

No. _____

CITY OF CEDAR RAPIDS

PROJECT MANUAL
for
2018
BENDER POOL HVAC
CONTRACT NO. PUR0618-198
3602203-01

PREPARED BY
INNOVATIVE ENGINEERS INC.

FILED IN THE OFFICE OF THE CITY CLERK ON
JULY 23, 2018

These Bid Documents are recommended for filing with the City Clerk.

(The Cedar Rapids Metropolitan Area Standard Specifications and Standard Details for Public Improvements, current version, shall apply to work on this project.)

00100
NOTICE TO BIDDERS
OF ADVERTISEMENT FOR SEALED BIDS FOR PROPOSED PUBLIC
IMPROVEMENT
TO BE KNOWN AS BENDER POOL HVAC DESCRIBED AS HVAC DESIGN FOR
BENDER POOL TO REPLACE EQUIPMENT THAT IS AT THE END OF ITS USEFUL
LIFE AND LOCATED AT BENDER POOL, 940 14th AVENUE SE, CEDAR RAPIDS,
IOWA
Contract No. PUR0618-198; 3602203-01

Description of Work

This project is to furnish and install a new indoor pool dehumidification unit with accompanying remote outdoor air-cooled condensing unit, including all duct, piping, electrical and refrigeration fittings. The Engineer's opinion of probable construction cost for the Work is \$243,500.

Type of Bid

Bids shall be on a lump sum basis.

Contract Time Information

Early State Date: Upon Approval of Contract Documents
Late Start Date: September 10, 2018
Milestones: None
Final Completion: December 12, 2018

Bid Opening Time, Date and Location

Sealed bids will be received at the Office of the City Clerk, 1st Floor, City Hall, 101 First Street SE, Cedar Rapids, Iowa before 11:00 a.m. on August 15, 2018. Bids that are not received before this time will not be opened. The time a bid is submitted shall be determined by the time stamp machine maintained in the City Clerk's office. The bids will be opened and read aloud at 11:00 a.m. on August 15, 2018 at City Hall, 101 First Street SE, in the City of Cedar Rapids, Iowa.

Contract Terms

Cedar Rapids Metropolitan Area Standard Specifications and Details, current version, are applicable to this project and are available for purchase at the City of Cedar Rapids Public Works Department, on the City of Cedar Rapids' website (www.cedar-rapids.org) and the City of Marion Engineering Department.

Items included in the Project are exempt from State of Iowa and Local Option Sales and Use Taxes. Contractor is responsible for obtaining the exemption or for applying for reimbursement for such taxes paid. Sales and Use taxes shall not be included in the Bid.

Pre-Bid Conference

A pre-Bid conference will be held at 1:00 p.m. on August 1, 2018 at Bender Pool, 940 14th Avenue SE, Cedar Rapids, Iowa. Representatives of OWNER and ENGINEER will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

Examination and Procurement of Documents

Copies of the Bidding Documents may be obtained only through Rapids Reproductions via their website at <http://dfs.rapidsrepro.com> (select "City of Cedar Rapids Plan Room"); by phone at 319-364-2473; or in person at 6015 Huntington Ct NE, Cedar Rapids IA 52402, in accordance with the Instructions to Bidders. No deposit will be required for the documents.

Bid Documents may be examined at the following locations:

City of Cedar Rapids
Purchasing Services
1st Floor, City Hall
101 First Street SE
Cedar Rapids, IA 52401
Ph. 319 286-5023
d.muench@cedar-rapids.org

Innovative Engineers, Inc.
2871 Heinz Rd Suite B
Iowa City, IA 52240
Ph. 319 855-4115
Fax 319 351-0070

Master Builders of Iowa
221 Park Street
Des Moines, IA 50309
Ph. 515 288-8904
info@mbionline.com

North Iowa Builders Exchange
9 North Federal Ave.
Mason City, IA 50401
Ph. 641-423-5334
Go to:
<http://buildingnorthiowa.com/contacts/>

Dodge Plan Room
3315 Central Ave
Hot Springs, AR 71913
Ph. 913 669-6837
linda.st.peter@construction.com

CMD
Document Processing Center
30 Technology Parkway
South, Ste 100
Norcross, GA 30092-2912
Ph. 800 424-3996
customercare@cmdgroup.com

Bid Security and Other Bonds

Bid security, as defined in Section 26.8 of the Iowa Code, in the amount of FIVE percent of the Bid must accompany each Bid. The successful bidder shall be required to provide performance and payment bonds, each in the amount of 100 percent of the Contract Price.

Drug Free Workplace

The City of Cedar Rapids seeks to enhance worker safety by creating workplaces that are free of drugs and substance abuse. All contractors and subcontractors shall be responsible for pre-employment drug screening of prospective employees. All contractors and subcontractors shall have in place a drug and alcohol testing policy that conforms to the requirements of Iowa Code and will be required to submit with their Bid an affidavit attesting to this practice.

Applicable Laws and Regulations

By virtue of statutory authority, preference will be given to Iowa produced products and Iowa domestic labor to the extent lawfully required under State Statutes, providing that award of contract will be made to the bidder submitting the lowest responsible bid.

In all contracts to be awarded for a public improvement, which shall include building or construction Work to be paid for in whole or in part by the use of funds of the municipality, resident bidders shall be allowed a preference against nonresident bidders from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country with which the nonresident bidder is a resident. "Resident bidder" means a person authorized to transact business in Iowa and having a place of business for transacting business within Iowa at which it is and had conducted business for at least six months prior to the first advertisement for the public improvement and in the case of a corporation, at least fifty percent of the common stock is owned by residents of this state. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

OWNER's Right to Reject Bids

The City Council of the City of Cedar Rapids reserves the right to reject any and all bids, to waive informalities and technicalities, and to enter such contracts as it deems in the best interest of the City. The City reserves the right to defer acceptance of any proposal for 45 calendar days after the bids have been received and opened.

By order of the City Council, City of Cedar Rapids.

Dated this 24th day of July, 2018.

Amy Stevenson, City Clerk

Posted to City of Cedar Rapids web site and statewide services 25th day of July, 2018.

00110
NOTICE OF PUBLIC HEARING
FOR BENDER POOL HVAC DESCRIBED AS HVAC DESIGN FOR BENDER POOL
TO REPLACE EQUIPMENT THAT IS AT THE END OF ITS USEFUL LIFE AND
LOCATED AT BENDER POOL, CEDAR RAPIDS
Contract No. PUR0618-198; 3602203-01

At 12:00 pm noon, local time, on the 14th day of August, 2018, at the Council Chambers, 3rd Floor, City Hall, 101 First Street SE, Cedar Rapids, Iowa, a hearing will be conducted by the Cedar Rapids City Council on the proposed plans, specifications, form of contract, opinion of probable cost and the proposed improvements described thereby for the Bender Pool HVAC project. The Cedar Rapids City Council has previously filed these documents with the City Clerk of the City of Cedar Rapids, Iowa. The City Engineer's opinion of probable construction cost for the Work is \$243,500. The proceedings of the City Council referring to the proposed plans, specifications, form of contract, and cost opinion are also made part of this notice. At this hearing, any interested person may file written and/or oral objections to these documents and the proposed improvements.

By order of the City Council, City of Cedar Rapids.

Dated this 24th day of July, 2018.

Amy Stevenson, City Clerk

Published in the Cedar Rapids Gazette on the 28th day of July, 2018.

**00200
INSTRUCTIONS TO BIDDERS**

TABLE OF CONTENTS

ARTICLE 1 - DEFINED TERMS	1
ARTICLE 2 - COPIES OF BIDDING DOCUMENTS	1
ARTICLE 3 - QUALIFICATIONS OF BIDDERS	1
ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, SITE AND OTHER RELATED DATA.....	6
ARTICLE 5 - PRE-BID CONFERENCE	8
ARTICLE 6 - SITE AND OTHER AREAS	8
ARTICLE 7 - INTERPRETATIONS AND ADDENDA	8
ARTICLE 8 - BID SECURITY	9
ARTICLE 9 - CONTRACT TIMES	9
ARTICLE 10 - LIQUIDATED DAMAGES.....	9
ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS	9
ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS	9
ARTICLE 13 - PREPARATION OF BID	10
ARTICLE 14 - BASIS OF BID; EVALUATION OF BIDS.....	11
ARTICLE 15 – SPECIAL BID REQUIREMENTS.....	11
ARTICLE 16 - SUBMITTAL OF BID	12
ARTICLE 17 - MODIFICATION AND WITHDRAWAL OF BID	13
ARTICLE 18 - OPENING OF BIDS	13
ARTICLE 19 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE	13
ARTICLE 20 - AWARD OF CONTRACT	13
ARTICLE 21 - CONTRACT SECURITY AND INSURANCE	14
ARTICLE 22 – SIGNING OF AGREEMENT	16
ARTICLE 23 - SALES AND USE TAXES	16
ARTICLE 24 – RETAINAGE	16
ARTICLE 25 – TARGETED SMALL BUSINESS AND DISADVANTAGED BUSINESS ENTERPRISESError! Bookmark not defined.	

00200
INSTRUCTIONS TO BIDDERS

TABLE OF CONTENTS
(Alphabetical by Subject)

AWARD OF CONTRACT	15
BASIS OF BID; EVALUATION OF BIDS.....	11
BID SECURITY	9
BIDS TO REMAIN SUBJECT TO ACCEPTANCE	15
CONTRACT SECURITY AND INSURANCE	15
CONTRACT TIMES	9
COPIES OF BIDDING DOCUMENTS	1
DEFINED TERMS.....	1
EXAMINATION OF BIDDING DOCUMENTS, SITE AND OTHER RELATED DATA.....	6
INTERPRETATIONS AND ADDENDA	8
LIQUIDATED DAMAGES.....	10
MODIFICATION AND WITHDRAWAL OF BID	14
OPENING OF BIDS	14
PRE-BID CONFERENCE	8
PREPARATION OF BID.....	10
QUALIFICATIONS OF BIDDERS	1
RETAINAGE	18
SALES AND USE TAXES	18
SIGNING OF AGREEMENT	18
SITE AND OTHER AREAS	8
SPECIAL BID REQUIREMENTS	12
SUBCONTRACTORS, SUPPLIERS, AND OTHERS	10
SUBMITTAL OF BID	13
SUBSTITUTE AND "OR-EQUAL" ITEMS	10
TARGETED SMALL BUSINESS AND DISADVANTAGED BUSINESS ENTERPRISES.....	18

00200
INSTRUCTIONS TO BIDDERS

ARTICLE 1 - DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:
- A. Bidder--The individual or entity who submits a Bid directly to OWNER, as distinct from Sub-bidder, who submits a Bid to a Bidder.
 - B. Issuing Office--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
 - C. Successful Bidder--The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.
 - D. OWNER -- City of Cedar Rapids
 - E. ENGINEER – Mohammed Abu-Hasan, P.E.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Notice of Hearing and Letting may be obtained from the Issuing Office.
- 2.02 Electronic copies of the bidding documents may have been divided into multiple electronic files to allow convenient viewing and downloading. Complete sets of Bidding Documents must be used in preparing Bids, whether obtained electronically or on paper; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

- 3.01 The Owner may make such investigations as deemed necessary to determine the ability and qualification of the Bidder. If requested by the Owner, Bidder shall submit such evidence of the Bidder's necessary financial and technical capability to perform the work covered by the Bid as well as the tenacity to do so, as demonstrated by the Bidder's past performance record. Failure to comply with this requirement may result in the rejection of consideration of such bid.
- 3.02 In determining the Bidder's qualifications, the following factors, among others, will be considered: work previously completed by the Bidder; qualifications of the proposed subcontractors for their work; Bidder references; and whether the Bidder (a) maintains a permanent place of business; (b) has adequate labor and equipment to do the work properly and expeditiously; (c) has the financial resources to meet all obligations incident to the work; (d) has appropriate technical experience; and (e) has adequate, competent, experienced staff and supervisors who will be committed to the work until completion.

- 3.03 Each Bidder may be required to show that he has handled former work and that no just claims have been prosecuted or are pending against such work. No bid will be accepted from a Bidder who is engaged on any work which would impair his ability to perform or finance this work or other work in progress.
- 3.04 If requested by Owner, the lowest, responsive Bidder for each contract shall, within two (2) working days following the bid opening, submit to the Owner a completed Statement of Bidder Qualifications. The Bidder must complete and fully disclose all information requested and questions must be answered. The information given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets. The bidder may submit any additional information. Failure to submit the background information may preclude the bid from further consideration by the Owner. The Owner reserves the right to reject any bid if the Owner determines, in its sole and absolute discretion, that the Bidder is not properly qualified to carry out the obligations of the Contract and/or to complete the work contemplated by the contract. Conditional bids will not be accepted.
- 3.05 The information requested in the Statement of Bidder Qualifications is, but not necessarily limited to:
- A. When Company organized
 - B. If Corporation, Where incorporated
 - C. How many years have you been engaged in the construction contracting business under your present company name?
 - D. List all of the surety / bonding companies you have utilized in the last five (5) years.
 - E. Have you ever been declared in default under a performance and payment bond in the last five (5) years? If so, describe the circumstances and which surety / bonding company was involved. Include the name and contact person of the owner(s).
 - F. Have you ever been found not to be a responsible bidder under Iowa Code Chapter 26? If yes, please describe the circumstances.
 - G. List all projects of similar size and scale you currently have under contract, including the contract value, the scheduled completion date, contact person and phone number. Also list any experience in construction similar to this project of any value.
 - H. Are you currently being investigated for or previously been found to have violated in the last five years any of the following state or federal laws: Iowa Minimum Wage Act, Iowa Non-English Speaking Employees Act, Iowa Child Labor Act, Iowa Labor Commissioner's Right to Inspect Premises, Iowa Compensation Insurance Act, Employment Security Act, Iowa Competition Act, Iowa Income, Corporate and Sales Tax Code, a 'willful' violation of the Iowa Federal Occupational Safety and Health Act, Iowa Employee Registration Requirements, Hazardous Chemical Risks Act, Iowa Wage Payment Collection Act, Federal Income and Corporate Tax Code, The National Labor Relations Act, The Drug-Free Workplace Act, The Employee Retirement Insurance Security Act, The Fair Labor Standards Act:
 - I. Do you currently have any legal action pending which could impact your ability to perform this Project?
 - J. Provide information on your corporate safety program and safety-related training.
- 3.06 Owner reserves the right to reject any bid if the Owner determines, in its sole and absolute discretion, that the Bidder is not properly qualified to carry out the obligations of the Contract and/or to complete the work contemplated by the contract. Conditional bids will not be accepted.
- 3.07 All electrical, mechanical, and plumbing Subcontractors will be required to submit to all bidding General Contractors prior to bidding a letter from their bonding company certifying the Subcontractor's ability to be bonded for this project if required.
- 3.08 Reference Article 12 of these Instructions to Bidders for discussion of Subcontractor qualifications.

CITY OF CEDAR RAPIDS, IOWA

STATEMENT OF CONTRACTOR QUALIFICATIONS

Bidder / Contractor: _____

Project: _____

Upon request, within two (2) working days following the bid opening the apparent lowest responsive Bidder shall complete the STATEMENT of CONTRACTOR QUALIFICATIONS. Questions may be answered on separate attached sheets. The Bidder may submit any additional supporting information.

A. When was the contracting business organized and how many years has the business been engaged in construction contracting under the present firm's name? _____

B. If a corporation, where was the business incorporated? _____

C. List all of the surety / bonding companies you have utilized in the last five (5) years.

D. Have you ever been declared in default under a performance or payment bond in the last five (5) years? _____ If so, describe the circumstances and the surety / bonding company that was involved. Include the name and contact person of the owner(s).

E. Have you ever not been found to be a responsible contractor under Iowa Code Chapter 26?

Yes _____ No _____

If yes, please describe the circumstances.

F. List all projects of similar size and scale you are currently have under contract, including the contract value, the scheduled completion date, contact person and phone number. Also list any experience in construction similar to this project of any value.

G. Are you currently being investigated for or previously been found to have violated in the last five years any of the following state or federal laws: Iowa Minimum Wage Act, Iowa Non-English Speaking Employees Act, Iowa Child Labor Act, Iowa Labor Commissioner's Right to Inspect Premises, Iowa Compensation Insurance Act, Employment Security Act, Iowa Competition Act, Iowa Income, Corporate and Sales Tax Code, a 'willful' violation of the Iowa Federal Occupational Safety and Health Act, Iowa Employee Registration Requirements, Iowa Hazardous Chemical Risks Act, Iowa Wage Payment Collection Act, Federal Income and Corporate Tax Code, The National Labor Relations Act, The Drug-Free Workplace Act, The Employee Retirement Insurance Security Act, The Fair Labor Standards Act:

Yes _____ No _____

If yes, please explain:

H. Do you currently have any legal action pending which could impact your ability to perform this Project?

I. Safety Program and Training

Do you have a written safety program in place? Yes _____ No _____. If so, please submit a copy of your program with this completed Statement of Qualifications. Additionally, please provide the following information:

1) Experience Modification Rate (EMR): Current year _____ Previous year _____

2) Recordable Case Rate : Current year _____ Previous year _____

3) Percentage of employees trained: OSHA 10-Hour _____% OSHA 30-Hour _____%

4) Have all on-site construction personnel planning to work on the project successfully completed the OSHA 10-Hour safety training? Yes _____ No _____

No actions will be made on the basis of answers to the above questions without any inquiry and an opportunity to be heard regarding the circumstances of the matter reported.

The undersigned hereby authorizes and request any person, firm or corporation to furnish credit history and financial condition or other information required by the City in verification of the recitals comprising this statement. The undersigned further authorized the City to conduct any and all necessary investigations of the undersigned's Federal and State Occupational Safety and Health Act (OSHA) compliance, including access to State and Federal records.

I hereby certify that the above information is true and correct to the best of my knowledge and that the City may rely on the information provided.

THIS STATEMENT MUST BE NOTARIZED.

NAME OF CONTRACTOR: _____

Signature: _____ Title: _____

Print Name: _____ Date: _____

STATE OF IOWA, LINN COUNTY,

Subscribed and sworn to before me by the said _____ on this ____ day of 20____.

Notary Public in and for the State of Iowa

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

4.01 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Bidding Documents.
2. Those Drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Bidding Documents.

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

4.02 Underground Facilities

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

4.03 Hazardous Environmental Condition

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

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

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

- 4.05 On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.
- 4.06 Reference is made to Article 7 of the General Conditions for the identification of the general nature of other work that is to be performed at the Site by OWNER or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, OWNER will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
- 4.07 It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;
 - B. visit and examine the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
 - C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
 - D. carefully study any and all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and carefully study all reports and Drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;
 - E. obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 - F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price Bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 - G. become aware of the general nature of the Work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and Drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. promptly give ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to Bidder; and

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

ARTICLE 5 - PRE-BID CONFERENCE

- 5.01 A pre-Bid conference will be held at 1:00 p.m. on August 1, 2018 at Bender Pool, 940 14th Avenue SE, Cedar Rapids, Iowa. Representatives of OWNER and ENGINEER will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective Bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 - SITE AND OTHER AREAS

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

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Purchasing Services Manager in writing, either through mail, fax or email. Contact individual shall be as follows:

Diane Muench, CPPB
Purchasing Services Manager
101 First Street SE
Cedar Rapids, IA 52401
Email: d.muench@cedar-rapids.org

Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda faxed, mailed or delivered to all parties recorded by ENGINEER as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

ARTICLE 8 - BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to OWNER in the amount as set forth in the Notice of Hearing and Letting. The Bid security must be in the form of a certified or cashier's check, or credit union share draft. The check or share draft shall be drawn on a financial institution in Iowa or chartered under the laws of the United States. In the alternate, a Bid Bond on the form attached and issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions.
- 8.02 The Bid security shall be submitted in the outer envelope as described in Article 16.03 C of these Instructions to Bidders.
- 8.03 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required Contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required Contract security within 15 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 45 days after the Bid opening, whichever is sooner, whereupon Bid security furnished by such Bidders will be returned.
- 8.04 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to (a) have Milestone items completed, and (b) also be completed and ready for final payment are as set forth in the Notice of Hearing and Letting.

ARTICLE 10 - LIQUIDATED DAMAGES

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

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the General Conditions and may be supplemented in the General Requirements.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to OWNER a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification, including evidence satisfactory to the Owner of each subcontractor's bonding capacity, for each such

Subcontractor, Supplier, individual, or entity if requested by OWNER. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.

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

ARTICLE 13 - PREPARATION OF BID

- 13.01 The Bid form is included with the Bidding Documents.
- 13.02 All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each [section, Bid item, alternative, adjustment unit price item, and unit price item] listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature.
- 13.08 All names shall be typed or printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form.
- 13.10 The address and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor License number for the state of the Project, if any, shall also be shown on the Bid form.

ARTICLE 14 - BASIS OF BID; EVALUATION OF BIDS

14.01 Lump Sum

- A. Bidders shall submit a Bid on a Lump Sum basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.01 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.02 The Bid price shall include cash allowances, if any, as indicated in the Contract Documents as provided in paragraph 11.05 of the General Conditions and as modified by the Supplementary Conditions.

14.03 Not Used.

14.04 Contract award will be made based on the Total Base Bid plus any Alternative Bids, which are added to or deducted from the Total Base Bid and exclusive of any incentive/disincentive clause. OWNER reserves the right to accept or reject any alternatives to the Total Base Bid.

14.05 By virtue of statutory authority, preference will be given to Iowa produced products and Iowa domestic labor to the extent lawfully required under State Statutes, providing that award of Contract will be made to the CONTRACTOR submitting the lowest responsible bid.

In all Contracts to be awarded for a public improvement, which shall include building or construction Work to be paid for in whole or in part by the use of funds of the municipality, resident bidders shall be allowed a preference against nonresident bidders from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the non-resident bidder is a resident.

"Resident bidder" means a person authorized to transact business in this state and having a place of business for transacting business within the state at which it is and has conducted business for at least six months prior to the first advertisement for the public improvement and in the case of a corporation, at least fifty percent of the common stock is owned by residents of this state. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, the provisions of this Specification (bidder preference) shall be suspended, but only to the extent necessary to prevent the denial of funds or to eliminate the inconsistency with federal requirements.

ARTICLE 15 – SPECIAL BID REQUIREMENTS

15.01

- A. In order to comply with the City of Cedar Rapids Affirmative Action Program each Bidder on this Project shall complete and sign the Bid Form Attachment I, "Equal Employment Opportunity/Non-Discrimination Policy Statement" and submit it with the bid proposal. Failure

to comply with this requirement may be deemed cause for the successful bidder to forfeit the Bid security.

- B. The City of Cedar Rapids seeks to enhance worker safety by creating workplaces that are free of drugs and substance abuse. All contractor and subcontractors working on City projects will be responsible for the pre-employment drug screening of all of their employees to be assigned to City projects. All Contractor and subcontractors shall have in place a drug and alcohol testing policy that conforms to the requirements of Iowa Code Section 730.5 "Private sector drug free workplaces" and "A Guide to Workplace Testing in Iowa", latest update. Random testing is to be conducted in conformance with Iowa Code Section 730.5 – 8.a.
- C. Bidders shall provide with their Bids as an attachment, an affidavit to the City that their testing program, and those of their subcontractors, meets the requirements of this Article. This affidavit will be included in the Contract with the successful Bidder by reference.

15.02 See Supplementary Conditions, 0800, for any information related to incentive/disincentive.

ARTICLE 16 - SUBMITTAL OF BID

- 16.01 Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy of each of the Bid Form, Bid Form Attachments, and, if required, the Bid Bond.
- 16.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Notice of Hearing and Letting. Bids received after the specified time of closing will be returned unopened. No responsibility shall be attached to any employee of the Owner for the premature opening of any Bid not prominently identified as directed.
- 16.03 Bid Documents shall be submitted in two envelopes, an INNER envelope and an OUTER envelope, one inside the other.
- 16.04 The INNER envelope shall be an envelope large enough to contain the Form of Proposal, without folding, and shall be sealed and clearly labeled as follows:

"BID ENCLOSED"
Bender Pool HVAC, PUR0618-198-3602203-01
Name and address of Bidder
Time and Date of Bid Opening

The INNER envelope shall contain:

- 1. The Bid (Exhibit 00300)
 - 2. Bidder Status Form
 - 3. Attachment I, Equal Employment Opportunity/Non-Discrimination Policy Statement
 - 4. Attachment II Non-Collusion Affidavit
 - 5. Attachment XI Licensed Plumber or Pipe Layer Certification
 - 6. Attachment XIII Affidavit of Drug Free Work Place Compliance
 - 7. Attachment XV Bidder Status Form
- 16.05 The OUTER envelope shall be an envelope large enough to contain the INNER envelope and additional documents listed below, without folding and shall be sealed and clearly labeled as follows:

"BID DOCUMENTS"
Bender Pool HVAC, PUR0618-198; 3602203-01
Name and address of Bidder
Time and Date of Bid Opening

The OUTER envelope shall contain:

1. Bid Bond (Document 00430)
2. The INNER envelope

If the OUTER envelope does NOT include the required documents, then the Bid will be considered non-responsive and the INNER "BID ENCLOSED" envelope will NOT be opened.

16.06 If the Bid is sent by mail or other delivery system, the INNER/OUTER envelope combination shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID DOCUMENTS".

16.07 It is the Bidders responsibility to ensure that its Bid is filed in accordance with these instructions.

ARTICLE 17 - MODIFICATION AND WITHDRAWAL OF BID

17.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Evidence shall be provided to demonstrate the individual attempting to withdraw the Bid is an authorized agent of the Bidder.

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

ARTICLE 18 - OPENING OF BIDS

18.01 Bids will be opened at the time and place indicated in the Notice of Hearing and Letting and, unless obviously non-responsive, read aloud publicly. A summary of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 19 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 20 - AWARD OF CONTRACT

20.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder.

- 20.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 20.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 20.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 20.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.
- 20.06 If the Contract is to be awarded, OWNER will award the Contract to the Bidder whose Bid is in the best interests of the Project, that is the lowest responsible Bid.

ARTICLE 21 - CONTRACT SECURITY AND INSURANCE

- 21.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to performance and payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.
- 21.02 The CONTRACTOR shall furnish the OWNER with Certificates of Insurance and, if requested by OWNER, a copy of the policies. Before commencing any performance under this Contract, the CONTRACTOR shall deliver all the Certificates of Insurance to the OWNER certifying that the policies stipulated above are in full force and effect.
- 21.03 Insurance documents shall be prepared according to the contract documents. Also refer to attached sample endorsement form on the following page for further explanation. Special attention is drawn to the following:
- A. "The City of Cedar Rapids, Iowa, its officers and employees shall be named as additional insureds" on the contractor's, subcontractor's and independent contractor's liability insurance policies and certificates of insurance.
 - B. The liability limits shall be according to the Contract Documents. General liability coverage must be on a claims occurred basis.
 - C. The project name and project number being covered must appear on the face of the certificate.
 - D. Endorsement with respect to including the certificate holder as an additional insured must be attached to the certificate to indicate that the policy is endorsed. Example endorsement language follows:

**CITY OF CEDAR RAPIDS, IOWA
ADDITIONAL INSURED ENDORSEMENT**

The City of Cedar Rapids, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out the Insured's work and/or services performed for the City of Cedar Rapids, Iowa. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether available coverage be primary, contributing or excess.

**CITY OF CEDAR RAPIDS, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT
(for use when including the City as an Additional Insured)**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Cedar Rapids, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Cedar Rapids, Iowa under Code of Iowa Section 670.4 as it now exists and as It may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as may be amended from time to time.
3. Assertion of Government Immunity. The City of Cedar Rapids, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Cedar Rapids, Iowa.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Cedar Rapids, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Cedar Rapids, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Cedar Rapids, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF CEDAR RAPIDS, IOWA
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to Utilities Department, attention: Engineering Manager, 1111 Shaver Road NE, Cedar Rapids, IA 52402. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

Note: Endorsements above per 'Urban Standard Specifications for Public Improvements'. Addendum No. 2 effective July 24, 2001.

ARTICLE 22 – SIGNING OF AGREEMENT

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

ARTICLE 23 - SALES AND USE TAXES

23.01 Items included in the Project are exempt from State of Iowa and Local Option Sales and Use Taxes. Contractor is responsible for obtaining exemption certificate(s) from The OWNER, on eligible items, as provided by law, or for applying for reimbursement for such taxes paid. Sales and Use taxes shall not be included in the Bid. For more information on this exemption and items that are non-exempt, please check the State of Iowa's website: www.state.ia.us/tax/business/Contr-ExEnt-Index.html

ARTICLE 24 – RETAINAGE

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

END OF SECTION 00200

Hazardous Environmental Condition, if any, which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) Bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
 - G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.
 - H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and Drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder.
 - J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - K. Bidder has received and is familiar with:
 - (i) Cedar Rapids Metropolitan Area Standard Specifications for Public Improvements (current version).
 - (ii) Cedar Rapids Metropolitan Area Standard Details for Public Improvements (current version).
- 4.01 Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any Agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
- 5.01 Bidder agrees that the Work will be completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of Calendar or Working Days indicated in the Agreement.
- 5.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.
- 6.01 Bid Documents shall be enclosed in two envelopes, an INNER envelope and an OUTER envelope, as outlined in Section 00200. This Bid form shall be included in the INNER envelope.

6.02 The following documents are submitted in an OUTER envelope and made a condition of this Bid:

- A. Bid Bond (Document 00430)
- B. INNER envelope

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

8.01 Bidder will complete the Work in accordance with the Contract Documents for the prices as shown on the attached schedule of Bid Prices.

Unit Prices have been computed in accordance with paragraph 11.01.A of the General Conditions.

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

8.02 Abbreviations

The following abbreviations may be used in this Bid:

ACC	- Asphaltic Cement Concrete	LBS	- Pounds
CIP	- Complete in Place	LF	- Linear Foot
COMP	- Complete	LS	- Lump Sum
CY	- Cubic Yard	LT	- Left
DI	- Ductile Iron	MAT	- Material
DIA	- Diameter	MH	- Manhole
EA	- Each	PCC	- Portland Cement Concrete
ELEC	- Electrical	RCB	- Reinforced Concrete Box
EST	- Estimate(d)	RCP	- Reinforced Concrete Pipe
EXCL	- Excluding	RT	- Right
FIXT	- Fixture	SF	- Square Foot
FT	- Feet	STA	- Station
GAL	- Gallon	SY	- Square Yard
HERCP	- Horizontal Elliptical RCP	TN	- Ton
HRS	- Hours	VLF	- Vertical Linear Foot
IN	- Inch	W/	- With
INCL	- Including	W/O	- Without

SUBMITTED on _____, _____.

Iowa Department of Labor Registration No./CONTRACTOR License No. _____.

If Bidder is:

An Individual

Name (typed or printed): _____

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

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Partnership

Partnership Name: _____ (SEAL)

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

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

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

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

Name (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____ FAX No.: _____

Date of Incorporation: _____

A Joint Venture

Joint Venturer Name: _____ (SEAL)

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

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.: _____ FAX No.: _____

Joint Venturer Name: _____ (SEAL)

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

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.: _____ FAX No.: _____

Phone and FAX Number, and Address for receipt of official communications:

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

**FIRM FIXED PRICE BID
BENDER POOL HVAC PROJECT
CONTRACT NO. PUR0618-198
CITY OF CEDAR RAPIDS**

The following firm fixed prices shall be for furnishing and installing the various items of material and Work as specified and shown on the Drawings. Bidder agrees to perform all Work as shown on the Drawings and described in the Specifications for the following listed prices.

All numbers shall be in ink.

Legal Name of Bidder: _____

Address of Bidder: _____

BID ITEM NO.	DESCRIPTION	FIRM FIXED PRICE
1.	Furnish and install new indoor pool dehumidification unit with accompanying remote outdoor air cooled condensing unit, including all duct, piping, electrical, and refrigeration fittings to provide a fully functional system as shown on construction documents.	\$
2.	Install new fabric duct system as shown on construction documents and connect to new dehumidification system. Provide all fittings, mountings, and hardware to provide fully functional system.	\$
TOTAL PRICE		
		\$
	(Words)	(Numbers)

**00410
ATTACHMENTS**

AFFIDAVIT OF DRUG FREE WORKPLACE

We, the undersigned Bidder understand that the City of Cedar Rapids seeks to enhance worker safety by creating workplaces that are free of drugs and substance abuse, and that all contractor and subcontractors working on City projects will be responsible for the pre-employment drug screening of all of their employees to be assigned to City projects.

We, the undersigned Bidder state that our firm has in place a drug and alcohol testing policy that conforms to the requirements of Iowa Code Section 730.5 "Private sector drug free workplaces" and "A Guide to Workplace Testing in Iowa", latest update. Random testing is and shall be conducted in conformance with Iowa Code Section 730.5 – 8.a.

We further state that our company drug testing program, and those of our subcontractors, if we are awarded the contract for the work, do or shall meet the requirements of this paragraph. This affidavit will be included in the Contract by reference.

I hereby certify that the above information is true and correct and that the City may rely on the information provided.

THIS STATEMENT MUST BE NOTARIZED.

NAME OF BIDDER: _____

Signature: _____ Title: _____

Print Name: _____ Date: _____

Subscribed and sworn to before me on this _____ of _____, 20__.

Notary Public in and for the State of Iowa

EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION POLICY STATEMENT

1. This is to affirm that _____ (hereinafter referred to as the Contractor) has a policy of Non-Discrimination and providing Equal Opportunity to all employees and applicants for employment in accordance with all applicable Equal Employment Opportunity/Affirmative Action laws, directives and regulations of Federal, State and Local governing bodies or agencies thereof, and specifically Iowa Statutes.
2. The **Contractor and Sub-Contractor**, will not discriminate against any employee or applicant for employment because of race, sex, color, creed, ancestry, national origin, marital status, families with children, religion, age, disability, sexual orientation, gender identity, genetic information, status with regard to public assistance, status as a veteran or any classification protected by federal, state, or local law, (Protected Classes) except where age and sex are essential bona fide occupational requirements, or where disability is a bona fide occupational.
3. The Contractor will take Affirmative Action to ensure that all employment practices are free of such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, selection, layoff disciplinary action, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor further assures that managers and employees comply with both the spirit and intent of federal, state, and local legislation, government regulation, and executive orders in providing affirmative action as well as equal opportunity.
4. The Contractor will use its best efforts to afford minority and female business enterprises with the maximum practicable opportunity to participate in the performance of subcontracts for construction projects that this employer engages in.
5. The Contractor will commit the necessary time and resources, both financial and human to achieve the goals of Equal Employment Opportunity and Affirmative Action.
6. The Contractor fully supports incorporation of nondiscrimination and Affirmative action rules and regulations into contracts.
7. The Contractor, or his collective bargaining representative, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor s' commitments under this selection.
8. The Contractor will evaluate the performances of its management and supervisory personnel on the basis of their involvement in achieving the Affirmative Action objectives as well as other established criteria. Any employee of this organization or subcontractor to this employer, or to who does not comply with the Equal Employment Opportunity policies and procedures as set forth in this Statement and Plan will be subject to disciplinary action. Any subcontractor not complying with applicable Equal Employment Opportunity/ Affirmative Action laws, directives and regulations of the Federal, State, and Local governing bodies or agencies thereof, specifically Iowa statutes, will be subject to appropriate legal sanctions.
9. The Contractor has appointed the following individual to manage the Equal Employment Opportunity activities and reporting the effectiveness of this Affirmative Action program, as required by Federal, State, and Local agencies. An official for the Contractor will receive and review reports of the progress of the program. If any employee or applicant for employment believes he/she has been discriminated against, please contact the following:

Company Name	
Contact Individual	
Address	
City, State, Zip Code	

Phone Number	
--------------	--

10. The Contractor, will include, or incorporate by reference, the provisions of this Equal Employment Opportunity/Nondiscrimination policy in every Contract, subcontract or purchase order unless exempt by the rules, regulations or orders of the Owner's Affirmative Action Program and will provide in every subcontract, or purchase order that said provision will be binding upon each Subcontractor and Supplier of Goods.

Signature of appropriate official

Date

Title

Representing

BYRD ANTI-LOBBYING AMENDMENT COMPLIANCE AND CERTIFICATION

For all orders above the limit prescribed in FAR Section 52.203-12(g), or its successor regulation (currently \$150,000), the Offeror must complete and sign the following:

The following certification and disclosure regarding payments to influence certain federal transactions are made per the provisions contained in FAR 52.203-11 and 52.203-12 and 31 U.S.C. 1352, the "Byrd Anti-Lobbying Amendment."

- a. FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions" is hereby incorporated by reference into this certification
- b. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:
 - 1. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering in to of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - 2. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - 3. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 shall certify and disclose accordingly.
- c. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure for to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

SIGNATURE: _____

COMPANY NAME: _____

DATE: _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER
RESPONSIBILITY MATTERS**

The Offeror certifies, to the best of its knowledge and belief, that:

1. The Offeror and/or any of its Principals:
 - a. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - b. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and
 - c. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph b) above.
 - d. Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
2. The Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

“Principals,” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

The Offeror shall provide immediate written notice to the City of Cedar Rapids if, at any time prior to subcontract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

A certification that any of the items in paragraphs 1, 2, or 3 exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested may render the Offeror nonresponsible.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 1 or 2 of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The certification in paragraphs 1 and 2 of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the City of Cedar Rapids, the City may terminate the contract resulting from this solicitation for default.

SIGNATURE: _____

COMPANY NAME: _____

DATE: _____

NON-COLLUSION AFFIDAVIT

CITY OF CEDAR RAPIDS, IOWA

Each Contractor submitting a Bid on this Project shall complete the Non-Collusion Affidavit and submit it with the bid.

STATE OF IOWA)

COUNTY OF LINN)

I, _____, representing _____, upon oath depose and state that neither (I/we) nor anyone in (my/our) employment has employed any person to solicit or procure this Contract nor will (I/we) nor they make any payment or agreement for payment of any compensation in connection with the procurement of this Contract.

I further depose and state that there is no Contract, Agreement or arrangement, either oral or written, express or implied, contemplating any division of compensation for services rendered under this Contract, or participation therein, directly or indirectly, by any other person, firm or corporation, except if shown by the Contract another Contractor jointly serving with (me/us) in the same capacity.

I further depose and state that neither (I/we) nor anyone in (my/our) employment has either directly or indirectly entered into any Agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this Contract.

Signature

Printed Name

Subscribed and sworn to before me on this _____ of _____, 20__.

Notary Public in and for the State of Iowa

BIDDER STATUS FORM

To be completed by all bidders

Part A

Please answer "Yes" or "No" for each of the following:

- Yes No My company is authorized to transact business in Iowa.
(To help you determine if your company is authorized, please review the worksheet on the next page).
- Yes No My company has an office to transact business in Iowa.
- Yes No My company's office in Iowa is suitable for more than receiving mail, telephone calls, and e-mail.
- Yes No My company has been conducting business in Iowa for at least 3 years prior to the first request for bids on this project.
- Yes No My company is not a subsidiary of another business entity or my company is a subsidiary of another business entity that would qualify as a resident bidder in Iowa.

If you answered "Yes" for each question above, your company qualifies as a resident bidder. Please complete Parts B and D of this form

If you answered "No" to one or more questions above, your company is a nonresident bidder. Please complete Parts C and D of this form.

To be completed by resident bidders

Part B

My company has maintained offices in Iowa during the past 3 years at the following addresses:

- Dates: ___ / ___ / ___ to ___ / ___ / ___ Address: _____
City, State, Zip: _____
- Dates: ___ / ___ / ___ to ___ / ___ / ___ Address: _____
City, State, Zip: _____
- Dates: ___ / ___ / ___ to ___ / ___ / ___ Address: _____
City, State, Zip: _____
- You may attach additional sheet(s) if needed.*

To be completed by non-resident bidders

Part C

1. Name of home state or foreign country reported to the Iowa Secretary of State:

2. Does your company's home state or foreign country offer preferences to bidders who are residents? Yes No
3. If you answered "Yes" to question 2, identify each preference offered by your company's home state or foreign country and the appropriate legal citation.

You may attach additional sheet(s) if needed.

To be completed by all bidders

Part D

I certify that the statements made on this document are true and complete to the best of my knowledge and I know that my failure to provide accurate and truthful information may be a reason to reject my bid.

Firm Name: _____

Signature: _____ Date: _____

You must submit the completed form to the governmental body requesting bids per 875 Iowa Administrative Code Chapter 156. This form has been approved by the Iowa Labor Commissioner. 309-6001 02-14

Worksheet: Authorization to Transact Business

This worksheet may be used to help complete Part A of the Resident Bidder Status form. If at least one of the following describes your business, you are authorized to transact business in Iowa.

- Yes No My business is currently registered as a contractor with the Iowa Division of Labor.
- Yes No My business is a sole proprietorship and I am an Iowa resident for Iowa income tax purposes.
- Yes No My business is a general partnership or joint venture. More than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes.
- Yes No My business is an active corporation with the Iowa Secretary of State and has paid all fees required by the Secretary of State, has filed its most recent biennial report, and has not filed articles of dissolution.
- Yes No My business is a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation has received a certificate of authority from the Iowa secretary of state, has filed its most recent biennial report with the secretary of state, and has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked.
- Yes No My business is a limited liability partnership which has filed a statement of qualification in this state and the statement has not been canceled.
- Yes No My business is a limited liability partnership which has filed a statement of qualification in a state other than Iowa, has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed.
- Yes No My business is a limited partnership or limited liability limited partnership which has filed a certificate of limited partnership in this state, and has not filed a statement of termination.
- Yes No My business is a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership.
- Yes No My business is a limited liability company whose certificate of organization is filed in Iowa and has not filed a statement of termination.
- Yes No My business is a limited liability company whose certificate of organization is filed in a state other than Iowa, has received a certificate of authority to transact business in Iowa and the certificate has not been revoked or canceled.

**00500
AGREEMENT
BENDER POOL HVAC
CONTRACT NO. PUR0618-198; 3602203-01
THE CITY OF CEDAR RAPIDS**

THIS AGREEMENT is by and between the City of Cedar Rapids, Iowa (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - THE PROJECT

1.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally referred to as follows:

BENDER POOL HVAC

ARTICLE 2 - WORK

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

This project is to furnish and install a new indoor pool dehumidification unit with accompanying remote outdoor air-cooled condensing unit, including all duct, piping, electrical and refrigeration fittings.

ARTICLE 3 - ENGINEER

3.01 The Project will be administered jointly by the CITY and the ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

B. The anticipated award date is August 28, 2018.

4.02 *Dates for Completion and Final Payment*

A. The Work will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before December 12, 2018.

4.03 *Dates for Milestones*

NONE

ARTICLE 5 - CONTRACT PRICE

- 5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs below:
- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work, times the estimated quantity of that item as indicated in Exhibit 00500-A.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Quantity cutoff is the 4th Friday of the each month. The CONTRACTOR shall submit pay application and, if applicable, change order documents within 14 calendar days of 4th Friday of month in accordance with Article 14 of the General Conditions or as per CONTRACTOR generated processing schedule. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. OWNER shall make progress payments on account of Work completed on the basis of CONTRACTOR generated quantities on or within 14 calendar days of OWNER stated due date for all appropriate documents (or within 21 calendar days of receipt if documents are received subsequent to OWNER stated due date) during performance of the Work as provided in paragraphs 6.02A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
1. Prior to Project Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:
 - a. 95% of Work completed (with the balance being retainage). If the Work has been 95% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and, OWNER, on recommendation of, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Final Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and
 - b. 100% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 2. OWNER shall pay retainage to CONTRACTOR in accordance with paragraph 14.02.B.5 of the General Conditions.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 – NOT USED

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, if any, and all Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, if any, (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and Drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions. CONTRACTOR acknowledges that such reports and Drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
 - E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto.
 - F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - G. CONTRACTOR is aware of the general nature of Work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and Drawings identified in the

Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. CONTRACTOR is competent and has sufficient equipment, personnel and financial resources to perform Work in accordance with the Contract Documents.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following items (either bound herein or separately) as marked with an "X".

Included

- 1. This Agreement
 - a. Pages 1 to [], inclusive;
 - b. Exhibit 500-A, Unit Price Work (pages 1 to [], inclusive);
 - c. Exhibit 500-B, Supplemental Unit Price Work (pages 1 to [], inclusive);
- 2. Notice of Hearing and Letting.
- 3. Performance Bond (pages 1 to 4 inclusive);
- 4. Payment Bond (pages 1 to 3 inclusive);
- 5. Other Bonds (pages [] to [], inclusive), (name of bond);
 - a. [] (pages [] to [], inclusive);
 - b. [] (pages [] to [], inclusive);
 - c. [] (pages [] to [], inclusive);
- 6. Bid Form Attachments
 - a. Attachment I – Equal Employment Opportunity/Non-Discrimination Policy Statement
 - b. Attachment II – Non-Collusion Affidavit
 - c. Attachment III – Disadvantaged Business Enterprise (DBE) Certification for Non-Rolling Stock Materials or Services
 - d. Attachment IV – Disadvantaged Business Enterprise (DBE) List
 - e. Attachment V – Debarment and Suspension Certification
 - f. Attachment VI – Certification of Primary Participant Regarding Debarment, Suspension, and Other Responsibility Matters
 - g. Attachment VII – Part 661 – Buy America Requirements – Surface Transportation Assistance Act of 1982, As Amended
 - h. Attachment VIII – Certification of Restrictions on Lobbying
 - i. Attachment IX – Certification of Nonsegregated Facilities
 - j. Attachment X – Targeted Small Business (TSB) Pre-Bid Contact Information
 - k. Attachment XI – Licensed Plumber or Pipe Layer Certification
 - l. Attachment XII – Local Business Certificate
 - m. Attachment XIII - Affidavit of Drug Free Workplace Compliance
 - n. Attachment XIV – Schedule of Unit Prices for Traffic Signal Installation
 - o. Attachment XV – Bidder Status Form
- 7. Cedar Rapids Metropolitan Area Standard Documents;
 - a. Cedar Rapids Metropolitan Area Standard Specifications for Public Improvements (current version).
 - b. Cedar Rapids Metropolitan Area Standard Details for Public Improvements (current version).
- 8. Supplementary Conditions, Section 00800, (pages 1 to [], inclusive);
- 9. Special Provisions and Specifications as listed in the table of 00500-5

- contents of the Project Manual;
- 10. Drawings consisting of a cover sheet and sheets numbered [] through [], inclusive, with each sheet bearing the following general title:
- 11. Addenda (numbers [] to [], inclusive);
- 12. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed (pages [] to [], inclusive);
 - b. CONTRACTOR's Bid Exhibit 00300A (pages [] to [], inclusive);
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages [] to [], inclusive);
 - d. Insurance Certificates;
 - e. [FIELD FOR "OTHER EXHIBITS"];
- 13. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s).

- B. The documents listed in paragraph 9.01.A are incorporated by reference (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9. Any attachments within an appendix not listed in Article 9, are not part of the Contract Documents. The CONTRACTOR has limited reliance on these appendices, in accordance with the General Conditions.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and

legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

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

10.05 *Other Provisions* – NOT USED

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

This Agreement will be effective on the date the Award is approved by the City Council as acting on behalf of the OWNER.

OWNER: CITY OF CEDAR RAPIDS, IA CONTRACTOR: _____

By: _____ By: _____
Jeffrey A. Pomeranz _____
City Manager (Title)

Date: _____ Date: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest Amy Stevenson, City Clerk Attest _____

Address for giving notices: Address for giving notices:
City of Cedar Rapids _____
City Clerk _____
101 First Street SE _____
Cedar Rapids, IA 52401 License No. _____
License No. _____
(Where applicable)

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

Agent for service of process:

Designated Representative: Designated Representative:
Name: Brent Schlotfeldt Name: _____
Title: Facilities Maintenance Manager Title: _____
Address: City Services Center Address: _____
500 15th Avenue SW _____
Cedar Rapids, IA 52404 _____
Phone: 319-286-5809 Phone: _____
Email: b.schlotfeldt@cedar-rapids.org Facsimile: _____

INSTRUCTIONS FOR EXECUTING CONTRACT

If the Agreement is to be signed by the Secretary of the corporation, the certificate below should be executed by some other officer of the corporation, under the corporate seal. **In lieu of the foregoing certificate, there may be attached to the Agreement copies of so much of the records of the corporation which will show the official character and authority of the officers signing, duly certified by the secretary or assistant secretary under the corporate seal to be true copies.**

The full name and business address of CONTRACTOR should be inserted and the Agreement should be signed with CONTRACTOR's official signature. Please have the name of the signing party printed under all signatures of the Agreement.

If CONTRACTOR is operating as a partnership, each partner should sign the Agreement. If the Agreement is not signed by each partner, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's (signers') authority to sign such Agreement for and in behalf of the partnership.

If CONTRACTOR is an individual, the trade name (if CONTRACTOR is operating under a trade name) should be indicated in the Agreement and the Agreement should be signed by such individual. If signed by other than CONTRACTOR, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's authority to execute such Agreement for and in behalf of CONTRACTOR.

If CONTRACTOR is a corporation, the following certificate should be executed:

I, _____, certify that I am the _____ of the corporation named as CONTRACTOR herein above; that _____, who signed the foregoing Agreement on behalf of CONTRACTOR was then _____ of said corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)

END OF SECTION 00500

**00610
PERFORMANCE BOND**

CONTRACTOR (Name and Address):	SURETY (Name and Address of Principal Place of Business):
OWNER (Name and Address): City of Cedar Rapids 101 First Street SE Cedar Rapids, IA 52401	
CONTRACT Date: Amount: Description (Name and Location): Bender Pool HVAC, #PUR0618-198 This project is to furnish and install a new indoor pool dehumidification unit with accompanying remote outdoor air-cooled condensing unit, including all duct, piping, electrical and refrigeration fittings.	
BOND Date (Not earlier than Contract Date): Amount: Modifications to this Bond Form:	

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms included in this Section 00610, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:
(Attach Power of Attorney)

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

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

FOR USE BY OWNER ONLY

REVIEWED BY OWNER

Signature _____ Date _____

Name and Title _____

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

from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied pliability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1. 4.2. or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to THE Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of the CONTRACTOR.
7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceedings legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the state of Iowa and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR UNDER THE Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.
 - 12.2 Contract: The Agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

- 12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

**00620
PAYMENT BOND**

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

CONTRACTOR (Name and Address):	SURETY (Name and Address of Principal Place of Business):
OWNER (Name and Address): City of Cedar Rapids 101 First Street SE Cedar Rapids, IA 52401	
CONTRACT Date: Amount: Description (Name and Location): Bender Pool HVAC, #PUR0618-198 This project is to furnish and install a new indoor pool dehumidification unit with accompanying remote outdoor air-cooled condensing unit, including all duct, piping, electrical and refrigeration fittings.	
BOND Date (Not earlier than Contract Date): Amount: Modifications to this Bond Form:	

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms included in this Section 00620, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:
(Attach Power of Attorney)

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

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

FOR USE BY OWNER ONLY

REVIEWED BY OWNER

Signature _____ Date _____

Name and Title _____

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

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.
9. The Surety shall not be liable to the OWNER. Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1. Claimant: An individual or entity having a direct Contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms 'labor, materials or equipment' that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2. Contract: The Agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

00700
GENERAL CONDITIONS
TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01: Defined Terms 00700-1
1.02: Terminology 00700-3
1.03: Defined Abbreviations 00700-4

ARTICLE 2 - PRELIMINARY MATTERS

2.01: Delivery of Bonds 00700-4
2.02: Copies of Documents 00700-4
2.03: Commencement of Contract Times;
Notice to Proceed 00700-4
2.04: Starting the Work 00700-5
2.05: Before Starting Construction 00700-5
2.06: Preconstruction Conference 00700-5
2.07: Initial Acceptance of Schedules 00700-6

**ARTICLE 3 – CONTRACT DOCUMENTS:
INTENT, AMENDING, REUSE**

3.01: Intent 00700-6
3.02: Reference Standards 00700-6
3.03: Reporting & Resolving Discrepancies. 00700-6
3.04: Amending & Supplementing
Contract Documents 00700-7
3.05: Reuse of Documents 00700-7

**ARTICLE 4 – AVAILABILITY OF LANDS;
SUBSURFACE & PHYSICAL CONDITIONS;
REFERENCE POINTS**

4.01: Availability of Lands 00700-7
4.02: Subsurface & Physical Conditions 00700-7
4.03: Differing Subsurface or Physical
Conditions 00700-8
4.04: Underground Facilities 00700-8
4.05: Reference Points 00700-9
4.06: Hazardous Environmental
Condition at Site 00700-9

ARTICLE 5 – BONDS & INSURANCE

5.01: Performance, Payment, &
Other Bonds 00700-10
5.02: Licensed Sureties & Insurers 00700-11
5.03: Certificates of Insurance 00700-11
5.04: Contractor’s Liability Insurance 00700-11
5.05: Owner’s Liability Insurance 00700-12
5.06: Property Insurance 00700-12
5.07: Waiver of Rights 00700-13
5.08: Receipt & Application of
Insurance Proceeds 00700-13
5.09: Acceptance of Bonds &
Insurance; Option to Replace 00700-14

5.10: Partial Utilization, Acknowledgment
of Property Insurer 00700-14
5.11: Deductible Provisions 00700-14

**ARTICLE 6 – CONTRACTOR’S
RESPONSIBILITIES**

6.01: Supervision & Superintendence 00700-14
6.02: Labor; Working Hours 00700-14
6.03: Services, Materials & Equipment 00700-15
6.04: Progress Schedule 00700-15
6.05: Substitutes & “Or-Equals” 00700-15
6.06: Concerning Subcontractors,
Suppliers & Others 00700-16
6.07: Patent Fees & Royalties 00700-17
6.08: Permits 00700-17
6.09: Laws & Regulations 00700-17
6.10: Taxes 00700-18
6.11: Use of Site & Other Areas 00700-18
6.12: Record Documents 00700-18
6.13: Safety & Protection 00700-18
6.14: Safety Representative 00700-19
6.15: Hazard Communication Program 00700-19
6.16: Emergencies 00700-19
6.17: Shop Drawings & Samples 00700-19
6.18: Continuing the Work 00700-20
6.19: Contractor’s General Warranty
and Guarantee 00700-20
6.20: Indemnification 00700-21
6.21: Testing 00700-23
6.22: Contractor’s Title to Material 00700-21
6.23: Coordination of Utility Relocations .. 00700-21

ARTICLE 7 – OTHER WORK

7.01: Related Work at Site 00700-22
7.02: Coordination 00700-22

ARTICLE 8 – OWNER’S RESPONSIBILITY

8.01: Communications to Contractor 00700-22
8.02: Replacement of Engineer 00700-22
8.03: Furnish Data 00700-22
8.04: Pay Promptly When Due 00700-22
8.05: Lands & Easements:
Reports & Tests 00700-22
8.06: Insurance 00700-22
8.07: Change Orders 00700-22
8.08: Inspections, Tests & Approvals 00700-22
8.09: Limitations on Owner’s
Responsibilities 00700-23
8.10: Undisclosed Hazardous
Environmental Condition 00700-23

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

- 9.01: Owner’s Representative00700-23
- 9.02: Visits to Site.....00700-23
- 9.03: Project Representative00700-23
- 9.04: Clarifications & Interpretations00700-23
- 9.05: Authorized Variations in Work.....00700-23
- 9.06: Rejecting Defective Work.....00700-23
- 9.07: Shop Drawings, Change Orders and Payments00700-23
- 9.08: Determination for Unit Price Work..00700-23
- 9.09: Decisions on Requirements of Contract Documents & Acceptability of Work00700-23
- 9.10: Limitations on Engineer’s Authority & Responsibilities00700-23

ARTICLE 10 – CHANGES IN THE WORK; CLAIM

- 10.01: Authorized Changes in the Work ...00700-24
- 10.02: Unauthorized Changes in the Work ...00700-24
- 10.03: Execution of Change Orders.....00700-25
- 10.04: Notification to Surety00700-25
- 10.05: Claims & Disputes.....00700-25

ARTICLE 11 – PAYMENT FOR WORK PERFORMED; COST OF THE WORK; SIGNIFICANT CHANGES IN THE CHARACTER OF WORK

- 11.01: Payment for Work Performed.....00700-25
- 11.02: Cost of the Work/
Force Account Work00700-26
- 11.03: Payment For Non-Tested Work00700-28
- 11.04: Significant Changes in the Character of Work.....00700-28
- 11.05: Cash Allowances.....00700-29

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

- 12.01: Change of Contract Price.....00700-29
- 12.02: Change of Contract Times00700-29
- 12.03: Delays Beyond Contractor’s Control00700-30
- 12.04: Delays Within Contractor’s Control 00700-30
- 12.05: Delays Beyond Owner’s & Contractor’s Control00700-30
- 12.06: Delay Damages.....00700-30

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

- 13.01: Notice of Defects..... 00700-30
- 13.02: Access to Work 00700-30
- 13.03: Tests & Inspections..... 00700-30
- 13.04: Uncovering Work 00700-31
- 13.05: Owner May Stop the Work..... 00700-31
- 13.06: Correction or Removal of Defective Work 00700-31
- 13.07: Correction Period/Maintenance Bond..... 00700-31
- 13.08: Acceptance of Defective Work..... 00700-32
- 13.09: Owner May Correct Defective Work .. 00700-32

ARTICLE 14 – PAYMENTS TO CONTRACTOR & COMPLETION

- 14.01: Schedule of Values 00700-33
- 14.02: Progress Payments..... 00700-33
- 14.03: Contractor’s Warranty of Title 00700-34
- 14.04: Substantial Completion 00700-34
- 14.05: Partial Utilization 00700-34
- 14.06: Final Inspection 00700-35
- 14.07: Final Payment 00700-35
- 14.08: Final Completion Delayed 00700-35
- 14.09: Waiver of Claims 00700-36

ARTICLE 15 – SUSPENSION OF WORK, CANCELLATION OF WORK & TERMINATION

- 15.01: Owner May Suspend Work 00700-36
- 15.02: Owner May Cancel Work 00700-36
- 15.03: Owner May Terminate for Cause... 00700-36
- 15.04: Owner May Terminate for Convenience..... 00700-37
- 15.05: Contractor May Stop Work or Terminate..... 00700-37
- 15.06: Termination Due to National Emergency..... 00700-37

ARTICLE 16 – DISPUTE RESOLUTION

- 16.01: Methods & Procedures 00700-37

ARTICLE 17 – MISCELLANEOUS

- 17.01: Giving Notice..... 00700-37
- 17.02: Computation of Times..... 00700-37
- 17.03: Cumulative Remedies..... 00700-38
- 17.04: Survival of Obligations 00700-38
- 17.05: Controlling Law 00700-38

00700
GENERAL CONDITIONS

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 - Defined Terms

Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated that are applicable to both the singular and plural thereof.

Addenda: Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the Bidding Requirements or the Contract Documents.

Agreement: The written instrument that is evidence of the Agreement between Owner and Contractor covering the Work.

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

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

Bid: The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidding Documents: The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

Bidding Requirements: The Notice of Hearing and Letting, Instructions to bidders, Bid security form, if any, and the Bid form with any supplements.

Bonds: Performance and payment Bonds and other instruments of security.

Calendar Day: Every day shown on the calendar.

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

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

Contract: The entire and integrated written Agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or Agreements, whether written or oral.

Contract Documents: The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, Advertisement to Bid, Instructions to Bidders, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Owner to Contractor are not Contract Documents.

Contract Price: The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.01 in the case of Unit Price Work).

Contract Times: The number of days or the dates stated in the Agreement to: complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

Contractor: The individual or entity with whom Owner has entered into the Agreement.

Cost of the Work: See paragraph 11.01.A for definition.

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

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

- Engineer:* Jurisdictional Engineer or duly authorized representative of the Owner.
- Engineer's and Owner's Consultants:* A person, firm or corporation having a Contract with Engineer or Owner to furnish services as Engineer's or Owner's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
- Field Order:* A written order issued by Engineer that requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
- General Requirements:* Sections of Division 1 (1000 Series) of the Technical Specifications. The General Requirements pertain to all sections of the Specifications.
- Hazardous Environmental Condition:* The presence at the Site of Asbestos, PCBs (polychlorinated biphenyls), Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- Hazardous Waste:* The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- Laws and Regulations; Laws or Regulations:* Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- Late Start Date:* A Calendar Day shown on the proposal form specifying the latest date on a Contract that a Contractor is to commence Work.
- Liens:* Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
- Milestone:* A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Final of all the Work.
- Notice of Award:* The written notice by Owner to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
- Notice of Hearing and Letting:* The written notice by Owner setting the time, date and location for the public hearing pertaining to the drawings, Project Manual, and opinion of cost, and the information required in the notice to bidders as required by the Iowa State Code.
- Notice to Proceed:* A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
- Owner:* The individual, entity, public body, or authority with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
- Partial Utilization:* Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- Petroleum:* Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
- Project:* The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
- Project Manual:* The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
- Radioactive Material:* Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- Resident Project Representative:* The authorized representative of Engineer or Owner who may be assigned to the Site or any part thereof.
- Samples:* Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 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.
- Site:* Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
- Special Provisions:* That part of the Contract Documents that amends or supplements the Specifications.
- Specifications:* That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
- Subcontractor:* An individual or entity having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

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 used for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplementary Conditions: That part of the Contract Documents that amends or supplements these General Conditions.

Supplier: A manufacturer, fabricator, Supplier, distributor, materialman, or vendor having a direct Contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

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

Unit Price Work: Work to be paid for on the basis of unit prices.

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

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

Working Day: Any Calendar Day, exclusive of Saturdays, Sundays, or a recognized legal holiday, upon which weather or other conditions (not under the control of the Contractor) will permit construction operations to proceed for not less than $\frac{3}{4}$ of a normal Work day in the performance of a controlling item of Work.

Written Amendment: A written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 - Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms as allowed, "as approved," or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.
2. *Day:* The word "day" shall constitute a Calendar Day of 24 hours measured from midnight to the next midnight.
3. *Defective:* The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
4. *Furnish, Install, Perform, Provide:*
 - a. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - b. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

- c. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - d. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- B. 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.

1.03 - Defined Abbreviations

Wherever the following abbreviations are used in these specifications or in the Contract Documents, they are to be construed the same as the respective expressions represented:

AAN – American Association of Nurserymen	FHWA – Federal Highway Administration
AAR – Association of American Railroads	FR – Federal Register
AASHTO (or AASHO) American Association of State Highway and Transportation Officials	FSS – Federal Specifications and Standards
ACI – American Concrete Institute	GSA – General Services Administration
AIA – American Institute of Architects	IAC – Iowa Administrative Code
ANSI – American National Standards Institute	ID – Identification
APWA – American Public Works Association	IEEE – Institute of Electrical and Electronics Engineers
ASCE – American Society of Civil Engineers	IES – Illuminating Engineering Society
ASLA – American Society of Landscape Architects	ITE – Institute of Transportation Engineers
ASTM - American Society of Testing and Materials	MUTCD – Manual on Uniform Traffic Control Devices
AWPA – American Wood Preservers Association	NEMA – National Electrical Manufacturers Association
AWS – American Welding Society	NFPA – National Fire Protection Association
AWWA – American Water Works Association	SAE – Society of Automotive Engineers
CFR – Code of Federal Regulations	UL – Underwriters' Laboratories, Inc.
DNR – Department of Natural Resources	US – United States
DOT – Department of Transportation	USC – United States Code
EPA – Environmental Protection Agency	
Abbreviations may be used for materials and classes of Work:	
AC – Asphalt Cement	PCC – Portland Cement Concrete
ACC – Asphalt Cement Concrete	PLS – Pure Live Seed
BSC – Bituminous Seal Coat	

ARTICLE 2 PRELIMINARY MATTERS

2.01 - Delivery of Bonds: When Contractor delivers the executed Agreements to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish.

2.02 - Copies of Documents: Owner shall furnish to Contractor up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 - Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed, or on such date as the Contractor mobilizes, whichever date is earlier. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier, and the Contract Completion Date(s) / Milestone(s) will be maintained, as specified in the Agreement.
- B. The Contractor will be charged a full Working Day for a Working Day as defined in Article 1.01. The Contractor will be charged ½ a Working Day when weather or other conditions beyond the control of the Contractor permit Work for at least one-half but less than three-quarters of a Working Day. The Contractor will not be charged a Working Day when weather or other conditions beyond the control of the Contractor prevent Work less than one-half a Working Day. Working Days will be charged beginning with the following circumstances:
 - 1. When a Specified Starting Date is used.
 - 2. When a Late Start Date is used and the Contractor has not started Work by the Late Start Date.
 - 3. When a starting date has been agreed to at the preconstruction conference for projects with an approximate starting date.
 - 4. When the Contractor is working at the time for the issuance of the Notice.

5. When early Work waiver is approved, as having been issued at the time of Site availability, as documented in the Project records.
 6. When the Site becomes available for Work prior to the Site Availability Date.
 7. When the Contractor begins Work prior to the Late Start Date.
- C. In the event of adverse weather when Work on a Project is ready to be started or resumed and the Contractor is not on the Project, Working Days will not be charged during the inclement weather period provided the Contractor starts Work as soon as weather and ground conditions permit Work to be started or resumed.
- D. Working Days will not be charged for Sundays and recognized legal holidays the Contractor does not Work. Working Days will be charged for Sundays and recognized legal holidays the Contractor does Work.
- E. Working Days will not be charged for Saturdays the Contractor does Work, unless a six day workweek is specified in the Contract Documents.
- F. Working Days will be charged for cure time of pavement and structural concrete when it is the controlling item of Work.

2.04 - Starting the Work: Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to Effective Date of the Agreement.

2.05 - Before Starting Construction

- A. Contractor's Review of Contract Documents: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.
- B. Preliminary Schedules: Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for Engineer's timely review:
1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents; (updates of the progress schedule shall be provided with pay requests)
 2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal
 3. a proposed listing of subcontractors and major material and equipment Suppliers
 4. a schedule of unit costs for machinery, tools and equipment
 5. actual wage rates for hourly laborers, timekeepers, supervisors and superintendents to be engaged in the Work
 6. Contractor personnel responsible for Project, including but not limited to:
 - a. Superintendent
 - b. Certified pipelayer or plumber
 - c. Contact person for emergencies during non-working hours.
- C. Evidence of Insurance: Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, as applicable, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance that either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.
- D. The Contractor shall not be required to submit Schedule of Values on unit price Contracts (unless they contain lump sum items). The Bid will be considered the Schedule of Values for a unit price Contract.

2.06 - Preconstruction Conference: Unless waived by the Owner in writing, before any Work at the Site is started, a conference attended by Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 - Initial Acceptance of Schedules:

- A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment, a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with paragraph 2.05.B. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The progress schedule will be acceptable to the Engineer if it is a critical path method schedule and it provides an orderly progression of the Work to completion within any specified Milestones and 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 Shop Drawing and Sample 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 (where applicable) will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the lump sum Work.
- B. Subsequent pay requests shall be accompanied by updated schedules of progress and Shop Drawing submissions.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 - Intent

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

3.02 - Reference Standards

Standards, Specifications, Codes, Laws, and Regulations:

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, Specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- B. No provision of any such standard, Specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Owner, Engineer, or any of Engineer's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 - Reporting and Resolving Discrepancies

- A. Reporting Discrepancies: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, Specification, manual or code, or of any instruction of any Supplier, Contractor shall report it to Engineer in writing at once. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that Contractor shall not be liable to Owner or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless Contractor knew or reasonably should have known thereof.
- B. Resolving Discrepancies
 - 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, Specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. Provisions for resolving any conflict, error, ambiguity, or discrepancy within the Contract Documents shall be as follows:
- a. the technical specifications shall govern regarding quality of materials and workmanship.
 - b. The drawings shall govern for the dimension and location information.
 - c. Special provisions of the Contract Documents shall take precedence over technical specifications in the Cedar Rapids Metropolitan Area Standard Specifications for Public Improvements
 - d. Special details in the Contract Documents shall take precedence over details in the Cedar Rapids Metropolitan Area Standard Details for Public Improvements.
- C. Unauthorized Correction of Discrepancy: If Contractor proceeds with Work that Contractor had actual knowledge or should have known that a conflict, error, ambiguity or discrepancy existed as indicated above, correction of Work constructed without such notification to Engineer shall be at Contractor's expense, (except in an emergency as authorized by paragraph 6.16).

3.04 - Amending and Supplementing Contract Documents

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

3.05 - Reuse of Documents: Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect Contract with Owner: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

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

4.01 - Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site, Contractor may make a Claim therefor as provided in paragraph 10.05.
- B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Written documentation of permission to access any additional lands shall be executed by the property owner or their authorized agent. Original Agreements shall be submitted to the Engineer prior to entering the additional land.

4.02 - Subsurface and Physical Condition

- A. Reports and Drawings: The Supplementary Conditions identify:
1. those reports of explorations and tests of Subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
 2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract

Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer, or any of Engineer's Consultants with respect to:

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

4.03 - Differing Subsurface or Physical Conditions

- A. Notice: If Contractor believes that any Subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:
1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents;
then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.
- B. Engineer's Review: After receipt of written notice as required by paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.
- C. Possible Price and Times Adjustments
1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.01.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated Contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice within the time and as required by paragraph 4.03.A.
 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, Owner, Engineer, and Engineer's Consultants shall not be liable to Contractor for any Claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 - Underground Facilities

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data
 - b. locating all Underground Facilities shown or indicated in the Contract Documents
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work
 - e. coordinating with Underground Facilities constructed by all entities during the Project.
- B. Not Shown or Indicated
1. If an Underground Facility is uncovered or revealed at or contiguous to the Site that was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
 2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in paragraph 10.05.

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

4.06 - Hazardous Environmental Condition at Site

- A. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been used by the Engineer in the preparation of the Contract Documents.
- B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer or any of Engineer's Consultants with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site that was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous

Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 BONDS AND INSURANCE

5.01 - Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until two years after the Work is fully accepted by the Owner. This is to provide for the correction of defects in workmanship and materials set forth in the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.
- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, Contractor shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

- D. The forms of the Performance and Payment Bonds attached hereto shall be used for the Contract. Note instructions thereon as to the form applicable. Each form contemplates one corporate surety only. In case co-sureties or individual sureties will be furnished, proper forms therefore shall be obtained.
- E. Every Bond must name the Owner as obligee.
- F. If the principal is an individual, his/her full name and residence shall be inserted in the body thereof, and he/she shall sign the Bonds with his/her usual signature on the line opposite the scroll seal. If the principals are partners, their individual names shall appear in the body of the Bonds, with the recital that they are partners comprising a firm, naming it, and all the members of the firm shall execute the Bonds as individuals.
- G. The signature of a witness shall appear in the appropriate places, attesting the signatures of each individual party to the Bonds.
- H. If the principal is a corporation, the name of the state in which incorporated shall be inserted in the appropriate place in the body of the Bonds, and said instrument shall be executed and attested under the corporate seal as indicated on the form. If the corporation has no seal, the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name. This also applies to execution by surety.
- I. The date of the Bonds must not be prior to the date of the Contract for which given.
- J. A power of attorney, authorizing the execution of the Bonds by an attorney-in-fact, or agent, shall be attached to one executed counterpart of the Bonds.

5.02 - Licensed Sureties and Insurers: All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from non-assessable insurance companies licensed to do business in the State of Iowa and currently rated "B" or better by the A.M. Best Company. All policies shall be written on an occurrence basis and not on a claims-made form. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 - Certificates of Insurance

- A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) that Contractor is required to purchase and maintain. The name of the Project and Contract shall be listed on the Certificates of Insurance
 - 1. All certificates of insurance shall be signed with an original penned signature of the agent and include the typed name of the agent and agency, address, and phone number. Signature stamps shall not be used on the certificates. Also, each certificate shall be accompanied by a power of attorney form or some other document showing the Agent's authority to sign the certificate as the authorized representative for the insurance company.
- B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) that Owner is required to purchase and maintain.
- C. On projects in which the Contractor must provide traffic control, the insurance certificate shall specifically state said insurance is applicable to the installation and maintenance of construction traffic control.

5.04 - Contractor's Liability Insurance

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from Claims set forth below that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage that are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;
 5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:
1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Owner, Engineer, Engineer's and Owner's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all Claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include products and completed operations insurance;
 4. include independent contractors' coverage;
 5. include premises and operations insurance;
 6. include contractual liability insurance covering Contractor's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;
 7. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to paragraph 5.03 will so provide);
 8. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
 9. with respect to completed operations insurance, remain in effect for at least two years after final payment (and Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 - Owner's Liability Insurance: In addition to the insurance required to be provided by Contractor under paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against Claims that may arise from operations under the Contract Documents.

5.06 - Property Insurance

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer's and Owner's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;
 2. be written on a builder's risk policy form to include insurance for physical loss or damage to the work, temporary buildings, false work, and materials, and equipment in transit, and insure against at least the following perils or causes of loss: fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, weight of snow or ice, water, building collapse, glass breakage, debris removal, demolition occasioned by enforcement of Laws and Regulations, theft by forcible entry with visible damage to gain entry, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, from the time Contractor takes possession of them until they are

tested and installed by Contractor and the Project is accepted as complete under an endorsement to this policy or in the form of Installation Floater Insurance of the all risk type;

5. allow for Partial Utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. All insurance policies shall have original signatures of the surety company
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. Policy shall also include Engineer's and Owner's Consultants as identified in paragraph 1.21 of the Supplementary Conditions as additional insureds.

5.07 - Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Contractor, Subcontractors, Engineer, Engineer's and Owner's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Engineer, Engineer's and Owner's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss that extends beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during Partial Utilization pursuant to paragraph 14.05, after final payment pursuant to paragraph 14.07.

5.08 - Receipt and Application of Insurance Proceeds

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

account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

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

5.09 - Acceptance of Bonds and Insurance; Option to Replace: If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 - Partial Utilization, Acknowledgment of Property Insurer: If Owner finds it necessary to occupy or use a portion or portions of the Work prior to final completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

5.11 - Deductible Provisions: Contractor shall pay all deductible provisions of insurance. The maximum deductible shall be \$5,000.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.01 - Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but Contractor shall not be responsible for the negligence of Owner or Engineer in the design or Specification of a specific means, method, technique, sequence, or procedure of construction that is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent thereto who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 - Labor; Working Hours

- A. Contractor shall provide efficient and competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Any person employed on the Work who shall refuse or neglect to obey the directions of the Engineer or Resident Project Representative, or who shall be deemed incompetent or disorderly, or who shall commit trespassing upon public or private property in the vicinity of the Work, shall be re-assigned off the Project Site when the Engineer so orders and shall not return unless express permission be given by the Engineer. Local labor shall be given preference so far as practicable.

The Contractor shall not employ or hire any of the City's employees without permission of the Engineer.

The methods, equipment and appliances used on the Work and the labor employed shall be such as will produce a satisfactory quality of Work and shall be adequate to complete the Contract within the specified time limit.

- B. **EQUAL EMPLOYMENT OPPORTUNITITES:** During the performance of the Contract the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment

advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship.

- 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, and as subject to local ordinance, all Work at the Site shall be performed during regular working hours, and Contractor will not permit overtime Work or the performance of Work on Sunday, or any legal holiday without Owner's written consent given after prior written notice to Engineer. Work on Saturday shall be permitted with appropriate notice to Engineer. If a City Inspector is required to be present on the job Site on a Sunday or Holiday, the wages for the Resident Project Representative will be deducted from the Contractor's progress payment for that month. However, if this Work and the Resident Project Representative's presence on the job is the result of a requirement of the Contract Documents and not a convenience to the Contractor, this shall not apply.

6.03 - Services, Materials, and Equipment

- A. Unless otherwise specified in the General Requirements, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents. Suppliers shall be deemed to implicitly warrant that their products and all component materials incorporated into them are suitable and fit for the intended use of such products and shall be free from defect in material, workmanship or design, such warranty to run to the benefit of Owner and Engineer. The foregoing applies whether the products or their component materials are specified in the Contract Documents or are of Supplier's design.

6.04 - Progress Schedule: Contractor shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

- A. Contractor shall submit to Engineer for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. Proposed adjustments to the progress schedules shall be submitted with pay requests.
- B. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 - Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Specification or description is intended to establish the type, function, appearance, and quality required. Unless the Specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. "Or-Equal" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the

requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - i. it is at least equal in quality, durability, appearance, strength, and design characteristics;
 - ii. it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;
 - iii. Contractor certifies that there is no increase in cost to the Owner; and
 - iv. Contractor certifies that it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - c. The procedure for review by Engineer will be as set forth in the following paragraph, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.
 - d. Contractor shall first make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct Contract with Owner for Work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and Claims of other contractors affected by any resulting change, all of which will be considered by Engineer in evaluating the proposed substitute item. Engineer may require Contractor to furnish additional data about the proposed substitute item.
- B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or use a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Engineer will be similar to that provided in the preceding paragraph.
- C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. Engineer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or used until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. Engineer's Cost Reimbursement: Engineer will record time required by Engineer and Engineer's Consultants in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct Contract with Owner for Work on the Project) occasioned thereby. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer and Engineer's Consultants for evaluating each such proposed substitute.
- F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 - Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect Contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate Agreement between Contractor and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such Agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the Agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, Engineer's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 - Patent Fees and Royalties: 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 that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any Agreement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 - Permits: Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work that are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 - Laws and Regulations

- A. Contractor shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 - Taxes: 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 that are applicable during the performance of the Work. Contractor is responsible to obtain exemptions from State and Local Option Sales and Use tax included in the project on items included in the Project, or to obtain reimbursement for Sales and Use Tax paid. Contractor shall not include Sales and Use Tax in Contractor's bid.

6.11 - Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas
 - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 - 2. Should any Claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the Claim by arbitration or other dispute resolution proceeding or at law.
 - 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any Claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. Removal of Debris and other Material During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, unsuitable material, surplus excavated material, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. Cleaning: Prior to final walk through inspection of the Work Contractor shall clean the Site and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

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

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

6.13 - Safety and Protection

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

6.14 - Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- B. During excavation and trenching, Contractor shall also keep at the Site at all times during its progress a competent person to comply with OSHA trenching and excavation requirements. The competent person shall be one who is capable of identifying existing and predictable hazards in the surrounds, or working conditions that are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.
- C. Contractor shall designate a qualified and experienced traffic control representative at the site whose duties and responsibilities shall be traffic control and shall handle all emergencies, the verification of the placement and maintenance of all signs, barricades, lights, and other traffic control measures.

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

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

6.17 - Shop Drawings and Samples

- A. Contractor shall submit Shop Drawings to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as Engineer may require and in the number of copies specified in the Supplementary Conditions and/or technical specifications. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by paragraph 6.17.E.

- B. Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Engineer may require to enable Engineer to review the submittal for the limited purposes required by paragraph 6.17. E. The numbers of each Sample to be submitted will be as specified in the Supplementary Conditions and/or Technical Specifications.
- C. Where a Shop Drawing or Sample is required by the Contract Documents including the technical specifications and/or the approved schedule of Shop Drawings and Sample submittals as required by paragraph 2.07, 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.

D. Submittal Procedures

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

E. Engineer's Review

1. Engineer will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval of Shop Drawings or Samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Engineer's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by Engineer relieve Contractor from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures:

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

6.18 - Continuing the Work: Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 - Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner, Engineer, and Engineer's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the

Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any acceptance by Owner or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by Owner.

6.20 - Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such Claim, cost, loss, or damage:
1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
 2. is caused in whole or in part 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.
- B. Regarding indemnification, it shall be understood that public employees are agents of the municipal Owner. In carrying out the provisions of the Contract, there shall be no personal liability of public officials and public employees.
- C. In any and all Claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- D. The indemnification obligations of Contractor under paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 - Testing: The Contractor shall be responsible to complete construction assurance testing (in accordance with the Technical Specifications) in a timely manner and as the construction progresses. Except as allowed by the Engineer, Contractor shall not wait until all quantities are constructed, prior to initiating testing. Payment for Work that has not been tested in a timely manner shall be subject to the payment provisions of Paragraph 11.03.

6.22 - Contractor's Title to Material: No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the Work, free from all liens, claims or encumbrances.

6.23 - Coordination of Utility Relocations: The Contractor shall be responsible for coordination of the utility relocations by other contractors and private utility companies within the Project Site, and that are required to be completed prior to the construction of the Work within this Contract.

ARTICLE 7 OTHER WORK

7.01 - Related Work at Site

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

7.02 - Coordination

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

ARTICLE 8 OWNER'S RESPONSIBILITIES

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

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

8.03 - Furnish Data: Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 - Pay Promptly When Due: Owner shall make payments to Contractor in accordance with Article 14.

8.05 - Lands and Easements: Reports and Tests: Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been used by Engineer in preparing the Contract Documents.

8.06 - Insurance: Owner's responsibilities, if any, in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 - Change Orders: Owner is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 - Inspections, Tests, and Approvals: Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 - Limitations on Owner's Responsibilities: 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, or the Contractor's failure to be familiar with all applicable Standards, Specifications, regulations and provision.

8.10 - Undisclosed Hazardous Environmental Condition: Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

ARTICLE 9 ENGINEER'S STATUS DURING CONSTRUCTION

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

9.02 - Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 - Project Representative: If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 - Clarifications and Interpretations: Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on Owner and Contractor. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 - Authorized Variations in Work: Engineer may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

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

9.07 - Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority as to Shop Drawings and Samples, see paragraph 6.17.
- B. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.08 - Determinations for Unit Price Work: Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations

on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of paragraph 10.05.

9.09 - Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Engineer in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.
- B. When functioning as interpreter and judge under this paragraph 9.09, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any that have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 - Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in Contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Except as noted in paragraph 14.05.A.1, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to Engineer's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 CHANGES IN THE WORK; CLAIMS

10.01 - Authorized Changes in the Work

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

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

10.03 - Execution of Change Orders

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

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

10.05 - Claims and Disputes

- A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 10 Calendar Days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Engineer and the other party to the Contract within 30 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- B. Engineer's Decision: Engineer will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, dispute, or other matter will be final and binding upon Owner and Contractor unless:
1. an appeal from Engineer's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or
 2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Engineer's written decision is delivered by Owner or Contractor to the other and to Engineer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Final Completion, whichever is later (unless otherwise agreed in writing by Owner and Contractor), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.
- C. If Engineer does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 PAYMENT FOR WORK PERFORMED; COST OF THE WORK; SIGNIFICANT CHANGES IN THE CHARACTER OR WORK

11.01 - Payment for Work Performed

- A. Items of Work performed which are covered by definite prices in the Contract:
1. 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. The estimated quantities of items of Unit Price Work performed by the Contractor will be made by Engineer subject to the provisions of paragraph 9.08. Lump sum amounts shall be reimbursed as specified in the Contract Documents.

2. 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.
3. Owner of Contractor may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:
 - a. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly as defined in paragraph 11.04 from the estimated quantity of such item indicated in the Agreement;
 - b. there is no corresponding adjustment with respect to any other item or Work; and
 - c. if Contractor believes the Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.
- B. Extra Work: Extra Work ordered by the Engineer, or a quality or class not covered by the Contract, will be paid for either at an agreed price, time and material basis, or on a force account basis.
 1. Agreed Price Basis: For extra Work ordered by the Engineer and performed on an agreed price basis, the Engineer and the Contractor shall enter into a written agreement before the Work is undertaken. This written agreement shall describe the extra Work that is to be done and shall specify the agreed price or prices therefor.
 2. Time and Material Basis: For extra Work performed on a time and material basis, the Contractor shall receive the rate of wage (or scale) agreed to in writing with the Engineer before beginning Work for each and every hour that laborers, timekeepers, supervisors, and superintendents are actually engaged in Work. The Contractor's allowed markup on Work by a Subcontractor shall be in accordance with paragraph 11.02.A.3.

11.02 - Cost of Extra Work/Force Account Work

- A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project.
 1. Payroll Costs:
 - a. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner. Payroll costs shall include:
 - i. the rate of wage (or scale) agreed to in writing with the Engineer and/or Owner BEFORE BEGINNING Work for each and every hour that laborers, timekeepers, supervisors and superintendents are actually engaged in the Work.
 - ii. When required by a collective bargaining agreement or other employment contract generally applicable to classes of labor employed on the Work, payroll costs shall also include health and retirement benefits, bonuses, sick leave, vacation and holiday pay, applicable thereto.
 - b. On force account Work, an amount equal to 35 percent of the sum of the bare payroll cost items in paragraph 11.02.A.1.a will also be paid to the Contractor. The 35 percent shall cover compensation for furnishing the necessary small tools for Work, together with all other overhead items of expense.
 - c. The wage of the superintendent, timekeeper, or supervisor who is employed partly on force account Work and partly on other Work shall be prorated between two classes of Work according to the number of persons shown by the payrolls as employed on each class of Work.
 2. Costs of Materials and Equipment.
 - a. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

- b. For materials used on force account Work, the Contractor shall receive the actual cost of materials delivered on the Work, including the freight and handling charges as shown by original receipted bills, to which cost shall be added a sum equal to 15 percent thereof.
 - c. Rental rate for machinery, tools or equipment (except small hand tools which may be used) and fuel and lubricants shall be based on the average monthly rental rate in the RENTAL RATE BLUE BOOK published by Dataquest Incorporated. The Engineer and Contractor shall agree on a rental rate in writing before extra Work of force account basis is performed. Profit percentage shall not be added to the rental rate.
3. Cost of Subcontractors
- a. Payments made by Contractor to Subcontractors for Work performed by Subcontractors: If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this paragraph 11.02.
 - b. The maximum percentage markup to be allowed to a prime contractor for extra Work (including force account Work) performed by the Subcontractor shall be limited to two tiers of Subcontractors and shall be in accordance with the following:
 - i. 10 percent on the first \$50,000, with a \$100 minimum.
 - ii. 5 percent on the portion over \$50,000
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Costs of Bonds, Insurance and Taxes: For property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and social security taxes on the force account Work, the Contractor shall receive the actual cost, to which 10 percent will be added. The Contractor shall furnish evidence of the rate or rates paid for such bond, insurance, and tax.
6. Supplemental costs including the following:
- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

- i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.
 - j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
7. Compensation as herein provided on a force account basis shall be accepted by the Contractor as payment in full for extra Work done. It will be assumed that such payment includes the use of tools and equipment for which no rate is allowed, overhead, and profit.
- B. Costs Excluded: The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's offices at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.
- C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in paragraph 12.01.C.
- D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.03 - Payment for Work Not Tested: The Engineer reserves the right to withhold up to 20 percent of the payment for Work which had been constructed, but not timely tested per paragraph 6.21. Upon test passage, full payment will be made, less retainage amounts.

11.04 - Significant changes in the Character of the Work

- A. The Engineer reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the Work as altered.
- B. If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, than an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.
- C. If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.
- D. The term "significant change" shall be construed to apply when one or more of the following circumstances occurs:
 1. When the character of the Work, as altered, differs materially in kind or nature from that involved or included in the original proposed construction and amounts to Contract changes of more than \$50,000 or 10 percent of the original awarded amount.
 2. When an item or Work, with a Bid amount greater the \$25,000, is increase in excess 125 percent or decrease below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only

to that portion in excess or 125 percent of the original Contract item quantity, or is a case of a decrease below 75 percent, to the actual amount of Work performed.

3. When an entire Contract item is deleted, amounting to a \$25,000 change or more.
4. All price adjustments.
5. Overruns and underruns amounting to \$50,000 or more on any one Contract item.
6. Liquidated damages.

11.05 - Cash Allowances: 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 as may be acceptable to Owner and Engineer. Contractor agrees that:

- A. The allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- B. Contractor's cost for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

ARTICLE 12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 - Change of Contract Price

- A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.01.A); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and Agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01.B).
- C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:
 1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on various portions of the Cost of the Work, as described in paragraph 11.02, shall be determined.
 - a. 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 Subcontractor who actually performs the Work, at whatever tier, will be paid a fee per paragraphs 11.02.A.1 and 11.02.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee (as stated in paragraph 11.03) of the amount paid to the next lower tier Subcontractor;
 - b. no fee shall be payable on the basis of costs itemized under paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B;
 - c. the amount of credit to be allowed by Contractor to Owner for any change that results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - d. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.c, inclusive.

12.02 - Change of Contract Times

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

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

12.03 - Delays Beyond Contractor's Control: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other Work as contemplated by Article 7.

12.04 - Delays Within Contractor's Control : The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

12.05 - Delays Beyond Owner's and Contractor's Control: Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay.

12.06 - Delay Damages

- A. In no event shall Owner or Engineer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:
1. delays caused by or within the control of Contractor; or
 2. delays caused or within the control of the Owner, which run concurrently with delays caused by or within the control of the Contractor.
 3. delays beyond the control of both Owner and Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other Work as contemplated by Article 7.
- B. The Owner and/or Engineer shall have a minimum of 48 hours upon receipt of written request for clarification from Contractor (and as per Articles 3.03 and 4.03) to respond with direction to minor issues, which cause the temporary suspension of the Contractor's Work, either in entirety or a portion thereof. The Contractor shall not be entitled to delay Claims during the 48 hour review period by Owner and/or Engineer. Individual review times shall not be added cumulatively to determine overall Project delays. Each review is a unique and exclusive event.
- C. Nothing in this paragraph 12.06 bars a change in Contract price pursuant to this Article 12 to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.

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

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

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

13.03 - Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner is responsible to have performed all inspections, tests, or approvals required by the Contract Documents except:
1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
 2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the Work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- F. Uncovering Work as provided in paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 - Uncovering Work

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

13.05 - Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- B. In the case of a risk of health and safety to the general public, the Engineer may issue a written notice to the Contractor to suspend the Work.
- C. TEMPORARY SUSPENSION OF THE WORK: The Engineer shall have authority to suspend the Work wholly or in part for such period, or periods of time, as he may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as is necessary due to the failure of the Contractor to carry out orders given to perform any or all provisions of the Contract.

13.06 - Correction or Removal of Defective Work

- A. Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of Work of others).
- B. Defective Work shall be corrected within the time period set forth in the Engineer's notice of same to Contractor.

13.07 - Correction Period

- A. If within two years after the date of Final Acceptance by the Owner or such longer period of time as may be prescribed by Laws or Regulations or by the term of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by Owner, remove it from the Project and

replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the Work of others or other land or areas resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of Work of others) will be paid by Contractor.

- B. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for a period of one year, beyond the original correction period of paragraph 13.07.A.
- C. Contractor's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

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

13.09 - Owner May Correct Defective Work

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

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

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

14.02 - Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work. Additionally, said review or recommendation will not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
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 referred to in paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Written Amendment or Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

- C. Payment Becomes Due ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.
- D. Reduction in Payment
1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. Claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.
 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner must give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.
 3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

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

14.04 - Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is complete (except for items specifically listed by Contractor as incomplete). Promptly thereafter, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work ready for its intended use, Engineer will notify Contractor in writing giving the reasons therefor, in the form of a punch list of items to be completed or corrected before final inspection and payment.
- B. Owner shall have the right to exclude Contractor from that portion of the Site after it has been occupied by the Owner for utilization, but Owner shall allow Contractor reasonable access to complete or correct items on the punch list.

14.05 - Partial Utilization

- A. Use by Owner at Owner's option of any completed part of the Work that has specifically been identified in the Contract Documents, or that 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, may be accomplished prior to final completion of all the Work subject to the following conditions:
1. The Engineer shall have control of the order in which the various parts of the construction Work are to be performed. The order of Work as determined by the Contractor will be followed except where the Engineer determines that such order would not be to the best interests of the general public. The Contractor shall complete any portion or portions of the work in such order of time as the Engineer may require. The Owner shall have the right to take portions of and use any completed or partially completed portions of the Work, at any time, but such taking possession and use shall not be deemed an acceptance of the work so taken or used or any part thereof. If such prior use increases the cost of or delays the Work, the Contractor shall be entitled to such extra compensation or extension of time, or both, as the Engineer may determine.
 2. Owner at any time may request Contractor in writing to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use. If Contractor agrees that such part of the Work can be used as intended, Contractor will certify to Owner and Engineer that the Owner may use such part of the Work. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use. 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 ready for Partial Utilization, Engineer will notify Owner and Contractor in writing giving the reasons therefor.
 3. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

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

14.07 - Final Payment And Acceptance

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7;
 - b. consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
4. Final application for payment shall be accompanied by Record Drawings and related information maintained by Contractor during Project Work as described in Article 6.12.

B. Review of Application and Acceptance

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

C. Payment Becomes Due: Thirty days after the final acceptance of the Work by resolution of the City Council of the respective jurisdiction (Owner), the amount recommended by Engineer will become due and, when due, will be paid by Owner to Contractor.

14.08 - Final Completion Delayed

- A. When 95 percent of the Work has been performed to the satisfaction of the Engineer, including consideration of the Contract period, and it is apparent that conditions beyond the control of the Contractor will delay the completion of the Contract for more than 60 Calendar Days, the Contractor may request a supplemental Contract for the uncompleted portion of Work on the same terms as those of the original Contract. If the Owner agrees, and the surety for the Contractor consents to the extension of the bond for the time required to complete the supplemental Contract, the supplemental Contract will be issued. After the Contract has been entered into, full payment will be made for the Work completed except under circumstances that would prejudice the rights of those who have filed Claims.
- B. The unpaid moneys held by the Owner as a retainer of the original Contract Price will be due and payable to the Contractor thirty (30) Calendar Days after the date of approval of the supplemental Contract by the City Council of the respective jurisdictional Owner, except as provided for the release and adjudication of Claims.

14.09 - Waiver of Claims: The mailing and acceptance of final payment will constitute:

- A. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract

Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

- B. a waiver of all Claims by Contractor against Owner other than those previously made in writing that are still unsettled.

ARTICLE 15 SUSPENSION OF WORK CANCELLATION OF WORK AND TERMINATION

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

15.02 - Owner May Cancel Work

- A. The Owner shall have the right to cancel any or all items from the Contract when unforeseen circumstances, unanticipated design changes, or other reasons beyond the control of the Contractor prevent or unreasonably delay completion of the Contract or certain items of the Contract, or when the Owner determines that cancellation is in the public or national interest.
- B. The Contractor may be prevented from starting work on a Contract or an identified phase of a Contract as a result of a delay caused by the Owner or others.
- C. When the delay prevents the Contractor's starting work on the Contract or an identified phase of the Contract for 30 calendar days, the Contractor may request cancellation of the delaying work items by written notice to the Engineer, stating the reasons therefor.
- D. Within 30 calendar days from the date of the request, the Engineer will eliminate or minimize, if possible, the cause for the delay and issue a notice to proceed, redefine the basis on which the Work is to proceed, or cancel the Contract or phase of the Contract.
- E. The Contractor shall not use delays that occur prior to starting work or an identified phase of the Work as a basis of a claim against the Owner except for an extension of Contract period.

15.03 - Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in paragraph 15.02.A occur, Owner may, after giving Contractor (and the surety, if any) seven days written notice, terminate the services of Contractor, exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but that are stored elsewhere, and finish the Work as Owner may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such Claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such Claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.
- C. 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 that may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

15.04 - Owner May Terminate For Convenience

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

15.05 - Contractor May Stop Work or Terminate: If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude Contractor from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

15.06 - Termination Due to National Emergency: The Owner and Contractor may terminate the Contract under written Agreement (as provided in the current Code of Iowa), in the event that declaration of a National Emergency by the Federal Government of the United States makes continuation of the Contract impractical.

ARTICLE 16 DISPUTE RESOLUTION

16.01 - Methods and Procedures

- A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.
- B. Any legal actions shall be filed in District Court of Linn County, Iowa.

ARTICLE 17 MISCELLANEOUS

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

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

17.03 - Cumulative Remedies: 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 that are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 - Survival of Obligations: All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract

Documents will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 - Controlling Law

- A. This Contract is to be governed by the law of the state of Iowa.
- B. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion of correction.

END OF SECTION 00700

find00800
SUPPLEMENTARY CONDITIONS

TABLE OF CONTENTS

SC-1.18	Drawings.....	00800-1
SC-1.21	ENGINEER's and OWNER's Consultants.....	00800-1
SC-2.08	Vendor Registration.....	00800-2
SC-4.02	Subsurface and Physical Conditions.....	00800-2
SC-5.01A	Performance, Payment, and Other Bonds.....	00800-2
SC-5.01E	Performance, Payment, and Other Bonds.....	00800-3
SC-5.02	Licensed Sureties and Insurers.....	00800-3
SC-5.03	Certificates of Insurance.....	00800-3
SC-5.04	CONTRACTOR's Liability Insurance.....	00800-3
SC-5.06A	Property Insurance.....	00800-7
SC-5.06B	Property Insurance.....	00800-7
SC-5.06D	Property Insurance.....	00800-8
SC-5.06E	Property Insurance.....	00800-8
SC-5.06F	Property Insurance.....	00800-8
SC-5.06G	Property Insurance.....	00800-8
SC-5.06H	Boiler and Machinery Insurance.....	00800-8
SC-5.11	Deductible Provisions.....	00800-8
SC-6.02A	Labor; Working Hours.....	00800-9
SC-6.02B	Labor; Working Hours.....	00800-10
SC-6.03	Services, Material and Equipment.....	00800-10
SC-6.08B	Permits.....	00800-11
SC-6.08C	Permits.....	00800-11
SC-6.09	Laws and Regulations.....	00800-11
SC-6.10	Taxes.....	00800-11
SC-6.17	Shop Drawings and Samples.....	00800-12
SC-13.07	Correction Period.....	00800-12
SC-14.07	Final Payment and Acceptance.....	00800-12
SC-18.01A	Completion Time and Allowable Closure Days.....	00800-12
SC-18.01B	Completion Time and Allowable Working Days.....	00800-13
SC-18.01C	Specified Date Completion Incentive.....	00800-13
SC-18.02	Definitions.....	00800-13
SC-18.03	Consideration for Extra Work or Delays.....	00800-13

**00800
SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Section 00700 General Conditions and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

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

SC-1.18 Drawings

The following Drawings are part of the Contract Documents Incorporated by Reference (bound separately):

Title: City of Cedar Rapids Bender Pool HVAC

Prepared By: Innovative Engineers, Inc.

Date: July 17, 2018

Drawing list:

G00	COVER SHEET AND DRAWING INDEX
M01	MECHANICAL DEMOLITION
M02	MECHANICAL PLAN
M03	MECHANICAL – DETAILS
M04	MECHANICAL – SCHEDULES
E01	ELECTRICAL - PLAN
E02	ELECTRICAL – DETAILS & SCHEDULES

SC-1.21 ENGINEER's and OWNER's Consultants

Insert the following after the definition of "Engineer's and Owner's Consultants" in the General Conditions Paragraph 1.01:

Wherever ENGINEER's Consultants are referred to in the Contract Documents, the phrase shall be interpreted to mean ENGINEER's and OWNER's Consultants.

The following are ENGINEER's Consultants on the Project:

The following are OWNER's Consultants on the Project:

The following is OWNER's Consultant and is referred to as the Project Soils Engineer in the Contract Documents:

SC-2.08 **Vendor Registration**

- A. The CONTRACTOR shall have a Vendor Registration Certificate on file with the City of Cedar Rapids a minimum of ten days before the submission of the first Application for Payment.

SC-4.02 **Subsurface and Physical Conditions**

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

- C. In the preparation of Drawings and Specifications, OWNER, ENGINEER or ENGINEER's Consultants relied upon the following reports of explorations and tests of subsurface conditions at the site:
 - 1. Report dated _____, prepared by _____, entitled: _____. The "technical data" contained in such report upon which CONTRACTOR may rely is _____.
 - 2. Report dated _____, prepared by _____, entitled: _____. The "technical data" contained in such report upon which CONTRACTOR may rely is _____.
- D. In the preparation of Drawings and Specifications, OWNER, ENGINEER or ENGINEER's Consultants relied upon the following Drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:
 - 1. Drawings dated _____, of _____, prepared by _____, entitled: _____, consisting of _____ sheets numbered _____ to _____, inclusive. All of the information in such Drawings constitutes "technical data" on which CONTRACTOR may rely, except for _____ appearing on Drawing No. _____ and _____ appearing on Drawing No. _____.
- E. Copies of reports and Drawings itemized in SC-4.02.C and SC-4.02.D that are not included with Bidding Documents may be examined at _____ (insert location) during regular business hours. These reports and Drawings are not part of the Contract Documents, but the "technical data" contained therein upon which CONTRACTOR may rely as identified and established above are incorporated therein by reference. CONTRACTOR is not entitled to rely upon other information and data utilized by OWNER, ENGINEER and ENGINEER's Consultants in the preparation of Drawings and Specifications.

SC-5.01A **Performance, Payment, and Other Bonds**

Delete the third sentence of paragraph 5.01.A and replace it with the following:

These Bonds shall remain in effect until four years after the Work is fully accepted by OWNER.

SC-5.01E **Performance, Payment, and Other Bonds**

Delete paragraph 5.01.E. and replace it with the following:

“Every Bond must name the OWNER, IOWA JOBS BOARD, and IOWA FINANCE AUTHORITY as obligee. The address for the IOWA JOBS BOARD and IOWA FINANCE AUTHORITY is 2015 Grand Avenue, Des Moines, IA 50319.

SC-5.02 **Licensed Sureties and Insurers**

Delete paragraph 5.02 and replace it with the following:

“All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Contractor shall be obtained from non-assessable insurance companies licensed to do business in the State of Iowa and rated “B+” or better by the A.M. Best currently and for the most recent three (3) years. The insurer must also have combined capital and unassigned surplus of at least one hundred million dollars (\$100,000,000). All policies shall be written on an occurrence basis and not on a claims-made form.”

SC-5.03 **Certificates of Insurance**

Delete paragraph 5.03 A.1.

SC-5.04 **CONTRACTOR’s Liability Insurance**

Add the following new paragraph immediately after paragraph 5.04.B:

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

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

a. State:	\$	<u>Statutory</u>
b. Applicable Federal	\$	<u>Statutory</u>
c. Employer’s Liability		
Bodily Injury by Accident:		
Each Accident	\$	500,000
Bodily Injury by Disease:		
Each Employee	\$	500,000
Policy Limit	\$	500,000

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

a. General Aggregate	\$	2,000,000
b. Products – Completed Operations Aggregate	\$	2,000,000
c. Personal and Advertising Injury (Per Person/Organization)	\$	1,000,000
d. Each Occurrence (Bodily Injury and Property Damage)	\$	1,000,000

- | | | | |
|----|--|----|------------------------------|
| e. | Fire Legal Liability Damage Limit (any One Fire) | \$ | 50,000 |
| f. | Medical Expense Limit (Any One Person) | \$ | 5,000 |
| g. | Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages. | | |
| h. | Railroad protective insurance | | |
| | i. Each Occurrence | \$ | 5,000,000 |
| | ii. Aggregate | \$ | 10,000,000 |
| i. | Umbrella Liability | \$ | See paragraph SC-5.04.C.7.g. |
| j. | Excess Umbrella Liability | \$ | See paragraph SC-5.04.C.8 |
3. Policy shall include as a minimum the following coverages:
- Broad Form Property Damage Coverage.
 - An elimination of the exclusions with respect to property under the care, custody or control of CONTRACTOR. In lieu of elimination of the exclusion, CONTRACTOR may provide Builder's Risk or Installation Floater coverage for property under the care, custody, or control of CONTRACTOR.
 - Contractual Liability Coverage.
 - Independent CONTRACTOR Coverage.
4. Automobile Liability under paragraph 5.04.A.6 of the General Conditions:
- Bodily Injury:

Each Person	\$	1,000,000
Each Accident	\$	1,000,000
 - Property Damage:

Each Accident	\$	1,000,000
---------------	----	-----------
 - Combined Single Limit of

	\$	1,000,000
--	----	-----------
 - Policy shall include contractual liability coverage and coverage on all owned, non-owned and hired vehicles.
5. The Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:
- Bodily Injury:

Each Accident	\$	1,000,000
Annual Aggregate	\$	2,000,000
 - Property Damage:

Each Accident	\$	1,000,000
Annual Aggregate	\$	2,000,000
6. Additional insurances required:
- Umbrella – see Section 7.g.
 - Rider covering traffic control operations.
 - Any providers of signs, barricades, lights, or other traffic control devices must show evidence of insurance.
 - Pollution Liability Insurance - NOT REQUIRED
 - Each occurrence: None

- ii. Covers and spill, release, discharge or disposal of pollutants onto the OWNER's property caused by the CONTRACTOR, its employees, Subcontractors, or independent contractors.

7. Additional insureds coverage:

- a. Insurance certificates shall specifically indicate by name the additional insureds which are to include OWNER and ENGINEER as well as other persons or entities so identified:

- 1) "The City of Cedar Rapids, Iowa, its officers and employees shall be named as additional insureds" on the Contractor's, subcontractor's and independent contractor's liability insurance policies and certificates of insurance.

- 2) No Others

Policy shall also include ENGINEER's and OWNER's Consultants as identified in paragraph SC-1.21 of the Supplementary Conditions as additional insureds under the provisions of paragraph 5.04 of the General Conditions.

- b. Additional Insured Endorsement – CONTRACTOR shall purchase and maintain liability insurance, as described above, specifically naming as additional insureds OWNER and ENGINEER and their employees, as well as other persons or entities so identified.

General Aggregate Limits specified above shall apply separately to this Project by attachment of **Additional Insured Endorsement, Governmental Immunities Endorsement, and Cancellation and Material Changes Endorsement**, text as given below.

**CITY OF CEDAR RAPIDS, IOWA
ADDITIONAL INSURED ENDORSEMENT**

The City of Cedar Rapids, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out the Insured's work and/or services performed for the City of Cedar Rapids, Iowa. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether available coverage be primary, contributing or excess.

**CITY OF CEDAR RAPIDS, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT
(for use when including the City as an Additional Insured)**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Cedar Rapids, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Cedar Rapids, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.

2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as may be amended from time to time.

3. Assertion of Government Immunity. The City of Cedar Rapids, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Cedar Rapids, Iowa.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Cedar Rapids, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Cedar Rapids, Iowa.

5. No Other Change in Policy. The insurance carrier and the City of Cedar Rapids, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF CEDAR RAPIDS, IOWA
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to Public Works Department, attention: Construction Engineering Manager, 1201 6th Street SW, Cedar Rapids, IA 52404. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

- c. CONTRACTOR shall, prior to the start of any Work on the Project by any Subcontractor, confirm and verify that CONTRACTOR has received a certificate of insurance from each Subcontractor specifically:
 - i. naming OWNER and ENGINEER as well as other persons and entities so identified as an additional insured, under each subcontractors' policy of insurance and;
 - ii. that each subcontractors' policy of insurance naming OWNER and ENGINEER as well as other persons and entities so identified as additional insured specifically includes the additional Insured Endorsement language as required by paragraph b.
- d. CONTRACTOR shall, prior to the start of any Work on the Project by CONTRACTOR or by any Subcontractor, submit to OWNER:
 - i. a certificate of insurance for CONTRACTOR in compliance with the above paragraph b.
 - ii. a certificate of insurance for each Subcontractor in compliance with paragraph 7.c.i and 7.c.ii.
- e. That failure of CONTRACTOR or Subcontractor to comply with the above requirements with respect to the Additional Insured Endorsement and/or Certificate of

Insurance, shall not be construed as waiver of those provisions by OWNER and ENGINEER as well as other persons and entities so identified.

- f. As an alternative to complying with items b through e above, CONTRACTOR may furnish to OWNER an Owners' and Contractors' Protective (OCP) policy, with ENGINEER and its employees as named additional insured. OCP policy shall provide for bodily injury and property damage coverage equal to the sum of: the general aggregate limit for commercial general liability plus the amount specified for the umbrella coverage.
 - g. The stated limits of paragraphs 5.04.C.1 through 5.04.C.7 of the Supplementary Conditions can be obtained through individual policies or if CONTRACTOR desires to reduce underlying limits to minimums required by its insurance carrier, an umbrella policy must accordingly be provided to maintain overall total level of coverage. Any Umbrella insurance shall be written on an occurrence basis and pay on behalf form and shall include the same endorsements and additional insureds as required of the primary policies.
8. Umbrella:
- a. An excess umbrella policy (pay on behalf form) with limits of \$1,000,000 for Employer's liability, CONTRACTOR's General Liability, (bodily injury, personal injury and property damage), Automobile Liability, Contractual Liability and Railroad Protective Insurance (if required) on a combined basis shall be provided. Any Excess insurance shall be written on an occurrence basis and pay on behalf form and shall include the same endorsements and additional insureds as required of the primary policies.
 - b. Policy shall include OWNER, ENGINEER and any others required by paragraph 5.04 of the General Conditions as additional insureds.
9. The types of insurance and the limits of liability indicated are the minimum required. Neither OWNER nor ENGINEER warrant the adequacy of the types of insurance or the limits of liability required. Any policy exclusions shall be indicated on the insurance certificate. All Insurance shall be provided on an occurrence form basis. Insurance certificate(s) must clearly disclose on its face that coverage is on an occurrence basis and that it cannot be cancelled or materially altered without giving the OWNER written notice thirty days prior to cancellation or alteration.

SC-5.06A Property Insurance

Delete paragraph 5.06 A.1. and replace with the following:

"include the interests of Owner, State of Iowa, Iowa Jobs Board, Iowa Finance Authority, Contractor, Subcontractors, Engineer, Engineer's and Owner's Consultants, and any other individuals or entities identified in SC1.21 of the Supplementary Conditions (Section 00800), and officers, directors, partner, employees, agents, and other consultants and subcontractors of each and any of them each of whom is deemed to have an insurable interest and shall be listed as an additional insured."

Delete the word "water" from paragraph 5.06 A.2.

Add the words "earthquake and flood" to paragraph 5.06 A.2.

Replace the word "lighting" with the word "lightning".

SC-5.06B Property Insurance

Delete entire sentence and replace with the following:

“The Contractor shall be held responsible for the care of the materials and the Work.”

SC-5.06D Property Insurance

Delete entire paragraph and replace with the following:

“Owner shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of the Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts. The risk of loss within deductible amounts will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within deductible amounts, each may purchase and maintain it at the purchaser’s own expense.”

SC-5.06E Property Insurance

Delete entire paragraph and replace with the following:

“The Contractor may self-insure builders risk coverage on infrastructure projects, but must purchase builders risk insurance on buildings and equipment being built or modified as part of this project. This insurance must be listed on the Contractor’s certificate of insurance provided to the Owner. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems outside the water and sewage treatment plants, dams and lighting systems.”

SC-5.06F Property Insurance

Add the following new paragraph 5.06F:

“The CONTRACTOR will make no charge for delays due to damage to the Work whether covered by insurance or not.”

SC-5.06G Property Insurance

Add the following new paragraph 5.06G:

The OWNER, STATE OF IOWA, IOWA JOBS BOARD, and IOWA FINANCE AUTHORITY shall be named as additional insureds and loss payees on the Builders Risk insurance policies. The address for the STATE OF IOWA, IOWA JOBS BOARD and IOWA FINANCE AUTHORITY is 2015 Grand Avenue, Des Moines, IA 50319.

SC-5.06H Boiler and Machinery Insurance

Add the following new paragraph 5.06H:

CONTRACTOR shall purchase and maintain property insurance or boiler and machinery insurance prior to the firing up or testing of any boilers, turbines, large air-conditioners, 100 KW or larger generators, 100 KVA or larger transformers, and 100 HP or larger motors or as required by Laws and Regulations which will include the interests of the OWNER, STATE OF IOWA, IOWA JOBS BOARD, IOWA FINANCE AUTHORITY, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER and OWNER’S Consultants, and any other individuals or entities identified in paragraph SC-1.21 of the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.11 **Deductible Provisions**

Delete paragraph 5.11 and replace with the following:

“Contractor shall pay all insurance deductible amounts. The maximum deductible for Builders Risk insurance shall not exceed \$25,000 for damage due to earthquake or flood and shall not exceed \$5,000 for damage due to any other causes.”

SC-6.02A **Labor; Working Hours**

Add the following new paragraphs to the end of paragraph 6.02.B. in the General Conditions:

AFFIRMATIVE ACTION PROGRAM COMPLIANCE: The CONTRACTOR must comply with the requirements of the Affirmative Action Program of the City of Cedar Rapids, Iowa.

The CONTRACTOR shall also comply with the following Bid item attachments:

1. Equal Employment Opportunity/Non-Discrimination Policy Statement
2. Non-Collusion Affidavit

If the CONTRACTOR, to whom the Contract is awarded, does not have a current approved Equal Employment Opportunity certificate on file with the City of Cedar Rapids (certificate valid for one year), the CONTRACTOR shall submit a written Affirmative Action Program to the City of Cedar Rapids. This Affirmative Action plan shall be submitted a minimum of one month in advance of the CONTRACTOR's first Application for Payment submittal. The CONTRACTOR shall not submit the first Application for Payment until receiving approval from the Equal Employment Opportunity Officer. Delays in submitting an acceptable Affirmative Action Program will not be considered as reasons for extension of the Contract completion date. The model for an Affirmative Action Program is available at the Equal Employment Opportunity Officer's office.

The CONTRACTOR shall furnish all information and reports required by the Equal Employment Opportunity Officer pursuant to Affirmative Action requirements and shall permit access to all books, accounts, and those records relevant to investigation to show compliance with the City's Affirmative Action Program-Contract Compliance Provisions.

1. CONTRACTOR COMPLIANCE

- a. The Equal Employment Opportunity Officer will notify the CONTRACTOR and request equal opportunity reporting documents to be completed and as soon as practical.
- b. The Equal Employment Opportunity Officer will make a compliance determination on the above materials and if found to be acceptable, the Officer will send a letter of recommendation certifying the CONTRACTORS', vendor or Suppliers' eligibility to be awarded a Contract. Copies of the letter will be sent to the appropriate department, the City Clerk, the Mayor, the City Council and the CONTRACTOR.
- c. Unless granted an exemption, all contractors, subcontractors, vendors and suppliers will be subject to the reporting requirements stipulated in the City's Affirmative Action Program. The Equal Employment Opportunity Officer is responsible for the enforcement of these requirements.

2. Exceptions

- a. The Equal Employment Opportunity Officer will make every effort possible to obtain the required information within the time specified. Recommendations on the

CONTRACTOR's, Subcontractor's, vendor's and supplier's compliance status will be followed under procedures outlined in 1. (c) above.

- b. When the Equal Employment Opportunity Officer has determined that the CONTRACTOR's EEO report is insufficient, the documents will be returned to the CONTRACTOR with recommendations to correct the deficiencies. The OWNER's Contract representative will be notified when the CONTRACTOR has been requested to submit additional support data. When the corrective action has been taken, the CONTRACTOR will be certified for eligibility to submit Applications for Payment.
- c. If the CONTRACTOR has not complied with the requirements for equal opportunity in a reasonable period of time, the Equal Employment Opportunity Officer will make recommendations to the Mayor and the City Council as authorized in Part 2, City's Affirmative Action Program-Contract Compliance Provisions.
- d. If an apparent low bidder has submitted an acceptable Affirmative Action Program for a prior contract and has a current approved Equal Employment Opportunity certificate on file with the City of Cedar Rapids (certificate valid for one year), the Equal Employment Opportunity Officer will exempt the low bidder from submitting a written Affirmative Action Plan under this Contract.

SC 6.02B Labor; Working Hours

Add the following new paragraphs after paragraph 6.02.C. in The General Conditions:

D. Disadvantaged Business Enterprises

The CONTRACTOR and subcontractors for this Contract are hereby notified that failure to carry out the requirements, as set forth below, shall constitute a breach of Contract which may result in the termination of the Contract or such other remedy as deemed appropriate by the OWNER.

1. The CONTRACTOR shall comply with all rules and regulations promulgated by the Federal Transit Administration of the U.S. Department of Transportation regarding participation of Disadvantaged Business Enterprises in contracting opportunities created by any Contract awarded under this solicitation.
2. The OWNER and CONTRACTOR agree to ensure that Disadvantaged Business Enterprises have the maximum opportunity to participate in the performance of Contracts and Subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, CONTRACTOR shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete and perform Contracts. The OWNER and CONTRACTOR shall not discriminate on the basis of age, race, religion, creed, color, sex, national origin, ancestry, or disability in the award and performance of this Contract.

SC-6.03 Services, Material and Equipment

Add the following paragraph:

- C. If the CONTRACTOR delivers a product or products under a Contract exceeding the Federal small purchase threshold (the simplified acquisition threshold established by 41 U.S.C. § 403 (11), currently \$100,000):
 1. The CONTRACTOR agrees to deliver only a product or products that comply with the requirements of 49 U.S.C. §5323 (j) and FTA's Buy America regulations, 49 C.F.R. Part

661, unless the product or products are eligible for a waiver in accordance with those regulations.

2. Before signing the underlying Contract, the CONTRACTOR is required to have submitted the appropriate Buy America certification.
3. FTA does not specify the methods by which the CONTRACTOR complies with FTA's Buy America requirements and this does not require the CONTRACTOR to include or require the inclusion of federally mandated Buy American clauses in lower tier subcontract.

SC-6.08B Permits

Add the following paragraph:

- B. Upon signature of contract, and prior to receiving a Notice to Proceed, the CONTRACTOR and all SUBCONTRACTORS shall have an officer of the respective company sign a certification statement for the "Storm Water Discharge Associated with Industrial Activity for Construction Activities" form, which generally states:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site as part of this certification. Further, by my signature, I understand that I am being a co-permittee, along with the owner(s) and other contractors and subcontractors signing such certifications, to the Iowa Department of Natural Resources NPDES General Permit No. 2 for "Storm Water Discharge Associated with Industrial Activity for Construction Activities" at the identified site. As a co-permittee, I understand that I, and my company, are legally required under the Clean Water Act and the Code of Iowa, to ensure compliance with the terms and conditions of the storm water pollution prevention plan developed under this NPDES permit and the terms of this NPDES permit."

SC-6.08C Permits

Add the following paragraph:

- C. The CONTRACTOR shall obtain a parking lot permit from the City of Cedar Rapids Building Department. Fees shall be waived for this permit.

SC-6.09 Laws and Regulations

Add the following paragraph:

- D. The CONTRACTOR shall be required to comply with the wage and labor requirements, and to pay minimum wages in accordance with the schedule of rates established by the United States Department of Labor. The schedule of rates is available from the OWNER upon request at 1201 6th Street SW, Cedar Rapids, Iowa. Within thirty days after the award of this Contract, the CONTRACTOR/Subcontractor shall file a compliance report (Standard Form 100) if it has not submitted a completed compliance report within twelve months preceding the date of award. This report is required if the CONTRACTOR/Subcontractor meets all of the following conditions:

1. CONTRACTOR/Subcontractors are not exempt based on 41 CFR 60-1.5.
2. Has fifty (50) or more employees.
3. Is a prime CONTRACTOR or first tier subcontractor.
4. There is a Contract, subcontract or purchase order amounting to \$50,000 or more.

SC-6.10 **Taxes**

Items included in the Project are exempt from State of Iowa and Local Option Sales and Use Taxes. Contractor shall obtain sales tax exemption certificates from Iowa Department of Revenue. Contractor shall NOT include Sales and Use Tax in Contractor's bid. Contractor shall pay all other taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project that are applicable during the performance of the Work.

SC-6.17 **Shop Drawings and Samples**

Add to the end of paragraph 6.17.D:

4. Number of Submittals Required
 - a. Samples: One
 - b. Shop Drawings: Four
 - c. Certifications: One
 - d. Test Results: One

SC-13.07 **Correction Period**

Amend the first line of paragraph 13.07.A to read as follows:

- A. "If within four years after the date of Final Acceptance by the OWNER or such longer period"

SC-14.07 **Final Payment and Acceptance**

Delete Paragraph 14.07.A3 in its entirety.

SC-18 - ROAD CLOSURE AND WORKING DAY INCENTIVE/DISINCENTIVE

SC-18.01A **Completion Time and Allowable Closure Days**

1. To run concurrently with all milestones, working days, allowable calendar days, and final completion dates, 0 shall be allowed for critical closure activities on Bender Pool, during which time traffic shall be routed as shown on the Traffic Control Plans.
2. The project closure shall occur within the following dates:
 Early Closure Date: None
 Late Closure Date: None
3. Daily Incentive/Disincentive Daily Rate for road closure. The incentive/disincentive daily rate is the incentive or disincentive dollar amount per day specified below that will be applied to the contract for incentive payment or disincentive assessment. An incentive/disincentive daily rate of \$0 per calendar day will be applied to determine an incentive payment of up to a maximum of \$0 for use of less than the allowed number of closure days, and to determine a disincentive assessment for use of more than the allowed number of closure days. Incentive will be paid at time of final payment. Disincentive will be assessed at the time of monthly pay applications that cover any period during which allowable days were exceeded.
4. Closure Days will be charged beginning with any one of the following circumstances:
 - a. When a Specified Closure Date is used.
 - b. When a Late Closure Date is used and the CONTRACTOR has not started Work by the Late Closure Date.

- c. When a Closure Date has been agreed to at the preconstruction conference for projects with an approximate starting date.
- d. When the CONTRACTOR begins closure prior to the Late Closure Date.
- e. On the Late Start Date, if no Closure Date is specified.

SC-18.01B Completion Time and Allowable Working Days

- 1. To run concurrently with all milestones, closure days, allowable calendar days and final completion dates, 94 CALENDAR DAYS shall be allowed for activities at Bender Pool, Cedar Rapids.
- 2. The project working days shall occur within the following days:
Early Start Date: Upon approval of contract documents
Late Start Date: September 10, 2018
- 3. Incentive/Disincentive Daily Rate for per 00500 completion. The incentive/disincentive daily rate is the incentive or disincentive dollar amount per day specified below that will be applied to the contract for incentive payment or disincentive assessment. An incentive/disincentive daily rate of \$0 per working day will be applied to determine an incentive payment of up to a maximum of \$0 for use of less than the allowed number of working days and to determine a disincentive assessment for use of more than the allowed number of working days. Incentive will be paid at time of final payment.

Disincentive will be assessed at the time of monthly pay applications that cover any period during which allowable days were exceeded.

SC-18.01C Specified Date Completion Incentive

An incentive of \$0 will be applied if completion of all Work has been completed before December 1, 2018. Incentive will be paid at time of final payment.

SC-18.02 Definitions

- A. Critical Closure Activity. Critical closure activities are those activities specified below where traffic movements are adversely affected causing undue delay and operating costs. Construction surveying; excavation; removal and installation of sewer; backfill; pavement removal, installation, and overlay, pavement markings, and other unspecified activities that restrict continuous two way traffic are defined to be critical closure activities. Utility locates, surface grading and restoration outside the roadway, mobilization, and demobilization, and other unspecified activities will not be considered critical closure activities provided that they do not restrict continuous two way flow of traffic.
- B. Closure Day. A closure day is a calendar day during the critical closure activity. A closure day will be counted for each calendar day or portion of a calendar day during the critical closure activity. During the critical closure activity, work shall be performed during regular working hours as defined in Article 6 of the General Conditions. The number of closure days given assumes some delay caused by weather.

SC-18.03 Consideration for Extra Work or Delays

- A. Closure day credits will not be given within the assigned critical closure activities. Additional closure days (working days) may be added when approved by the ENGINEER for extra work, overruns of contract items, or extraordinary circumstances. The basis for additional closure days (working days) as defined below is different than the basis for a change of contract time as defined in Article 12 of the General Conditions.

- B. Approved extra work or overruns of contract items that will delay the CONTRACTOR during critical closure activities must be documented and included in the critical path of the project on a revised schedule which is subject to the approval of the ENGINEER. An additional closure day (working day) may be added for each additional closure day (working day) caused by the approved extra work or overruns of contract items as shown on the revised schedule and approved by the ENGINEER.
- C. Extraordinary circumstances that delay the CONTRACTOR during critical closure (working days) activities must be documented by the CONTRACTOR and a written request for additional closure days must be submitted to the ENGINEER within 10 calendar days of the beginning of the delay. Additional closure days (working days) for extraordinary circumstances will not be allowed for the first five consecutive closure days of each delay caused by an extraordinary circumstance. The ENGINEER will approve or deny all requests for additional closure days (working days) resulting from extraordinary circumstances. Extraordinary circumstances shall be limited to the following.
1. Adverse weather including rain, snow, wind, flood, extreme heat and the results thereof, such as inaccessibility or non-workability of materials, only if the CONTRACTOR is working or ready to work on the contract and the adverse weather conditions do not allow productive work on the critical path.
 2. Strikes not directed against the CONTRACTOR.
 3. Legal stoppages if they result from legal action against the OWNER or against the CONTRACTOR if not based on a specification violation.
 4. Procurement of material for the project is the sole responsibility of the CONTRACTOR. Late delivery will be considered an extraordinary circumstance only when the CONTRACTOR can show that orders were placed with a reliable supplier in sufficient time for materials to be delivered when needed and only when there is:
 - a. nationwide shortage; or
 - b. an Industry wide strike; or
 - c. transportation strike which delays the delivery of material; or
 - d. delays due to a change in material commitments when caused by a Federal emergency or order.
 5. A suspension order may be issued if the project area is declared a disaster area and the disaster causes conditions that do not allow productive work.

END OF SECTION 00800