.
- B. Costs Not Included in Cash Allowances But Included in Contract Sum/Price: Product delivery to site and handling at site, including unloading, uncrating, and storage; protection of products from elements and from damage; and labor for installation and finishing.
- C. Architect/Engineer Responsibilities:
  - 1. Consult with Contractor for consideration and selection of products, suppliers, and installers.
  - 2. Select products in consultation with Owner and transmit decision to Contractor.
  - 3. Prepare Change Order.
- D. Contractor Responsibilities:
  - 1. Assist Architect/Engineer in selection of products, suppliers, and installers.
  - 2. Obtain proposals from suppliers and installers and offer recommendations.
  - 3. On notification of selection by Architect/Engineer, execute purchase agreement with designated supplier and installer.

4. Arrange for and process shop drawings, product data, and samples. Arrange for delivery.
  5. Promptly inspect products upon delivery for completeness, damage, and defects. Submit claims for transportation damage.
- E. Differences in costs will be adjusted by Change Order.
- F. Allowances Schedule:
1. Section [\_\_\_\_\_] - [\_\_\_\_\_]: Include the stipulated sum of \$[\_\_\_\_\_] for purchase, delivery, and installation of [\_\_\_\_\_].
  2. Section [\_\_\_\_\_] - [\_\_\_\_\_]: Include the unit price of \$[\_\_\_\_\_] per [\_\_\_\_\_] for purchase, delivery, and installation of [\_\_\_\_\_].

### 1.3 CONTINGENCY ALLOWANCES

- A. Include in the Contract, a stipulated sum/price of \$20,000 for use upon Owner's instruction.
- B. Contractor's costs for products, delivery, installation, labor, insurance, payroll, taxes, bonding, equipment rental, overhead, and profit will be included in Change Orders authorizing expenditure of funds from this Contingency Allowance.
- C. Funds will be drawn from Contingency Allowance only by Change Order.
- D. At closeout of Contract, funds remaining in Contingency Allowance will be credited to Owner by Change Order.

### 1.4 SCHEDULE OF VALUES

- A. Submit printed schedule on EJCDC 1910-8-E. Contractor's standard form or electronic media printout will be considered.
- B. Submit Schedule of Values in duplicate within 15 days after date established in Notice to Proceed.
- C. Format: Utilize Table of Contents of this Project Manual. Identify each line item with number and title of major specification Section.
- D. Include in each line item, amount of Allowances specified in this section.
- E. Include separately from each line item, direct proportional amount of Contractor's overhead and profit.
- F. Revise schedule to list approved Change Orders, with each Application For Payment.

1.5 APPLICATIONS FOR PAYMENT

- A. Submit 3 copies of each application on EJCDC 1910-8-E.
- B. Content and Format: Utilize Schedule of Values for listing items in Application for Payment.
- C. Submit updated construction schedule with each Application for Payment.
- D. Payment Period: Submit at intervals stipulated in the Agreement.
- E. Submit with transmittal letter as specified for Submittals in Section 013300 - Submittal Procedures.

1.6 CHANGE PROCEDURES

- A. Submittals: Submit name of individual authorized to receive change documents, and be responsible for informing others in Contractor's employ or Subcontractors of changes to the Work.
- B. The Architect/Engineer will advise of minor changes in the Work not involving adjustment to Contract Sum/Price or Contract Time by issuing supplemental instructions on AIA Form G710.
- C. The Architect/Engineer may issue a Proposal Request including a detailed description of proposed change with supplementary or revised Drawings and specifications, a change in Contract Time for executing the change. Contractor will prepare and submit estimate within 7 days.
- D. Contractor may propose changes by submitting a request for change to Architect/Engineer, describing proposed change and its full effect on the Work. Include a statement describing reason for the change, and effect on Contract Sum/Price and Contract Time with full documentation. Document requested substitutions in accordance with Section 016000 - Product Requirements.
- E. Stipulated Sum/Price Change Order: Based on Proposal Request and Contractor's fixed price quotation or Contractor's request for Change Order as approved by Architect/Engineer.
- F. Unit Price Change Order: For contract unit prices and quantities, the Change Order will be executed on fixed unit price basis. For unit costs or quantities of units of work which are not pre-determined, execute Work under Construction Change Directive. Changes in Contract Sum/Price or Contract Time will be computed as specified for Time and Material Change Order.
- G. Construction Change Directive: Architect/Engineer may issue directive, on EJCDC 1910-8-F Work Directive Change signed by Owner, instructing Contractor to proceed with

change in the Work, for subsequent inclusion in a Change Order. Document will describe changes in the Work, and designate method of determining any change in Contract Sum/Price or Contract Time. Promptly execute change.

- H. Time and Material Change Order: Submit itemized account and supporting data after completion of change, within time limits indicated in Conditions of the Contract. Architect/Engineer will determine change allowable in Contract Sum/Price and Contract Time as provided in Contract Documents.
- I. Maintain detailed records of work done on Time and Material basis. Provide full information required for evaluation of proposed changes, and to substantiate costs for changes in the Work.
- J. Document each quotation for change in cost or time with sufficient data to allow evaluation of quotation.
- K. Change Order Forms: EJCDC 1910-8-B Change Order.
- L. Execution of Change Orders: Architect/Engineer will issue Change Orders for signatures of parties as provided in Conditions of the Contract.
- M. Correlation Of Contractor Submittals:
  - 1. Promptly revise Schedule of Values and Application for Payment forms to record each authorized Change Order as separate line item and adjust Contract Sum/Price.
  - 2. Promptly revise progress schedules to reflect change in Contract Time, revise sub-schedules to adjust times for other items of work affected by the change, and resubmit.
  - 3. Promptly enter changes in Project Record Documents.

#### 1.7 DEFECT ASSESSMENT

- A. Replace the Work, or portions of the Work, not conforming to specified requirements.
- B. If, in the opinion of the Architect/Engineer, it is not practical to remove and replace the Work, the Architect/Engineer will direct appropriate remedy or adjust payment.
- C. The defective Work may remain, but unit sum/price will be adjusted to new sum/price at discretion of Architect/Engineer.
- D. Defective Work will be partially repaired to instructions of Architect/Engineer, and unit sum/price will be adjusted to new sum/price at discretion of Architect/Engineer.
- E. Individual specification sections may modify these options or may identify specific formula or percentage sum/price reduction.

- F. Authority of Architect/Engineer to assess defects and identify payment adjustments, is final.
- G. Non-Payment For Rejected Products: Payment will not be made for rejected products for any of the following:
  - 1. Products wasted or disposed of in a manner that is not acceptable.
  - 2. Products determined as unacceptable before or after placement.
  - 3. Products not completely unloaded from transporting vehicle.
  - 4. Products placed beyond lines and levels of required Work.
  - 5. Products remaining on hand after completion of the Work.
  - 6. Loading, hauling, and disposing of rejected products.

**1.8 UNIT PRICES**

- A. Authority: Measurement methods are delineated in individual specification sections.
- B. Measurement methods delineated in individual specification sections complement criteria of this section. In event of conflict, requirements of individual specification section govern.
- C. Take measurements and compute quantities. Architect/Engineer will verify measurements and quantities.
- D. Unit Quantities: Quantities and measurements indicated in Bid Form are for contract purposes only. Quantities and measurements supplied or placed in the Work shall determine payment.
  - 1. When actual Work requires more or fewer quantities than those quantities indicated, provide required quantities at unit sum/prices contracted.
  - 2. When actual Work requires 25 percent or greater change in quantity than those quantities indicated, Owner or Contractor may claim for Contract Price adjustment.
- E. Payment Includes: Full compensation for required labor, products, tools, equipment, plant and facilities, transportation, services, and incidentals; erection, application, or installation of item of the Work; overhead and profit.
- F. Final payment for Work governed by unit prices will be made on basis of actual measurements and quantities accepted by Architect/Engineer multiplied by unit sum/price for Work incorporated in or made necessary by the Work.
- G. Measurement Of Quantities:
  - 1. Weigh Scales: Inspected, tested, and certified by applicable state Weights and Measures department within past year.
  - 2. Platform Scales: Of sufficient size and capacity to accommodate conveying vehicle.

3. Metering Devices: Inspected, tested, and certified by applicable state department within past year.
4. Measurement by Weight: Concrete reinforcing steel, rolled or formed steel, or other metal shapes will be measured by handbook weights. Welded assemblies will be measured by handbook or scale weight.
5. Measurement by Volume: Measured by cubic dimension using mean length, width, and height or thickness.
6. Measurement by Area: Measured by square dimension using mean length and width or radius.
7. Linear Measurement: Measured by linear dimension, at item centerline or mean chord.
8. Stipulated Sum/Price Measurement: Items measured by weight, volume, area, or linear means or combination, as appropriate, as completed item or unit of the Work.

1.9 ALTERNATES

- A. Alternates quoted on Bid Forms will be reviewed and accepted or rejected at Owner's option. Accepted Alternates will be identified in Owner-Contractor Agreement.
- B. Coordinate related work and modify surrounding work.
- C. Schedule of Alternates:
  1. Alternate No. 1: Dry Hydrant, Standpipe & Sprinkler:
    - a. Alternate Item: Drawing number A3.
  2. Alternate No. 2: Epoxy Coated Reinforcement:
    - a. Base Bid Item: Drawing number A0.2.
    - b. Alternate Item: Drawing number A0.2.
  3. Alternate No. 2: Additional Burn Rooms:
    - a. Base Bid Item: Drawing number A2.0.
    - b. Alternate Item: Drawing number A2.0.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SECTION 013000

ADMINISTRATIVE REQUIREMENTS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Coordination and project conditions.
- B. Field engineering.
- C. Preconstruction meeting.
- D. Site mobilization meeting.
- E. Progress meetings.
- F. Pre-installation meetings.
- G. Cutting and patching.

1.2 COORDINATION AND PROJECT CONDITIONS

- A. Coordinate scheduling, submittals, and Work of various sections of Project Manual to ensure efficient and orderly sequence of installation of interdependent construction elements.
- B. Verify utility requirements and characteristics of operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service operating equipment.
- C. Coordinate space requirements, supports, and installation of mechanical and electrical Work indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit, as closely as practicable; place runs parallel with lines of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- D. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within construction. Coordinate locations of fixtures and outlets with finish elements.
- E. Coordinate completion and clean-up of Work of separate sections in preparation for Substantial Completion.

- F. After Owner occupancy of premises, coordinate access to site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of Owner's activities.

### 1.3 FIELD ENGINEERING

- A. Employ Land Surveyor registered at Project location and acceptable to Architect/Engineer.
- B. Locate and protect survey control and reference points. Promptly notify Architect/Engineer of discrepancies discovered.
- C. Control datum for survey is that established by Owner provided survey.
- D. Verify set-backs and easements; confirm drawing dimensions and elevations.
- E. Provide field engineering services. Establish elevations, lines, and levels, utilizing recognized engineering survey practices.
- F. Submit copy of site drawing and certificate signed by Land Surveyor certifying elevations and locations of the Work are in conformance with Contract Documents.
- G. Maintain complete and accurate log of control and survey work as Work progresses.
- H. Protect survey control points prior to starting site work; preserve permanent reference points during construction.
- I. Promptly report to Architect/Engineer loss or destruction of reference point or relocation required because of changes in grades or other reasons.
- J. Replace dislocated survey control points based on original survey control. Make no changes without prior written notice to Architect/Engineer.

### 1.4 PRECONSTRUCTION MEETING

- A. Architect/Engineer will schedule meeting after Notice of Award.
- B. Attendance Required: Owner, Architect/Engineer, and Contractor.
- C. Agenda:
  - 1. Submission of executed bonds and insurance certificates.
  - 2. Distribution of Contract Documents.
  - 3. Submission of list of Subcontractors, list of products, schedule of values, and progress schedule.
  - 4. Designation of personnel representing parties in Contract, and Architect/Engineer.

5. Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal request, Change Orders, and Contract closeout procedures.
  6. Scheduling.
- D. Record minutes and distribute copies within 2 days after meeting to participants, with 2 copies to Architect/Engineer, and those affected by decisions made.

**1.5 SITE MOBILIZATION MEETING**

- A. Architect/Engineer will schedule meeting at Project site prior to Contractor occupancy.
- B. Attendance Required: Owner, Architect/Engineer, Contractor, Contractor's Superintendent, and major Subcontractors.
- C. Agenda:
1. Use of premises by Owner and Contractor.
  2. Owner's requirements.
  3. Construction facilities and controls provided by Owner.
  4. Temporary utilities provided by Owner.
  5. Survey and layout.
  6. Security and housekeeping procedures.
  7. Schedules.
  8. Application for payment procedures.
  9. Procedures for testing.
  10. Procedures for maintaining record documents.
  11. Requirements for start-up of equipment.
  12. Inspection and acceptance of equipment put into service during construction period.
- D. Record minutes and distribute copies within 2 days after meeting to participants, with 2 copies to Architect/Engineer, and those affected by decisions made.

**1.6 PROGRESS MEETINGS**

- A. Schedule and administer meetings throughout progress of the Work at maximum monthly intervals.
- B. Make arrangements for meetings, prepare agenda with copies for participants, preside at meetings.
- C. Attendance Required: Job superintendent, major subcontractors and suppliers, Owner, Architect/Engineer, as appropriate to agenda topics for each meeting.
- D. Agenda:
1. Review minutes of previous meetings.
  2. Review of Work progress.

3. Field observations, problems, and decisions.
  4. Identification of problems impeding planned progress.
  5. Review of submittals schedule and status of submittals.
  6. Review of off-site fabrication and delivery schedules.
  7. Maintenance of progress schedule.
  8. Corrective measures to regain projected schedules.
  9. Planned progress during succeeding work period.
  10. Coordination of projected progress.
  11. Maintenance of quality and work standards.
  12. Effect of proposed changes on progress schedule and coordination.
  13. Other business relating to Work.
- E. Record minutes and distribute copies within 2 days after meeting to participants, with 2 copies to Architect/Engineer, and those affected by decisions made.

#### 1.7 PRE-INSTALLATION MEETINGS

- A. When required in individual specification sections, convene pre-installation meetings at Project site prior to commencing work of specific section.
- B. Require attendance of parties directly affecting, or affected by, Work of specific section.
- C. Notify Architect/Engineer 4 days in advance of meeting date.
- D. Prepare agenda and preside at meeting:
  1. Review conditions of installation, preparation, and installation procedures.
  2. Review coordination with related work.
- E. Record minutes and distribute copies within 2 days after meeting to participants, with 2 copies to Architect/Engineer, and those affected by decisions made.

#### PART 2 PRODUCTS - Not Used

#### PART 3 EXECUTION

##### 3.1 CUTTING AND PATCHING

- A. Employ skilled and experienced installer to perform cutting and patching.
- B. Submit written request in advance of cutting or altering elements affecting:
  1. Structural integrity of element.
  2. Integrity of weather-exposed or moisture-resistant elements.
  3. Efficiency, maintenance, or safety of element.
  4. Visual qualities of sight exposed elements.
  5. Work of Owner or separate contractor.

- C. Execute cutting, fitting, and patching including excavation and fill, to complete Work, and to:
  - 1. Fit the several parts together, to integrate with other Work.
  - 2. Uncover Work to install or correct ill-timed Work.
  - 3. Remove and replace defective and non-conforming Work.
  - 4. Remove samples of installed Work for testing.
  - 5. Provide openings in elements of Work for penetrations of mechanical and electrical Work.
- D. Execute work by methods to avoid damage to other Work, and to provide proper surfaces to receive patching and finishing.
- E. Cut masonry and concrete materials using masonry saw or core drill.
- F. Restore Work with new products in accordance with requirements of Contract Documents.
- G. Fit Work tight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces.
- H. Maintain integrity of wall, ceiling, or floor construction; completely seal voids.
- I. Refinish surfaces to match adjacent finishes. For continuous surfaces, refinish to nearest intersection; for assembly, refinish entire unit.
- J. Identify hazardous substances or conditions exposed during the Work to Architect/Engineer for decision or remedy.

END OF SECTION