

Contract Documents for:

I-35 and Santa Fe Street Fiber Optic Interconnect Project Number

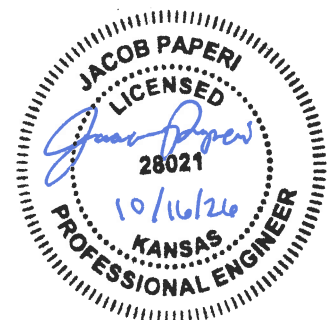
City PN 3-C-025-18

KDOT PN 35-46 KA-6364-02

Federal PN STP-A636[402]

Prepared by:

**City of Olathe, Kansas
Infrastructure Department
Engineering Division**



CITY OF OLATHE, KANSAS

ENGINEERING DIVISION

NOTICE TO BIDDERS

Sealed bids will be received online at <https://olatheks.bonfirehub.com>, until 10 a.m. local time, on November 17, 2026, for the construction of I-35 and Santa Fe Street Fiber Optic Interconnect, Project No. 3-C-025-18, KDOT Project Number 35-46 KA-6364-02, Federal Project Number STP-A636(402).

At said time and place, and promptly thereafter, all bids that have been duly received will be publicly opened online at <https://olatheks.bonfirehub.com>.

The work consists of the following:

City of Olathe fiber relocation in association with the Santa Fe and I-35 Project.

Bid documents including drawings and specifications are on file at the office of Public Works of Olathe, Kansas, and are open for public inspections. Bid documents and drawings may be downloaded free of charge from <https://olatheks.bonfirehub.com>. Only bids submitted electronically at <https://olatheks.bonfirehub.com> will be accepted.

A satisfactory bid bond executed by the bidder or an acceptable surety, in an amount equal to five percent (5%) of the total bid for work shall be submitted with each proposal. A scanned copy of the BID BOND must be included with the online bid submitted at <https://olatheks.bonfirehub.com>. The original copy of the BID BOND form must be submitted to the ENGINEER within 48 hours of bid opening. Failure to submit original copy of the bid bond will result in rejection of bid and OWNER's selection of the next low qualified bidder.

The successful bidder will be required to furnish and pay satisfactory performance and payment bond or bonds.

Attention is called to the fact that not less than the minimum salaries and wages as set forth in the contract documents must be paid on this project, and that the contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin. Contractors must comply with Title 29 relating to the employment of apprentices in accordance with requirements published by the United States Department of Labor as contained in the contract documents.

Bidders are informed that the prime contractor and subcontractors are required to comply with Section 109 of the Housing and Community Development Act of 1974, Title VI of the Civil Rights Act of 1964, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968. Contractors responsibilities under these laws are outlined at Title 24, CFR Part 1 and Part 570 relating to non-discrimination in federally-assisted programs of the Department of Housing and Urban Development; Title 24, Part 130 relating to equal employment opportunity under HUD-assisted construction contract; and Title 24, Part 135 relating to employment opportunities for businesses and lower income persons in connection with assisted projects.

The prime general contractor, and subcontractors where appropriate, under the terms of the contract, shall be required to comply with the following requirements prior to issuance of a construction work order:

- (A) Maintain an affirmative action file detailing efforts to meet affirmative action hiring responsibilities and utilize minority firms as subcontractors and supplier;
- (B) Submit a copy of their affirmative action plan to the city for review and HUD concurrence;
- (C) Provide a preliminary statement of work force needs by category for the project and goals for minorities; and
- (D) Attend a scheduled pre-construction conference for orientation on HUD equal opportunity and labor standards requirements.

The City of Olathe, Kansas, reserves the right to reject any or all bids or to waive any informality in the bidding.

Bids may be held by the City of Olathe, Kansas, for a period not to exceed sixty (60) days from the date of the opening of bids for the purpose of reviewing the bids and investigating the qualifications of bidders, prior to awarding the contract.

City of Olathe, Kansas

BY Brenda Swearingan
City Clerk

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INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

These Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract, EJCDC C-700, 2013 Edition have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest qualified, responsible BIDDER to whom OWNER (on the basis of OWNER'S evaluation as hereinafter provided) makes an award.

2. COPIES OF BIDDING DOCUMENTS

- A. Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation may be obtained from ENGINEER via <https://oaltheks.bonfirehub.com>.
- B. Complete sets of Bidding Documents shall be used in preparing bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- C. OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining bids on the work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

- A. Contractor to provide a Certificate of Good Standing from the Kansas Secretary of State prior to the project award.
- B. To demonstrate qualifications to perform the work, each BIDDER must be prepared to submit, within five (5) days of OWNER's request, a notarized "Statement of Bidder's Qualifications." A form for this purpose is included in this document. All information requested on the form must be provided. Each bid must contain evidence of BIDDER's qualification to do business in the state where the project is located or covenant to obtain such qualification prior to award of the contract.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- A. Before submitting a bid, each BIDDER must (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work; and (d) study and carefully correlate BIDDER'S observations with the Contract Documents.
- B. Reference may be made in the Supplementary Conditions for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the work which have been relied upon by the ENGINEER used in preparing the drawings and specifications. OWNER will make copies of such reports available to any BIDDER requesting them. These reports are not guaranteed as to accuracy or completeness, nor are they part of the Contract

Documents. Before submitting his bid each BIDDER will, at his own expense, make such additional investigations and tests as the BIDDER may deem necessary to determine his bid for performance of the work in accordance with the time, price and other terms and conditions of the Contract Documents.

- C. On request, OWNER will provide each BIDDER access to the site to conduct such investigations and tests as each BIDDER deems necessary for submission of his bid.
- D. The lands upon which the work is to be performed, rights-of-way for access thereto and other lands designated for use by CONTRACTOR in performing the work are identified in the Supplementary Conditions, General Requirements, or drawings.
- E. The submission of a bid will constitute an incontrovertible representation by the BIDDER that he has complied with every requirement of this Article 4 and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

5. INTERPRETATIONS

All questions about the meaning or intent of the Contract Documents shall be entered online via <https://olatheks.bonfirehub.com>. Replies will be issued by addenda via <https://olatheks.bonfirehub.com> to all parties recorded as having received the bidding documents. Questions received less than three (3) days prior to the date for opening of bids will not be answered. Only questions answered via <https://olatheks.bonfirehub.com> through an addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6. BID SECURITY

- A. Bid Security shall be made payable to OWNER in an amount of five percent (5%) of the BIDDER'S maximum bid price and in the form of a Bid Bond (on form attached, if a form is prescribed) issued by a Surety meeting the requirements of paragraph 6.01 of the General Conditions.
- B. The Bid Security of the successful BIDDER will be retained until such BIDDER has executed the agreement and furnished the required Contract Security, whereupon it will be returned; if the successful BIDDER fails to execute and deliver the agreement and furnish the required Contract Security within ten (10) days of 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 any BIDDER whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the "effective date of the agreement" (which term is defined in the General Conditions) by OWNER to CONTRACTOR and the required Contract Security is furnished on the sixty-first (61) day after the bid opening. Bid Security of other BIDDERS will be returned within sixty (60) days of the bid opening.
- C. A scanned copy of the BID BOND must be included with the online bid submitted at <https://olatheks.bonfirehub.com>. The original copy of the BID BOND form must be submitted to the ENGINEER within 48 hours of bid opening. Failure to submit original copy of the bid bond will result in rejection of bid and OWNER's selection of the next low qualified bidder.

7. CONTRACT TIME

The number of days within which, or the date by which, the work is to be completed (the contract time) is set forth in the Bid Form and will be included in the Agreement.

8. LIQUIDATED DAMAGES

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

9. SUBSTITUTE MATERIAL AND EQUIPMENT

The contract, if awarded, will be on the basis of material and equipment described in the drawings or specified in the specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the drawings or specified in the specifications 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 submittal of any such application by CONTRACTOR and consideration by ENGINEER is set forth in paragraphs 7.04 and 7.05 of the General Conditions and paragraphs SC 7.04.A and SC 7.04.D of the Supplementary Conditions.

10. SUBCONTRACTORS, ETC.

- A. If the Supplementary Conditions require the identity-identities of certain SUBCONTRACTORS and other persons and organizations to be submitted to OWNER in advance of the Notice of Award, the apparent Successful BIDDER, and any other BIDDER so requested, will within thirty (30) days after the day of the bid opening submit to OWNER a list of all SUBCONTRACTORS and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work as to which such identification is so required. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such SUBCONTRACTOR, person and organization if requested by OWNER. If OWNER or ENGINEER, after due investigation-investigations, has reasonable objection to any proposed SUBCONTRACTOR, other person or organization, either may before giving the Notice of Award request the apparent Successful BIDDER to submit an acceptable substitute without an increase in bid price. If the apparent Successful BIDDER declines to make any such substitution, the contract shall not be awarded to such BIDDER, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. Any SUBCONTRACTOR, other person or organization so listed and to whom OWNER or ENGINEER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER.
- B. In contracts where the contract price is on the basis of cost-of-the-work plus a fee, the apparent Successful BIDDER, prior to the Notice of Award, shall identify in writing to OWNER those portions of the work that such BIDDER proposes to subcontract and after the Notice of Award may only subcontract other portions of the work with OWNER'S written consent.
- C. No CONTRACTOR shall be required to employ any SUBCONTRACTOR, other person, or organization against whom he has reasonable objection.

- D As provided in Article 7 of the General Conditions, the CONTRACTOR may utilize the services of SUBCONTRACTORS on those parts of the Work which, under normal contracting practices, are performed by SUBCONTRACTORS; provided, however that the CONTRACTOR shall not award subcontracts which total more than 40% of the total Contract Price based upon the unit prices within the Bid submitted to the OWNER by the CONTRACTOR.

11. BID FORM

The bid form attached hereto is for reference only; bidders must download and complete the required bid form and enter line item unit amounts online at <https://olatheks.bonfirehub.com>.

12. SUBMISSION OF BIDS

Bids shall be submitted at the time and place indicated in the Invitation to Bid, only bids submitted electronically at <https://olatheks.bonfirehub.com> will be considered. A scanned copy of the BID BOND must be included with the online bid. Bidders shall acknowledge receipt of any bid addenda issued by signing the bid addendum form and uploading with the Bid.

13. MODIFICATION AND WITHDRAWAL OF BIDS

- A. Bids may be modified or withdrawn online at any time up to the time and date of bid opening listed on the Notice to Bidders.
- B. If, within twenty-four (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 his bid, that BIDDER may withdraw his bid and the Bid Security will be returned. Thereafter, that BIDDER will be disqualified from further bidding on the work.

14. OPENING OF BIDS

Bids will be opened (publicly).

- A. Bids will be opened publicly online at <https://olatheks.bonfirehub.com>. The online process shall be utilized in place of a bid opening meeting, unless otherwise noted in the contract documents. An abstract of the base bids and major alternatives (if any) will be available online after the opening of the bids.
- B. When bids are opened publicly at a bid opening meeting they will be read aloud, and an abstract of the amounts of the base bids and major alternates (if any) will be made available after the opening of bids.
- C. When bids are opened privately, an abstract of the same information will be made available to BIDDERS within seven (7) days after the date of bid opening upon receipt of a written request to the OWNER by the CONTRACTOR.

15. BIDS TO REMAIN OPEN

All bids shall remain open for sixty (60) days after the date of the bid opening, but OWNER may, in his sole discretion, release any bid and return the Bid Security prior to that date.

16. AWARD OF CONTRACT

- A. OWNER reserves the right to reject any and all bids, to waive any and all informalities and to negotiate contract terms with the Successful BIDDER, and the right to disregard all nonconforming, non-responsive or conditional bids. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- B. In evaluating bids, OWNER shall consider the qualifications of the BIDDERS, whether or not the bids comply with the prescribed requirements, and alternates and unit prices if requested in the bid forms. It is OWNER'S intent to accept alternates (if any are accepted) in the order in which they are listed in the bid form but OWNER may accept them in any order or combination.
- C. OWNER may consider the qualifications and experience of SUBCONTRACTORS and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the work as to which the identity of SUBCONTRACTORS and other persons and organizations must be submitted as provided in the Supplementary Conditions. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by OWNER.
- D. OWNER may conduct such investigations as he deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the BIDDERS, proposed SUBCONTRACTORS and other persons and organizations to do the work in accordance with the Contract Documents to OWNER'S satisfaction within the prescribed time.
- E. OWNER reserves the right to reject the bid of any BIDDER who does not pass any such evaluation to OWNER'S satisfaction.
- F. If the contract is to be awarded it will be awarded to the lowest responsive and responsible BIDDER whose evaluation by OWNER indicates to OWNER that the award will be in the best interests of the project.
- G. If the contract is to be awarded, OWNER will give the Successful BIDDER a Notice of Award within sixty (60) days after the day of the bid opening.

17. PERFORMANCE AND OTHER BONDS

Paragraph 6.01 of the General Conditions and Section SC 6.01.A of the Supplementary Conditions set forth OWNER'S requirements as to performance and other bonds. When the Successful BIDDER delivers the executed agreement to OWNER it shall be accompanied by the required Contract Security.

18. SIGNING OF AGREEMENT

When OWNER gives a Notice of Award to the Successful BIDDER, it will be accompanied by at least five (5) unsigned counterparts of the agreement and all other Contract Documents.

Within ten (10) days thereafter CONTRACTOR shall sign and deliver at least five (5) counterparts of the agreement to OWNER with all other Contract Documents attached. Within fifteen (15) days thereafter OWNER will deliver all fully signed counterparts to CONTRACTOR. ENGINEER will identify those portions of the Contract Documents not fully signed by OWNER and CONTRACTOR and such identification shall be binding on all parties.

19. SPECIAL LEGAL REQUIREMENTS

The contract awardee, if not a resident of Kansas, shall appoint a Process Agent as provided by the form in these documents. Refer to the Supplementary Conditions for further instructions.

20. NON-RESIDENT CONTRACTORS

- A. If the Successful BIDDER is a corporation organized outside the state of Kansas, it will be necessary to apply to the Secretary of State for authority to engage in business in this state as a foreign corporation (see K.S.A. 17-7301 et. seg.).
- B. All non-resident CONTRACTORS and SUBCONTRACTORS, as defined in K.S.A. 79-1008, desiring to engage in the business of construction in the State of Kansas and who have not registered this contract with the Director of Revenue for the state of Kansas, post a good and valid surety bond in the sum of \$1,000.00 and conditioned that all taxes, including contributions due under the employment security law, which may accrue to the state of Kansas and all taxes, including contributions due under the employment security law, which may accrue to the State of Kansas, and all taxes which may accrue to the political subdivisions thereof on such Contract shall be paid (see K.S.A. 79-1009 et. seg.).

21. EQUAL EMPLOYMENT OPPORTUNITY

Attention of BIDDERS is particularly called to the requirements for assuring that employees and applicants for employment are not discriminated against in the performance of any work done under the contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, or national origin or ancestry. (See GENERAL SPECIFICATIONS).

22. WAGES AND SALARIES:

- A. Attention of BIDDERS is particularly called to the requirements concerning the payment of the not less than the prevailing wage and salary rates specified in the contract documents and the conditions of employment with respect to certain categories and classifications of employees. See GENERAL SPECIFICATIONS, PART II.
- B. The rates of pay set forth under GENERAL SPECIFICATIONS, PART II, are the minimal to be paid during the life of the contract. It is, therefore, the responsibility of the BIDDERS to inform themselves as to local labor conditions, such as the length of work day and work week overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustments of rates.

23. COMPLIANCE WITH AFFIRMATIVE ACTION REQUIREMENTS:

BIDDERS on this project will be required to comply with the bid conditions affirmative action requirements referred to as the Kansas City plan. Failure to comply with the above will result in the bid not being awarded.

24. COMPLIANCE WITH SECTION 3 REQUIREMENTS:

BIDDERS on this project will be required to comply with Section 3 of the Housing and Urban Development Act of 1968. This section provides that to the greatest extent feasible, opportunities for training and employment shall be given to lower income residents of HUD-assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part by persons residing in the area of the project. BIDDERS should familiarize themselves with Title 24, CFR Part 135, outlining their responsibilities under this law.

25. COMPLIANCE WITH DEPARTMENT OF LABOR REGULATIONS:

BIDDERS on this project shall comply with the provisions of the Department of Labor regulations--Title 29 (CFR 29, part 5 and part 5A. See GENERAL SPECIFICATIONS, PART II). Copies of Department of Labor regulations (Title 29) are available from the City of Olathe.

26. TITLE 29 DOCUMENTS:

Attention of BIDDERS is called to familiarize themselves with the requirement for the use of apprentice-apprentices. (See DIVISION 220--General Specifications)

27. TAX EXEMPTION

All applicable taxes, sales, consumer, use and other similar taxes, imposed by any taxing authority, on materials, equipment or supplies to be incorporated in the work, shall be tax exempt and not included in the Bid.

The low BIDDER shall be required to furnish taxing authorities any necessary information or reports pertaining thereto, as required.

Pursuant to KSA 79-3606, both services and materials for this project are exempt from the Kansas Retailers' Sales Tax and the Kansas Compensating Tax. Within fifteen (15) days after the date of Contract, OWNER will provide a Kansas sales and compensating tax exemption certificate number to CONTRACTOR. CONTRACTOR and each SUBCONTRACTOR or repairman must furnish the exemption certificate number to each supplier on Kansas Sales Tax Division Form STD 74. The exemption certificate number shall be placed on all invoices for material to be incorporated in the work. All invoices shall be held by CONTRACTOR for five (5) years, and shall be subject to audit by the Director of Taxation. Upon completion of the work, CONTRACTOR shall file with OWNER on a form provided by the Director of Taxation, a sworn statement that all purchases made under the exemption certificate were entitled to be exempt from the Kansas Retailers' Sales Tax and the Kansas Compensating Tax. CONTRACTOR shall assume full responsibility for proper use of the exemption certificate number and shall pay all legally assessed penalties for improper use of the certificate number.



*****For completion by bid finalists ONLY*****

When selected as the successful bidder for a contract with the City of Olathe, the Contracting Company, Firm or Agency will submit the following information in accordance with the requirements of the Municipal Code. All questions must be answered, and the data given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets. This questionnaire must be notarized. Misrepresentation of fact will disqualify the bidder. Please e-mail the completed Questionnaire separately to your Olathe contract liaison if you are selected as a bid finalist. If you have already completed this questionnaire or received Compliance Certification after August 2017, you do not need to resubmit these forms unless there have been significant changes to your ownership and/or business practices. Instead, please submit the date and project number and project description related to your submission of these form. For questions, please contact the Office of Community Relations at (913) 971-8827.

Name of Contracting Company, Firm or Agency:

Name of your Equal Employment Officer or designated contact person:

Address: _____

City: _____ State: _____ Zip: _____

Contact Person's Phone: _____

Email: _____

Type of Company, Firm or Agency: _____

Name of Company, Firm or Agency President: _____

I certify that that my company:

1. Does not discriminate, will not discriminate, and has never discriminated against any employee or applicant for employment because of Race, Religion, Color, Sex, Age, Disability, National Origin or Ancestry.

Yes ☐ No ☐

If No, explain

-
2. Will adhere to Local, State, and Federal laws and mandates; and will adhere to Affirmative Action/Equal Opportunity in all its employment procedures including advertising, recruiting, hiring, training, promotions and upgrading.

Yes ☐ No ☐

If No, explain

-
3. Will require that any subcontractor my company hires for any work for the City comply with these non-discrimination policies.

Yes ☐ No ☐

If No, explain

I understand that an act of discrimination is a breach contract with the City. I also understand that the Community Relations Manager or designee is authorized to initiate investigations, receive discrimination complaints, and refer them to the Olathe Human Relations Commission on an ongoing basis. An Act of discrimination or a misleading or a dishonest response to this form may result in the contract being rescinded, terminated, or suspended in whole or in part.

Dated this _____ day of _____, 202__.

Firm Name _____

Signature of Person Completing Form: _____

Print Name _____

Title _____

Email _____ Phone _____

To be completed by a Notary Public:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on _____ by _____.

(Seal)

(Signature of notarial officer)

Title (and Rank)
[My appointment expires: _____]

STATEMENT OF BIDDER'S QUALIFICATIONS

(To be submitted by the Bidder only upon specific request of the City of Olathe).

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. Name of Bidder: _____
2. Permanent main office address: _____
3. When organized: _____
4. If a corporation, where incorporated: _____
5. How many years have you been engaged in the contracting business under your present firm or trade name? _____
6. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
7. General character of work performed by your company:
8. Have you ever failed to complete any work awarded to you? _____
If so, where and why?
9. Have you ever defaulted on a contract? _____
If so, where and why?
10. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed:
11. Experience in construction work similar in importance to this project:
12. List your major equipment available for this contract:

13. Background and experience of the principal members of your organization, including the officers.
14. Credit available: \$_____.
15. Give bank references:
16. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the City of Olathe? _____
17. The undersigned hereby authorized and requests any person, firm, or corporation to furnish any information requested by the City of Olathe in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated at _____ this _____ day of _____,
20_____.

By _____
Title _____

State of _____)
County of _____)ss

_____ being duly sworn, deposes
and says that he is _____ of
_____ and that the answers to the
foregoing questions and all statements therein contained are true and correct.

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

Notary Public
My commission expires _____, 20_____.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____, a
_____ duly organized under the laws of the State of _____, as PRINCIPAL, and
_____, a corporation duly organized under the laws of the State of _____, as SURETY, are held
and firmly bound unto the City of Olathe, Kansas, herein after called the City of Olathe, in the penal sum of _____ Percent of the Amount of Bid
(__%), for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid,
dated _____, 20_____, for the following project:
I-35 and Santa Fe Street Fiber Optic Interconnect, City PN 3-C-025-18 KDOT PN 35-46 KA-6364-02 Federal PN STP-A636[402].

NOW, THEREFORE, if the Principal shall not withdraw said Bids within the period specified therein after the opening of the same,
or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period be
specified, within ten (10) days after the prescribed forms are presented to SURETY for signature, enter into a written Contract with the City of
Olathe in accordance with the Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful
performance and proper fulfillment of such Contract; or in the event of the withdrawal of said Bid within the period specified, or the failure to
enter into such Contract and give such bond within the time specified, if the Principal shall pay the City of Olathe the difference between the
amount specified in said Bid and the amount for which the City of Olathe may procure the required work or supplies for both, if the latter be in
excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this _____ day
of _____, 20_____, the name and corporate seal of each corporate party being hereto affixed.

PRINCIPAL

SURETY

(Principal) (SEAL)

(Surety) (SEAL)

Business Address: _____

By: _____
Attorney-in-Fact, State of _____

By: _____
(Corp. Principal)

(Title)

Surety Phone No: _____

Witness: _____

Witness: _____

BID FORM
City P.N. 3-C-025-18
KDOT PN 35-46 KA-6364-02
Federal PN STP-A636[402]
CITY OF OLATHE, KANSAS

The following table is a list of bid items, estimated quantities, and the unit prices submitted by the bidder for the I-35 and Santa Fe Street, City PN 3-C-025-18, KDOT PN 35-46 KA-6364-02, Federal PN STP-A636[402].

Schedule of Values

ITEM		UNITS	APPROX.	UNIT PRICE		AMOUNT
			QUANTITY	DOLLARS	CENTS	DOLLARS
	P.N.					
1	Mobilization	LS	1			
2	Contractor Construction Staking	LS	1			
3	Traffic Control	LS	1			
4	Fiber Optic Interconnect Installation	LS	1			
TOTAL:						

ASPHALT MATERIAL INDEX:

The price included for Asphaltic Concrete Surface will be based on the computed monthly Asphalt Material Index for the month of the bid opening, if current month is not available at the time of bid opening the previous month prior to the bid opening month's index value will be used, as listed at the following web site, <http://www.ksdot.org/burconsmain/ppreq/asphaltpriceindex.asp>. The bid unit price for Asphaltic Concrete Surface shall be adjusted in subsequent months based on specification number **15-01009-R01, Price Adjustment for Asphalt Materials, in the 2015 Edition of Kansas Department of Transportation Special Provisions for the Standard Specification.**

The undersigned successfully completed the bid process online at olatheks.bonfirehub.com and affirms that the schedule of values table above matches the unit prices, line item amounts, and bid total amount submitted electronically.

Contractor

By

Title

Date

Telephone Number

Contact Person

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

THIS AGREEMENT is dated as of the ____ day of _____, 20__ (“Effective Date”), by and between the City of Olathe, Kansas (“Owner”) and _____ (“Contractor”). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- City of Olathe fiber relocation in association with the Santa Fe and I-35 Project.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: I-35 and Santa Fe Street Fiber Optic Interconnect, City PN 3-C-025-18, KDOT PN 35-46 KA-6364-02, Federal PN STP-A636[402].

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by HNTB Corporation.
- 3.02 The Owner has retained HNTB Corporation (“Engineer”) 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, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*
- A. The Work will be substantially completed within 60 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 15 days after the date when the Contract Times commence to run.
- B. Work must be substantially complete no later than May 15, 2027.
- 4.03 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any

extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and Final Completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds the amount that follows, subject to adjustment under the Contract:

\$ _____

[Here insert a lump sum, unit prices or both, if necessary attach exhibits and list them in Article 8.]

[CONTRACTOR's Bid may be attached as an exhibit to avoid lengthy retyping of unit price schedules, formulae for escalation of prices, information as to alternatives, etc.]

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments

previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

- a. 95% percent of Work completed (with the balance being retainage) and
 - b. 95% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 97% of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200% of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

NOTE(S) TO USER:

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate prescribed under K.S.A. 16-1901 et seq., and any amendments thereto.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, if any.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of

such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs, if any such reports and drawings are so identified.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- 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 given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages xiii to xix, inclusive).
 - 2. Performance & Maintenance bond (pages xx to xxv, inclusive).
 - 3. Statutory bond (pages xxvi to xxx, inclusive).
 - 4. Appointment of Process Agent.
 - 5. Non-collusive Affidavit of Prime Bidder.
 - 6. General Conditions (pages 1 to 65, inclusive).
 - 7. Supplementary Conditions (pages 1 to 33, inclusive).
 - 8. Specifications as listed in the table of contents of the Project Manual.
 - 9. Drawings (not attached but incorporated by reference) consisting of 12 sheets with each sheet bearing the following general title: I-35 and Santa Fe Street Fiber Optic Interconnect [or] the Drawings listed on the attached sheet index.
 - 10. Addenda (numbers to , inclusive).
 - 11. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages to , inclusive).
 - b. Bid Documents (Notice to Bidders, Instructions to Bidders, Questionnaire of Personnel Practices Bid Bond, Bid Form).

- c. Certificates (Compliance with Personnel Practices, Good Standing to Conduct Business in Kansas, Insurance).
 - d. Federal Funds Project Documents (if applicable) (Standard General Conditions Division 100, General Specifications Division 200, Required Contract Specifications, General Wage Decision).
 - e. Project Requirements.
 - f. Temporary Facilities.
 - g. Submittals.
 - h. Technical Specifications.
 - i. General Special Conditions.
 - j. Measurements and Payments.
12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

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

10.03 *Successors and Assigns*

- A. Owner and Contractor each represent that they are duly authorized to enter into the Contract, and binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

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 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor in the Supplementary Conditions.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

OWNER:

CONTRACTOR:

City of Olathe, Kansas

By: _____

Title: Mayor

Attest: _____

Title: _____

Address for giving notices:

P.O. Box 768

Olathe, KS 66051-0768

By: _____

Title: _____

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

Attest: _____

Title: _____

Address for giving notices:

Contractor's Phone Number

License No.: _____

(where applicable)

Agent for service of process:

If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Approved as to form:

Deputy City Attorney

**CITY OF OLATHE, KANSAS
PERFORMANCE & MAINTENANCE BOND**

_____, as surety ("Surety"), and _____, as principal ("Contractor"), enter into and execute this Bond ("Performance Bond"), and bind themselves in favor of the City of Olathe, Kansas as obligee ("Owner"), in the initial amount of \$_____, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated _____ under City Project No. 3-C-025-18, KDOT PN 35-46 KA-6364-02, Federal PN STP-A636[402], to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects in a workmanlike manner, as designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract Documents, General and Technical or Special Specifications of the Contract, Plans, and any Written Addendum's or Change Orders, (hereinafter collectively referred to as the "Contract"), as may be necessary to ensure the timely completion of the I-35 and Santa Fe Street Fiber Optic Interconnect Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to furnish this Performance and Maintenance Bond as a condition to executing the Contract with the Contractor, and has further required the Contractor to guarantee and maintain the Project work in accordance with the Contract for a period of two (2) years from the date of final payment.

It is agreed if the Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Contract, according to the true intent and meaning in each case, and the Project improvements shall be constructed in accordance with the Contract so as to endure without defect and need of repair for a period of two (2) years from the date of final payment, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract including without exception all of the Contract Documents as designated, defined and described in the Contract, and in accordance with the Olathe Technical Specifications and Design Criteria Manual) and all terms and conditions, both express and implied.
- 2) If the Owner shall provide to Surety the written notice of the Owner stating that the Contractor is in breach or default of the Contract, and that such breach or default remains uncured by the Contractor, then upon delivery of such notice to the Surety in the method for providing notices as set forth in Paragraph 7 below, Surety must promptly notify the Owner in writing which action it will take as permitted in Paragraph 3.

- 3) Upon the delivery of the Owner's written notice of breach or default by the Contractor as provided in Paragraph 2 above, the Surety may promptly remedy the breach or default or must, within ten (10) days, proceed to take one of the following courses of action:
- a. **Proceed Itself.** Complete performance of the Contract including correction of defective and nonconforming Work through its own contractors or employees, approved as being acceptable to the Owner, in the Owner's sole discretion, provided, however, that Contractor will not be retained, and provided further that Owner's discretion to approve Surety's contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated with the Contractor. During this performance by the Surety the Owner will pay the Surety from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. During this performance Surety's payment and performance bond must remain in full force and effect; or
 - b. **Tender a completing contractor acceptable to Owner.** Tender a contractor, approved as being acceptable to the Owner (in the Owner's sole discretion), together with a contract for fulfillment and completion of the Contract executed by the completing contractor, to the Owner for the Owner's execution. Owner's discretion to approve Surety's completing contractor will not be unreasonably withheld as to any contractor who would have qualified to offer a proposal on the Contract and is not affiliated (as defined in the General Conditions of Contract) with the Contractor. Owner's discretion to approve Contractor as the completing contractor, however, shall be in Owner's sole subjective discretion. Upon execution by the Owner of the contract for fulfillment and completion of the Contract, the completing contractor must furnish to the Owner a performance and maintenance bond and a separate statutory payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond must be in the Penal Sum of the full cost to complete the Contract. The Owner will pay the completing contractor from its own funds only those sums as would have been due and payable to the Contractor under the Contract as and when they would have been due and payable to the Contractor in the absence of the breach or default not to exceed the amount of the remaining Contract balance less any sums due the Owner under the Contract. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the Contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the Owner can utilize those sums in making timely payment to the completing contractor; or
 - c. **Tender the Full Penal Sum.** Tender to the Owner the full Penal Sum of the surety bond. The Owner will refund to the Surety without interest any unused portion not spent by the Owner procuring and paying a completing contractor or completing the construction contract itself, plus the cost allowed under Section 4, after completion of the contract

for fulfillment and completion of the Contract and the expiration of any applicable warranties; or

d. **Other Acts.** Take any other acts mutually agreed upon in writing by the Owner and the Surety.

e. **IT SHALL BE NO DEFENSE TO SURETY'S OBLIGATION TO UNDERTAKE ONE OF THE PRECEDING COURSES OF ACTION THAT THE CONTRACTOR CONTENDS THAT IT IS NOT IN BREACH OR DEFAULT OF THE CONTRACT, OR THAT THE NOTICE OF BREACH OR DEFAULT WAS DEFECTIVE, OR THAT THE CONTRACTOR HAS RAISED ANY OTHER CLAIM OF DEFENSE OR OFFSET, PROVIDED ONLY THAT SURETY HAS RECEIVED THE WRITTEN NOTICE OF THE OWNER AS SPECIFIED IN PARAGRAPH 2.**

- 4) In addition to those duties set forth herein above, the Surety must promptly pay the Owner (i) all losses, costs and expenses resulting from the Contractor's breach(es) or default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, plus (ii) liquidated or actual damages, whichever may be provided for in the contract, for lost use of the Project, plus (iii) re-procurement costs and fees and expenses, plus (iv) costs incurred at the direction, request, or as a result of the acts or omissions of the Surety; provided that in no event shall Surety's liability exceed the Penal Sum of this Bond.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) The Surety provides this Performance and Maintenance Bond for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by attached rider, together with their heirs, administrators, executors, successors, and assigns. No other party, person or entity has any rights against the Surety.
- 7) All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY

Name: _____
Attention: _____
Street: _____
City, State, _____
ZIP: _____

CONTRACTOR

Name: _____
Attention: _____
Street: _____
City, State, _____
ZIP: _____

OWNER

City of Olathe, Kansas
Attn: Leslie Donnelly, Project Manager
P.O. Box 768
Olathe, KS 66051-0768

with a copy to:

City Attorney's Office
P.O. Box 768
Olathe, KS 66051-0768

- 8) The recitals contained in this Performance and Maintenance Bond are incorporated by reference herein and are expressly made part of this Performance and Maintenance Bond.
- 9) This Performance and Maintenance Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 10) In the event any legal action shall be filed upon this Performance and Maintenance Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

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IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

_____ ,

on this, the _____ day of _____, 20__.

Contractor

Surety

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Phone Number)

(Phone Number)

(Date of Execution)

(Date of Execution)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)

STAFF NOTES:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Departments most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
4. Accompany this bond with Attorney-in-Facts Authority from the surety company certified to include the date of the bond.

**CITY OF OLATHE, KANSAS
STATUTORY BOND**

_____, a _____, organized under the laws of the state of _____, and authorized to do business in the state of Kansas, as surety ("Surety"), and _____, as principal ("Contractor"), enter into and execute this Bond ("Statutory Bond"), and bind themselves unto the City of Olathe, Kansas and any Beneficiary of this Statutory Bond, in the initial amount of \$_____, which amount is one hundred percent (100%) of the Contract Sum, or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and the City of Olathe as Owner, (the "Penal Sum").

WHEREAS, the Contractor has executed a contract with the Owner dated _____ under City Project No. 3-C-025-18, KDOT PN 35-46 KA-6364-02, Federal PN STP-A636[402], to timely and fully provide all labor, tools, equipment and materials or supplies in conformance with generally accepted standards for quality, skill and construction of similar projects, in a workmanlike manner, designated, described and required by the Instruction to Bidders, Bid Proposal, the Contract, General and Technical or Special Specifications of the Contract, and any Written Addendum's or Change Orders, (the "Contract"), used or consumed in connection with or in or about the I-35 and Santa Fe Fiber Optic Interconnect Project in the City of Olathe, Johnson County, Kansas (the "Project");

WHEREAS, the Owner has required the Contractor to guarantee payment of all labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, and all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and

WHEREAS, the Owner has required the Contractor to furnish this Statutory Bond as a condition to awarding and executing the Contract with the Contractor, to guarantee the stated obligations.

NOW THEREFORE, if the Contractor and the subcontractors of the Contractor shall pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, or the making of the Project improvements described in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect;

The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree:

- 1) The Contract is incorporated by reference and made a part of this Bond. The Surety and the Contractor are bound for the full performance of the Contract and all of the terms and conditions, both express and implied, and, without limitation, specifically including the Contractor's obligation to pay all indebtedness incurred for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project.
- 2) For purposes of this Statutory Bond, "Beneficiary" is defined as any person or entity to whom there is due any sum for labor, materials, tools, equipment or supplies furnished pursuant to the Contract for the Project that were used or consumed in connection with or in or about the Project, or whom otherwise incurred indebtedness for labor furnished, materials, tools, equipment or supplies, used or consumed in connection with or in or about the Project, and any such person or entity's assigns.

- 3) In no event is the Surety obligated hereunder for sums in excess of the Contract Sum or such greater amount as the Contract Sum may be adjusted from time to time in accordance with the Contract between the Contractor and Owner.
- 4) Upon receipt of a claim from a Beneficiary hereunder, the Surety must promptly, and in no event later than thirty (30) days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:
- a. making payment of all sums not in dispute; and
 - b. stating the basis for disputing any sums not paid.
- 5) The Surety waives notice of any Modifications to the Contract, including changes in the Contract Time, the Contract Sum, the amount of liquidated damages, or the Work to be performed in connection with the Project. The parties expressly agree that this Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Sum more than 25 percent (25%), so as to bind the Contractor and the Surety to the full and faithful performance of the Contract so amended. The term "*amendment*" or "*modification*" wherever used in this Bond, and whether referring to this Bond or the Contract, shall include any alteration, addition, extension, or modification of any character whatsoever.
- 6) **METHOD OF NOTICE.** All notices to the Surety, the Contractor or the Owner must be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY

Name: _____
Attention: _____
Street: _____
City, State, _____
ZIP: _____

CONTRACTOR

Name: _____
Attention: _____
Street: _____
City, State, _____
ZIP: _____

OWNER

City of Olathe, Kansas
Attn: Leslie Donnelly, Project Manager
P.O. Box 768
Olathe, Kansas 66051-0768

with a copy to:

City Attorney's Office
P.O. Box 768
Olathe, KS 66051-0768

- 7) The recitals contained in this Statutory Bond are expressly made part of this Statutory Bond.
- 8) This Statutory Bond shall be governed by, and construed in accordance with, the laws of the State of Kansas without regard to its conflict of laws provisions.
- 9) In the event any legal action shall be filed upon this Statutory Bond, venue shall lie exclusively in the District Court of Johnson County, Kansas.

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IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

_____ ,

on this, the _____ day of _____, 20__.

Contractor

Surety

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By:

By:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Address)

(Address)

(Phone Number)

(Phone Number)

(Date of Execution)

(Date of Execution)

(Accompany this bond with Attorney-in-Fact's authority from the Surety Company certified to include the date of the bond.)

STAFF NOTES:

1. A Statutory Bond is required only in connection with a Contract exceeding One Hundred Thousand dollars (\$100,000.00) in accordance with K.S.A. 60-1111 as amended.
2. **Contractor** shall be responsible for ensuring this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Departments most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Facts Authority from the surety company certified to include the date of the bond.

Certification, pursuant to Local Rule 3.7

☐ [Pursuant to Local Rule 3.7, the undersigned hereby certifies that no portion of **City of Olathe, Kansas – Statutory Bond** was drafted/prepared using Generative A.I.)

OR

☐ [Pursuant to Local Rule 3.7, the undersigned hereby certifies that Generative A.I. was used to draft/prepare **City of Olathe, Kansas – Statutory Bond**. Specifically, [Name of A.I. tool] was used, in whole or in part, to draft/prepare this submission. The undersigned further certifies that he/she has independently verified the accuracy of every citation to the law or to the record and that any language drafted by Generative A.I., including quotations, citations, paraphrased assertions, and/or legal analysis has been included and submitted after considering the requirements of KSA 60-211 and any applicable ethical rules governing attorneys.

Respectfully submitted,

APPOINTMENT OF PROCESS AGENT

KNOW ALL MEN BY THESE PRESENTS:

That pursuant to K.S.A. 16-113, as amended, _____
("Contractor") does hereby appoint and designate _____, a
resident of the State of Kansas, as and for their process agent, and hereby consents, without power of
revocation, that actions may be commenced against said Contractor in any court of competent
jurisdiction in Johnson County, Kansas, which might arise out of a contractual relationship with the State
of Kansas or any political or taxing subdivision or unit thereof by service of process on said Contractor,
and said Contractor stipulates and agrees that such service shall be taken and held in all courts to be as
valid and binding as if service of process had been made upon the President or any other chief official of
said corporation.

IN WITNESS WHEREOF the above named Contractor has caused these presents to be executed
by its president and its secretary, and authenticated by its corporate seal at
_____, in said State of _____, this _____ day of
_____, 20____.

CORPORATE NAME _____

By _____

President _____

SEAL

ATTEST:

Secretary

NONCOLLUSIVE AFFIDAVIT OF PRIME BIDDER

STATE OF _____)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and states that:

(1) He/she is _____ (owner, partner, officer, representative or agent) of _____, (company) the bidder having submitted the attached bid:

(2) He/she is fully informed of the contents of the attached bid and of all the circumstances surrounding the preparation of such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said bidder nor any of its officers, partners, owners, representatives, employees, or parties interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other bidder, firm, or person to:

(a) submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted;

(b) refrain from bidding in connection with such contract;

(c) fix the price or prices in the attached bid, or the price or prices of any other bidder;

(d) fix any overhead, profit, or cost element of the bid price, or the bid prices of any other bid;

(e) secure an unlawful advantage against the City of Olathe, Kansas, or any person interested in the proposed contract.

(5) The price or prices quoted in the attached bid are fair and proper and not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties interest, including this affiant.

By _____

Title _____

Subscribed to and sworn to before me, the undersigned, a Notary Public, this _____ day of _____, 20____.

(Seal)

Notary Public

My Commission Expires: _____



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

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

1.02 *Terminology*

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

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

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

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

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

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

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

4.05 *Delays in Contractor's Progress*

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

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

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

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

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

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

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

5.03 *Subsurface and Physical Conditions*

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

5.04 *Differing Subsurface or Physical Conditions*

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

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

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

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

5.05 *Underground Facilities*

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

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

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

5.06 *Hazardous Environmental Conditions at Site*

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

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

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

6.02 *Insurance—General Provisions*

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

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

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

6.03 *Contractor's Insurance*

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

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

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

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

6.04 *Owner's Liability Insurance*

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

6.05 *Property Insurance*

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

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

6.06 *Waiver of Rights*

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

6.07 *Receipt and Application of Property Insurance Proceeds*

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

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

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

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

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

7.03 *Services, Materials, and Equipment*

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

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

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

7.04 "Or Equals"

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

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

7.05 Substitutes

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

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

7.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

O. Nothing in the Contract Documents:

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

7.07 *Patent Fees and Royalties*

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

7.08 *Permits*

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

7.09 *Taxes*

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

7.10 *Laws and Regulations*

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

7.11 *Record Documents*

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

7.12 *Safety and Protection*

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

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

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

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

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

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

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

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

1. *Shop Drawings:*

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

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

2. *Samples:*

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

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

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

D. *Engineer's Review:*

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

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

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

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

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

7.18 *Indemnification*

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

7.19 *Delegation of Professional Design Services*

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

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

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

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

8.02 *Coordination*

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

8.03 *Legal Relationships*

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

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

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

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

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

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

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

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

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

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

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

11.02 *Owner-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

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

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

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

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

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

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

11.07 *Execution of Change Orders*

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

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

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

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

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

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

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

13.01 *Cost of the Work*

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

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

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

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

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

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

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

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

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

13.02 Allowances

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

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

13.03 *Unit Price Work*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

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

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

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

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

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

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

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

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

15.01 *Progress Payments*

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

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

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

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

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

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

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

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

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

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

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

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

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

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

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

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

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

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

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

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

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

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

16.03 *Owner May Terminate For Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

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

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC 1.01 Add the following language before Paragraph 1.01.A:

The terms in these Supplementary Conditions that are defined in the Standard General Conditions of the Construction Contract (EJCDC C-700, 2013 edition) have the meanings assigned to them in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof. Substantial completion shall mean completion of all work except general clean-up. Any subsequent reference to Engineer shall mean owner's representative. The terms "Owner" and "City" shall refer to the City of Olathe, Kansas.

SC 1.01.A. Add to the list of definitions in Paragraph 1.01.A. by inserting the following as a numbered item in its proper alphabetical position:

Punch List—Collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

ARTICLE 2 – PRELIMINARY MATTERS

SC 2.01.D. Add the following Paragraph after Paragraph 2.01.C.:

- D. *Certificate of Good Standing.* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner a Certificate of Good Standing to conduct business in the State of Kansas issued by the Kansas Secretary of State.

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

Owner shall furnish to Contractor one copy ~~four printed copies~~ of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). ~~Additional printed copies will be furnished upon request at the cost of reproduction.~~

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

Contractor's Progress Schedule

- A. The Contractor, promptly within ten (10) days after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's information review and approval a Contractor's Progress Schedule for the Work. The Progress Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the

conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

- B. The Contractor shall prepare a Schedule of Submittals, promptly within ten (10) days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the Schedule of Submittals for the Owner's and Engineer's approval. The Owner's and Engineer's approval shall not unreasonably be delayed or withheld. The Schedule of Submittals shall (1) be coordinated with the Contractor's Progress Schedule, and (2) allow the Owner and Engineer reasonable time to review submittals. If the Contractor fails to submit a Schedule of Submittals, the Contractor shall not be entitled to any increase in Contract Price or extension of Contract Times based on the time required for review of submittals.
- C. The Contractor shall perform the Work in general accordance with the most recent Schedule of Submittals provided to and approved by the Owner and Engineer.

SC 2.05 Delete Paragraph 2.05 in its entirety.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC 3.03 Delete Paragraph 3.03 in its entirety and insert the following in its place:

Review of Contract Documents and Field Conditions by Contractor

- A. By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Engineer of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.
- B. The Contractor must carefully study and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner pursuant to this Section SC 3.03 before commencing Work at the Site and at frequent intervals during its progress.
- C. The Contractor must take field measurements and verify Site conditions, and must carefully compare such field measurements and Site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or doing any Work at the Site.
- D. The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable Laws and Regulations bearing on the performance of the Work and Referenced Standards and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.
- E. If the Contractor believes that any portions of the Contract Documents do not comply with applicable Laws or Regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors or Referenced Standards, the Contractor must promptly notify the Owner and the Engineer of the non-compliance as provided in Subparagraph SC 3.03.F. and request direction before proceeding with the affected Work.

- F. The Contractor must promptly notify the Owner and the Engineer in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Engineer timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.
- G. If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, without prompt written notice to the Owner and the Engineer and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

SC 3.06 Add the following new paragraph immediately after Paragraph 3.05:

Document Retention and Audit Provisions

- A. Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of five (5) years after final payment. Furthermore, the Owner has the right to examine the Contractor's records directly or indirectly pertaining or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for five (5) years after final payment.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

SC 4.01 Delete Paragraph 4.01 in its entirety and insert the following in its place:

Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run immediately from the day indicated on the Notice to Proceed.

SC 4.03 Add the following new Paragraph after Paragraph 4.03.A.:

- B. Any Section Corner or Quarter Section Corner affected by the project shall be referenced to points outside the construction and all requirements of KSA 58-2011 shall be met. A copy of all reports required by KSA 58-2011 to be filed with the Johnson County Engineer shall be submitted to the City.

SC 4.04 Add the following new Paragraphs after Paragraph 4.04.B.:

- C. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Times are a reasonable period for performing the Work.
- D. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 6 to be furnished by the Contractor and Owner, or prior to approval of Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

- E. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Times. If Contractor's Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Progress Schedule as a Cost of the Work.
- F. The Contractor must conform to the most recently approved Progress Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Progress Schedule.
- G. The Contractor must maintain at the Site, available to the Owner and the Engineer for their reference during the progress of the Work, a copy of the approved Progress Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Progress Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Progress Schedule.
- H. The Contractor represents that its Bid includes all costs, overhead and profit which may be incurred throughout the Contract Times and the period between Substantial and final Completion. Accordingly, the Contractor may not make any Claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Times but for any claimed delay.
- I. If the Contractor's progress is not maintained in accordance with the approved Progress Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Progress Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.
- J. The Owner reserves the right to issue a Work Change Directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Price. If the Owner requires an acceleration of the Progress Schedule and no adjustment is made in the Contract Price, or if the Contractor disagrees with any adjustment made, the Contractor must file a Claim as provided in Article 12 or the same will be deemed to be conclusively waived.

SC 4.05 Delete Paragraph 4.05 in its entirety and insert the following in its place:

Delays and Extensions of Time

- A. Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Progress Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Progress Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Times, caused by conditions which could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Paragraph 4.05.B, the Contractor or anyone for whose acts the Contractor is responsible. Excusable delays do not include any delays caused in whole or in part by any Subcontractors, Sub-subcontractors or Suppliers. There shall be no compensation whatsoever for excusable delays. Excusable delays may, but do not necessarily, include:
 - 1. weather delays as further defined in Paragraph SC 4.05.F.;

2. acts of government and regulatory agencies and officials (other than the Owner in its capacity as Owner);
 3. catastrophic events such as fire, flood and unavoidable casualties; and
 4. strikes or labor disputes.
- B. Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Progress Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Progress Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Times, caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to applicable Laws or Regulations).
- C. Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Progress Schedule, or delays to Work not previously identified as critical path activities as shown on the most recently approved Progress Schedule but which become critical path activities as a result of a delay, and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Times, and which are not excusable delays or compensable delays. No increase in the Contract Price or extension of the Contract Times will be made for an unexcused delay.
- D. The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than ten (10) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Engineer within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Paragraph SC 4.05.E. The Contractor's failure to provide the written notice containing the information specified in Paragraph SC 4.05.E within the ten (10) days prescribed above will be conclusively deemed a waiver of any Claim for delay arising from such occurrence.
- E. The Contractor's notice must identify those portions of the Progress Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:
1. A written detailed statement of the reasons and causes for the delay;
 2. inclusive dates of the delay;
 3. specific trades and portions of the Work affected by the delay;
 4. status of Work affected before commencement of the delay;
 5. effect of the delay on available "float" time;
 6. a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Progress Schedule, or that the delay has an effect on an activity not previously on the critical path as shown on the most recent approved Progress Schedule, but which becomes a critical path activity as a result of a delay; and
 7. if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible including any Subcontractor, Sub-subcontractor or Supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to applicable Laws and Regulations) or anyone for

whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

F. In order for the Contractor to be entitled to an extension of the Contract Times for unusually severe weather, the following conditions must be satisfied:

1. The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
2. The unusually severe weather must delay Work which at the time of the unusual severe weather was a critical path activity as shown on the most recently approved Progress Schedule, or delays Work not previously identified as critical path activity as shown on the most recently approved Progress Schedule but which become critical path activity as a result of a delay, and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Times. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted activity must not have occurred during unusually severe weather due to previous unexcused delays; and
3. The Contractor must have provided written notice of the weather-related delay complying with Paragraphs 4.05.D. and 4.05.E. above.

The following schedule of monthly anticipated adverse weather delays constitute the base line for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all-weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
6	4	5	5	4	3	3	3	3	4	4	5

Upon acknowledgement of the Notices to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report, the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities, or must prevent Work not previously identified as a critical path activity as shown on the most recent approved Progress Schedule but which becomes a critical path activity as a result of a delay, for fifty (50) percent or more of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month, and be recorded as full days. If the Contractor has complied with Paragraphs 4.05.D and 4.05.E and the provisions of this Paragraph 4.05.F. and the number of actual adverse weather delay workdays exceeds the number of days anticipated in the table above, and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Times but not the Contract Price.

- G. If strikes or labor disputes are to be considered as the basis for an excusable delay, they must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

- H. Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Paragraphs 4.05.D and 4.05.E (and, if applicable, SC 4.05.F and SC 4.05.G), the Owner will review the most recently approved Progress Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Progress Schedule, including the application of any unused “float” time available in the schedule. The Owner may require the Contractor to submit a more detailed Progress Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner’s approval a revised Progress Schedule which minimizes the adverse effects of the delay.
- I. No extension of the Contract Times or increase in the Contract Price will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Times or increase in the Contract Price will be made to the extent that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Price will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.
- J. The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or Suppliers), is included in, and payable to the Contractor as part of the Change Order or Work Change Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including Claims for local and cumulative impacts as a result of such Change Order or Work Change Directive and any and all other Claims of any type or nature whatsoever including any Claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order.
- K. In the event the Owner denies the Contractor’s request for a change in the Contract Times or, in the case of a compensable delay, a change in the Contract Price, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.
- L. *Delay Damages*
 - 1. By executing a Change Order or Work Change Directive, the Contractor represents that the Contractor is not entitled to an increase in the Contract Price or an extension of the Contract Times beyond that specified in the Change Order or Work Change Directive. The Contractor is not entitled to an increase in the Contract Price or extension of the Contract Times as a result of the issuance by the Owner of a Work Change Directive unless the Contractor asserts a Claim as required by this Agreement;
 - 2. The provisions of Paragraph SC 4.05.L.1. do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond and insurance cost (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are

fully compensated for by payment of the adjustment amount specified in Paragraph 4.05.K.; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner, Engineer, or anyone for whom they are responsible; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to applicable Laws or Regulations; and (vi) the Contractor has fully complied with Paragraphs SC 4.05.D and SC 4.05.E.; and

3. A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written Claim for the time extension complying with Paragraphs SC 4.05.D and SC 4.05.E (and, if applicable, SC 4.05.F and SC 4.05.G).

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

SC 5.02.C Add the following language at the end of the Paragraph:

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Engineer will allocate the cost among those responsible.

SC 5.03 Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:

- A. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner. Contractor shall have full responsibility with respect to subsurface conditions at the Site.

SC 5.04.A. & 5.04.B. Delete Paragraphs 5.04.A. and 5.04.B in their entirety and insert the following:

- A. *Notice.* During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- B. *Engineer's Review.* Upon written notification, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

SC 5.04.D. Add the following language at the end of the Paragraph:

3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. It is the responsibility of the Contractor to justify any change.

SC 5.04.E. & 5.04.F. Add the following language after Paragraph 5.04.D.:

- E. If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Price and Contract Times arising from the existence of such remains or features may be made as provided in Article 12.
- F. No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

SC 5.05.E.3. Add the following language to the end of Subparagraph 5.05.E.3.:

It is the responsibility of Contractor to justify any change.

SC 5.06 Delete Paragraphs 5.06.A through 5.06.I. in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.
- B. In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Environmental Condition (other than those for which the Contractor may have specific responsibility for remediation under the Contract), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Environmental Condition, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Engineer, in writing, within twenty-four (24) hours of discovery.
- C. Upon receipt of notice of a suspected Hazardous Environmental Condition, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.
- D. If the Owner's investigation confirms the presence of a Hazardous Environmental Condition which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of a Hazardous Environmental Condition by Owner, (ii) upon the removal, containment or remediation of the Hazardous Environmental Condition, or (iii) upon the establishment of appropriate safety precautions.
- E. The Contractor may request a change in the Contract Price or Contract Times if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate the Hazardous Environmental Condition which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Contract. Any such requested change in the Contract Price or Contract Times must be made in writing within ten (10) days of discovery of any Hazardous Environmental Condition, which has not been rendered harmless giving rise to the request for the change and must fully comply with

Articles 4, 11, and 12 or any such requested change will be deemed conclusively waived by the Contractor.

- F. The Owner shall not be responsible under this Section SC 5.06 for materials or substances the Contractor brings to the Site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.
- G. The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the Site and negligently handles, or (2) where the Contractor fails to perform its obligations under Paragraph SC 5.06.B., except to the extent that the cost and expense are due to the Owner's fault or negligence.
- H. If, without fault or negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.
- I. Intentionally left blank.

ARTICLE 6 – BONDS AND INSURANCE

SC 6.01.A. At the end of Paragraph 6.01.A., add the following Subparagraphs:

- 1. The performance bond and payment bond, as identified in the General Conditions, Article 6.01, shall be identified herein as a Performance Bond and Statutory Bond, respectively. The Performance (Construction Completion) Bond and Statutory (Construction Payment) Bond shall be in the forms included in the Contract Documents.
- 2. The Statutory Bond described in Subparagraph SC 6.01.A.1. shall be provided in accordance with the provisions of K.S.A. 60-1111 with a duly licensed or authorized corporate surety in the amount of 100% of the contract price. Said bond shall be on a form approved by the Owner and filed with the City of Olathe City Clerk.
- 3. As a provision of the Performance Bond or as a separate bond document, the Contractor will be required to furnish a two (2) year Maintenance Bond in an amount not less than 100% of the contract amount. In addition, a two (2) year Maintenance Bond clause in the amount of 100% of the cost to cover any settlement shall be provided.
- 4. Coincidental with the execution of the agreement, the Contractor shall furnish all required bonds in the forms included in the Agreement. The bonds shall be in the amount of not less than the contract such as indicated by the total base Bid guaranteeing the following:
 - a. The faithful performance of all the covenants, guarantees and agreements of the contract and the payment of all bills and obligations arising from the execution of the contract, which bills or obligations might, or will, in any manner become a Claim against the Owner, and

- b. The work included in this contract against faulty materials (not including those furnished by the Owner) or poor workmanship for two (2) years after the time of its acceptance by the Owner. The bond shall be complete and in full accordance with statutory requirements.

The bonds shall be executed through a company licensed and qualified to operate in the state of Kansas and is subject to approval by the Owner. The bonds shall be signed by an agent residing in the state of Kansas, and the date thereof shall be the date of the execution of the contract.

If at any time during the term of the contract, the surety on the Contractor's bond become irresponsible, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the Owner's satisfaction within ten (10) days after the notice to do so. In default thereof, the contract may be suspended and all payments due the Contractor may be withheld.

SC 6.03 Add the following language at the end of Section 6.03:

The limits of liability for the insurance required by paragraph 6.03 of the General Conditions do not infer or place a limit on Contractor's liability and shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

6.03.A. Worker's Compensation:

- (a) Coverage as required by the statutes of the state of Kansas. The policy shall provide "other states" coverage.
- (b) Applicable Federal (e.g., Longshoreman's)
- (c) Employer's Liability:
 - By Accident - \$500,000 each accident
 - By Disease - \$500,000 each person
 - By Disease - \$500,000 policy limit

6.03.B. Commercial General Liability –Claims Covered:

All insurance required of Contractor by this Agreement shall be first and primary until fully exhausted to the limits provided by this Agreement.

Self-insurance and/or self-insured retentions must be declared to and approved by the Owner. If any portion of any coverage is self-insured, Contractor must provide Owner with written claims handling procedures, to include the name, address, and telephone number of the claims handling office. This may be noted on the Certificate of Insurance or on a separate attached document. Any and all deductibles or self-insurance shall be assumed by and be for the account of, and at the sole risk of the contractor. The Owner may require written guarantees for payment procedures of self-insured losses including related investigations, claims administration and cost of defense.

6.03.C. Commercial General Liability, Form and Content (including completed operations and products liability) per site/project including Personal & Advertising Injury:

General	\$1,000,000	Per Occurrence
	\$2,000,000	Per Project Aggregate
Product - completed operations		

\$1,000,000
\$1,000,000

Each Occurrence
Per Project Aggregate

6.03.D. *Automobile liability:*

\$1,000,000

Per Occurrence
Bodily Injury and
Property Damage,
Combined Single Limit
(or equivalent)

6.03.E. *Umbrella or excess liability:*

This coverage obtained by Contractor shall be excess of the limits provided under the workers compensation and employer's liability, general liability and business automobile liability policies. The liability limits of the umbrella liability policy shall not be less than \$1,000,000. Coverage limits contained in this Section SC 6.03 can be met by a combination of primary and umbrella policy limits.

6.03.F. *Contractor's pollution liability insurance:*

This coverage may be waived at the Owner's discretion.

SC 6.04 Delete Paragraph 6.04 and substitute the following:

The Owner and Engineer shall be included as additional insureds under policies required by paragraph 6.03 as commercially available. Upon request, Contractor shall provide copies of ISO form endorsements (CG 20 10) or equivalent indicating additional insured status of Owner and Engineer.

Any insurance or self-insurance maintained by the Owner and Engineer shall be separate and excess of the contractor's insurance and shall not contribute with it.

Contractor shall include all Subcontractors as additional insureds under its policies or shall submit to Owner for each Subcontractor separate certificates of insurance and endorsements which meet the requirements contained herein.

SC 6.05.A. *Property Insurance, Builder's Risk:* This insurance is not applicable to street, curb, and gutter projects, nor to the waterline or sewer line portion of water or sewer projects.

SC 6.06.B. and 6.06.C Delete Paragraphs 6.06.B. and 6.06.C. and substitute the following:

B. The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and

reputation, and for loss of profit except anticipated profit arising directly from the Work.

- C. The mutual waiver provided in Paragraph 6.06.B. is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 16. Nothing contained in this Section 6.06 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SC 7.01 Delete Paragraphs 7.01.A. and 7.01.B. in their entirety and insert the following:

- A. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.
- B. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
- C. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- D. *Superintendent*
 - 1. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address and cell phone number to Owner and Engineer and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.
 - 2. The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the name and qualifications of a

proposed superintendent. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to the proposed superintendent or (2) that the Engineer requires additional time to review. Failure of the Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

3. The Contractor shall not employ a proposed superintendent to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

SC 7.02 Delete Paragraphs 7.02.A. and 7.02.B. in their entirety and insert the following:

- A. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by Laws or Regulations.
- B. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. Work will be performed in accordance with the Contract Documents and the codes, ordinances, and other applicable Laws and Regulations governing the Contractor's performance of the Work. No delays resulting from compliance with applicable Laws or Regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Times.
- C. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor. The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Engineer within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.
- D. The Contractor must not permit work outside of hours established in the Contract Documents or on holiday observed by the Owner without the consent of the Owner. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times established in the Contract Documents. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent, other assigned project staff, or a designated representative of the Contractor, all whom must be knowledgeable of the Work required for the Project.
- E. The Contractor must comply with all codes, ordinances, and other applicable Laws and Regulations covering the regulation of noise levels. It is the duty of the Contractor to

familiarize itself with those provisions and perform the Work in compliance with those provisions.

SC 7.03 Add the following new Paragraph after Paragraph 7.03.C.:

- D. The Contractor is strongly encouraged to use the Owner's solid waste roll-off containers at the Site.

SC 7.04.A. Add the following language to the end of Paragraph 7.04.A.:

Owner or Engineer has the right to deny any "or equal" claim.

SC 7.04.D. At the end of the first sentence of Paragraph D, add the following language:

unless approval of an "or-equal" request will result in cost savings to Owner; in such event, the Contract Price will be equitably reduced.

SC 7.06.A. Add the following language to the end of Paragraph 7.06.A.:

1. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to any such proposed person or entity or (2) that the Engineer requires additional time for review. Failure of the Owner or Engineer to reply within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall update this list throughout the Project and keep Owner and the Engineer advised of any new Subcontractors employed.
2. The Contractor shall not contract with a proposed person or entity to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
3. If the Owner or Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Engineer has no reasonable objection. If the proposed but rejected Subcontractor met all criteria set forth in the Contract Documents and was reasonably capable of performing the Work, the Contract Price and Contract Times shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Price or Contract Times shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
4. The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Engineer makes reasonable objection to such substitution.

SC 7.06.E. Amend Paragraph 7.06.E. to read as follows:

- E. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor ~~shall~~ may be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; ~~and~~ Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement in order to prove Contractor's need for an adjustment in Contract Price or Contract Times, or both.

SC 7.06.O. Add the following language at the end of Section 7.06:

- O. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

P. *Contingent Assignment of Subcontractors*

1. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 16.02 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing, and assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.
2. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.
3. Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.
4. Upon such assignment to the Owner under this Paragraph 7.06.P, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

SC 7.09 Delete Paragraph 7.09.A. in its entirety and insert the following:

- A. The Owner enjoys tax exempt status. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.
- B. The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to

verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

- C. The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.
1. The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each Application for Payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.
 2. The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.
- D. The Contractor shall pay sales, consumer, use and similar taxes, including unemployment compensation taxes, for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

SC 7.11.A. Amend Paragraph 7.11.A. to read as follows:

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

SC 7.12.B. Add the following language to the end of Paragraph 7.12.B.:

1. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
2. The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.
3. When explosives or other hazardous materials or equipment are stored or used or unusual methods are employed in the performance of the Work, the Contractor must exercise utmost care and conduct such activities under supervision of properly qualified personnel.
4. If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable

time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claims arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 11 when the Contractor is seeking an adjustment in the Contract Price and are in addition to the requirements of Article 4 when the Contractor is seeking an adjustment in the Contract Times.

5. The Contractor must promptly remedy, at its sole cost and expense, damage and loss to property referred to in Subparagraph SC 7.12.B.6 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Paragraph SC 7.18.A. and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Subparagraph SC 7.12.B.6.
6. The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No increase in the Contract Price will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

SC 7.15 Delete Paragraph 7.15.A. in its entirety and replace with the following:

In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction or authorization from the Owner or Engineer, to prevent threatened damage, injury or loss. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Engineer. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Price or Contract Times to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Price or Contract Times shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

SC 7.16.B. Add the following language to the end of Paragraph 7.16.B:

4. The Contractor must correct at its cost, and without any adjustment in Contract Times, any Work the correction of which is required due to the Contractor's failure

to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

SC 7.17 Add the following language to the end of Section 7.17:

- E. The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 14, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including direct damages relating to any breach of the Contractor's general warranty or any additional or special warranties required by the Contract Documents.
- F. The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 14.
- G. *After Substantial Completion*
 - 1. In addition to the Contractor's obligations under Paragraph SC 7.17.F., if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph SC 15.01.B.3., or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period (or the period as agreed to by the Owner and Construction Manager and set forth in the Contract) for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 14.07.
 - 2. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
 - 3. The two-year period (or the period as agreed to by the Owner and Construction Manager and set forth in the Contract) for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section SC 7.17.
 - 4. The Contractor shall remove from the Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
 - 5. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors

caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

6. Nothing contained in this Section SC 7.17 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Paragraph SC 7.17.G.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

SC 7.18.A. Revise Paragraph 7.18.A. to read as follows:

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify, defend, and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, attorneys, and other professionals, and all court, arbitration, mediation, or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than (1) the Work itself, or (2) the materials and equipment to be incorporated therein, including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Paragraph SC 7.18.A.

SC 7.18.B. Add the following Paragraph after Paragraph SC 7.18.A.:

- B. In claims against any person or entity indemnified under Paragraph SC 7.18.A by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Paragraph SC 7.18.A. shall not be limited by the amount of insurance Contractor is required to carry under Article 6, nor by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 – OTHER WORK AT THE SITE

SC 8.01. Add the following language to the end of Section 8.01:

- E. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

- F. The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph SC 7.12.B.5.

SC-8.02 Delete Paragraphs 8.02.A. and B. in their entirety and replace with the following:

- A. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 12.
- B. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- C. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their current Progress Schedule. The Contractor shall make any revisions to the Progress Schedule deemed necessary after a joint review and mutual agreement. The Progress Schedule shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.
- D. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Articles 6 and 7, this Article 8, and Article 14.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

SC 9.06.A. Delete Paragraph 9.06.A. in its entirety.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

SC-10.03 Add the following language after Paragraph 10.03.A:

- B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Owner, shall be the Owner's agent in all matters relating to on-site construction review of the Contractor's work, shall communicate only with the Owner and the Contractor (or Contractors), shall communicate with Subcontractors only through the Contractor or the Contractor's authorized superintendent, and will confer with Engineer regarding RPR's actions.
 - 1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.

2. Schedules: Review the Progress Schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
4. Liaison:
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: Report to Engineer and Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer and Owner.
6. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Owner and Engineer. Transmit to Contractor in writing decisions as issued by Owner and Engineer.
8. Review of Work and Rejection of Defective Work:
 - a. Conduct on-Site observations of Contractor's work in progress (relating to portions of the project designed and specified by the Engineer under the Contract Documents) to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Owner and Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work

in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Owner and Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:

- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Owner and Engineer.
- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. Reports:

- a. Furnish to Owner and Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Owner and Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Owner and Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Owner and Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these

documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:

- a. Participate in Owner's and Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a Punch List of items to be completed or corrected.
- b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final Punch List of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Owner and Engineer concerning acceptance and issuance of the notice of acceptability of the Work.

C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Owner's or Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Owner and Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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

SC 11.04.B.4. Add the following Subparagraph after Subparagraph 11.04.B.3.:

4. Where the work involved is not covered by unit prices contained in the Contract Documents, the unit prices will be determined by mutually agreed-upon prices.

ARTICLE 12 – CLAIMS

SC 12.01.B. Revise Paragraph 12.01.B to read as follows:

Submittal of Claim: The party submitting a Claim shall deliver it directly to the other party to the Contract in writing promptly (but in no event later than ~~30~~ 10 days) after the start of the event giving rise thereto or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; in the case of appeals regarding Change Proposals within ~~30~~ 10 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled. As a condition to making a Claim for an increase in the Contract Price, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred. If a Claim for a change in Contract Price is approved, the Owner shall pay the Contractor actual costs incurred, plus either (a) ten-percent (10%) for overhead and profit for work performed by the Contractor, or (b) five percent (5%) overhead and profit for work performed by a subcontractor, as applicable.

SC 12.01.C. Revise Paragraph 12.01.C. to read as follows:

Review and Resolution: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Paragraph SC 5.06.B. and Article 16, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Owner.

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

SC 13.03.E. Delete Paragraph 13.03.E in its entirety and replace with the following:

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

1. if the extended price of a particular item of Unit Price Work amounts to twenty percent (20%) or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than twenty percent (20%) from the estimated quantity of such item indicated in the Agreement; and
2. if there is no corresponding adjustment with respect to any other item of Work; and
3. if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may submit a Change Proposal, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, Owner may make a Claim, seeking an adjustment in the Contract Price.

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

SC 14.02.C. Add the following language to the end of Paragraph 14.02.C.:

If any test indicates non-compliance with applicable Specifications, Laws or Regulations, at least one additional test will be paid for by Contractor to determine actability of material or methods.

SC 14.02.G. Add the following Paragraph after Paragraph 14.02.F.:

In addition to the tests required by this Section 14.02, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

SC 14.05.A. On the first line of Paragraph 14.05.A., after "Engineer", add ", upon written authorization from the Owner,".

SC 14.05.B. On the second line of Paragraph 14.05.B, after "Engineer", add ", upon written authorization from the Owner,".

SC 14.05.C. In the second line of Paragraph 14.05.B, after "Engineer's request", add ", upon written authorization from the Owner,".

SC 14.07.A. On the first line of Paragraph 14.07.A., delete "reasonable time" and substitute "seven-day period (or such shorter time as may be reasonable to Owner under the circumstances)".

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

SC 15.01.A. Delete the first sentence of Paragraph 15.01.A. and substitute "The measurement of quantities of work shall be as provided in the Special Conditions of this Agreement."

SC 15.01.B.3. At the end of Paragraph 15.01.B.3, add the following language:

Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less retainage as stated in the Agreement. The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract to the point of achieving final completion of the Work; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Engineer; (C) the Contractor has delivered to the Owner all Project close-out documents as required by the Agreement, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings and/or other electronic media documenting as-built conditions; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable

governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

SC 15.01.C.1. On the first line of Paragraph 15.01.C.1, delete “10” and substitute “7”.

SC 15.01.D.1. On the first line of Paragraph 15.01.D.1., delete “Ten” and substitute “In accordance with K.S.A. 16-1903 (c) and any amendments thereto, unless extenuating circumstances exist, thirty”.

SC 15.03.B. Add the following new subparagraphs to Paragraph 15.03.B:

1. The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer’s services and expenses made necessary thereby, shall be at the Contractor’s expense.
2. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

SC 15.06.A. Delete Section 15.06.A. in its entirety and replace with the following:

A. Completion of Punch List and Application for Payment

1. When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Engineer and request a final inspection of the Work as provided in Paragraph SC 15.06.A.2. The Contractor’s notice and request for a final inspection must be accompanied by a final Application for Payment and the submittals required by Paragraph SC 15.06.A.3.
2. Upon receipt of the Contractor’s notice and request for final inspection, the Owner and the Engineer will promptly make such inspection and, when the Owner and the Engineer concur that the Work has been fully completed and is acceptable under the Contract Documents, the Engineer will issue a Certificate of Final Completion to the Owner. The Contractor’s notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Engineer will promptly notify the Contractor if the Owner or the Engineer do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Engineer until the Work is determined to be finally complete.
3. Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents to the Engineer:
 - a. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner), have been paid or otherwise satisfied, submitted on a form as may be prescribed by or agreed to by the Owner;

- b. a release or waiver of Liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and Supplier, accompanied by an affidavit of release of Liens on a form as may be prescribed by or agreed to by the Owner;
 - c. a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the correction period (as stated in the Agreement) following Substantial Completion as set forth in Section SC 7.17;
 - d. a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
 - e. consent of surety to final payment, submitted on a form prescribed by or agreed-upon by the Owner;
 - f. other data required by the Owner establishing payment or satisfaction of obligations, such as receipts, releases and waivers of Liens, Claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be prescribed by the Owner;
 - g. an as-built Site plan in the form and number required by the Contract Documents;
 - h. all warranties and bonds required by the Contract Documents;
 - i. Record Documents as provided in Paragraph SC 7.11.A. and return of Contract Documents as provided therein; and
 - j. Attic stock items as required by the Contract Documents; and
 - k. As applicable, documentation of approval by the agency having jurisdiction for all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. Approval by the appropriate agency will be based on satisfying all Permit requirements including the submission of all required SWM documentation.
4. If the Contractor is unable to secure from any Subcontractor or Supplier a release or waiver required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner and any co-obligees under the bond against any lien or claim from such Subcontractor or Supplier. The Contractor must also indemnify the Owner for all costs incurred by the Owner in removing, discharging or otherwise settling all Subcontractor or Supplier Liens or Claims, including all personnel and consultant costs and reasonable attorneys' fees.

SC 15.06.B. In the first sentence of Paragraph 15.06.B., fifth line, delete "ten" and substitute "seven".

SC 15,08.A. In the first sentence of Paragraph 15.08.A., first line, delete "one year" and substitute "two years".

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

SC 16.01.A. Delete Paragraph 16.01.A. and replace with the following:

- A. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine by written notice to Contractor and Engineer.

B. The Contract Price and Contract Times shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Paragraph SC 16.01.A. Adjustment of the Contract Price shall not include profit. No adjustment shall be made to the extent

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract; or
3. if a Change Proposal seeking such adjustments is submitted more than thirty (30) days after the date fixed by Owner for resumption of the Work.

SC 16.02.A.3. Delete “or” at the end of Subparagraph 16.02.A.3.

SC 16.02.A.4. Delete “.” at the end of Subparagraph 4 and substitute “; or”; add the following Subparagraphs after Subparagraph 4.:

5. Contractor’s failure to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and such Subcontractors or Suppliers;
6. Contractor anticipatorily breaches or repudiates the Contract;
7. Contractor fails to make satisfactory progress in the prosecution of the Work required by the Contract; or
8. Contractor endangers the performance of the Contract.

SC 16.02.B.-G. Delete Paragraphs 16.02.B. through 16.02.G. and substitute the following:

- B. The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection SC 16.02.A. The Owner will provide the Contractor (and any surety) with a written notice to cure the default. If the default is not cured, the termination for default is effective on the date specified in the Owner’s written notice. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by Laws or Regulations or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.
- C. Upon receipt of written notice from the Owner of termination, the Contractor must:
1. cease operations as directed by the Owner in the notice and, if required by the Owner and County, participate in an inspection of the Work with the Owner, County and the Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
 2. complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;

3. unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
 4. except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.
- D. Following written notice from the Owner of termination, the Owner may:
1. declare Contractor to be in default and give Contractor (and any surety) notice that the contract is terminated;
 2. enforce the rights available to Owner under any applicable performance bond;
 3. take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
 4. accept assignment of subcontracts and purchase orders; and
 5. complete the Work by whatever reasonable method the Owner may deem expedient.
- E. Upon termination for cause,
1. the Contractor must take those actions described in Section SC 16.02.C, and the Owner may take those actions described in Section SC 16.02.D, subject to the prior rights of the Contractor's Surety.
 2. If the Contractor files for Bankruptcy protection, or a petition is filed against it, under applicable Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor accepts that Owner may petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate the Contract.
- F. When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.
- G. If the unpaid balance of the Contract Price less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Engineer's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract.
- H. In completing the Work following termination for cause, the Owner is not required to solicit competitive Bids or to award completion work to the lowest Bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.
- I. Where Contractor's services have been terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any

performance, maintenance, and/or statutory bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

- J. If and to the extent that Contractor has provided a performance and maintenance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Section 16.02.

SC 16.03 Delete Section 16.03 in its entirety and substitute the following:

- A. The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.
- B. Upon receipt of written notice from the Owner of termination, the Contractor must:
 - 1. Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner and the Engineer to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
 - 2. Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
 - 3. Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
 - 4. Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders therefor.
- C. Following written notice from the Owner of termination, the Owner may:
 - 1. Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
 - 2. Accept assignment of subcontracts and purchase orders; and
 - 3. Complete the Work by whatever reasonable method the Owner may deem expedient.
- D. In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:
 - 1. Payment for acceptable Work performed up to the date of termination;
 - 2. The costs of preservation and protection of the Work if requested to do so by the Owner;
 - 3. The cost of terminating the following contracts including:
 - a. Purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
 - b. Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;

4. Documented transportation costs associated with removing Contractor-owned equipment;
5. Documented demobilization and close-out costs; and
6. Overhead and profit on the foregoing not to exceed ten (10%) percent.

The Contractor is not entitled to any other costs or compensation (including lost or expected profits or revenues, uncompensated overhead or related expenses, or other economic loss arising out of or resulting from such termination, including, but not limited to, the cost of preparing and documenting its compensable expenses under this Subparagraph SC 16.03.D. as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 12. The Claim must be limited to resolution of the amounts specified in Subparagraphs SC 16.03.D.1, SC 16.03.D.2., SC 16.03.D.3., and SC 16.03.D.4. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract.

- E. The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

SC 16.04 Delete Section 16.04 in its entirety.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

SC 17.02 Add the following new paragraph immediately after Paragraph 17.01:

Mediation

- A. Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Paragraph SC 6.06.B shall be subject to mediation as a condition precedent to binding dispute resolution the institution of legal or equitable proceedings by either party.
- B. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this

Paragraph SC 17.02.B., the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

- C. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any dispute under the Agreement not resolved by mediation shall be litigated in the District Court of Johnson County, Kansas, or the closest Court of competent jurisdiction thereto as a bench trial, provided however, that a bench trial does not violate any provisions of the Fairness in Public Construction Contracting Act.

ARTICLE 18 - MISCELLANEOUS

SC 18.07.A. Delete Paragraph 18.07.A. in its entirety and substitute the following:

This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas without regard to its conflict of laws provisions. Any action to enforce this Agreement or that arises out of or relates to any of the provisions of this Agreement shall be brought, heard in, and be subject to the jurisdiction of the District Court of Johnson County, Kansas.

SC 18.09 Add the following new Paragraph after Paragraph 18.08:

The contract awardee, if not resident of Kansas, shall appoint a Process Agent as provided in the form in these documents. The contractor awardee, shall file the Process Agent form with the Secretary of State of Kansas, as provided by law.

If the contract awardee has a Foreign Corporation Application (or any other form that is acceptable to Owner and filed with the Kansas Secretary of State, Contractor shall provide this form to the City with the Agreement.



KDOT LPA REQUIRED CONTRACT PROVISIONS (RCP)
CONTRACTOR ACKNOWLEDGEMENT FORM

REQUIRED CONTRACT PROVISIONS:

The current versions of the following Required Contract Provisions (I-IV) require the Contractor to furnish information. The Contractor shall complete and submit with its proposal these provisions. The City of Olathe will reject proposals that fail to contain completed Required Contract Provisions I, II and III and may reject proposals that fail to contain completed Required Contract Provision IV.

- | | |
|---------------------|--|
| I. 08-10-66 (LPA) | Certification - Non-collusion & History of Debarment |
| II. 04-26-90 (LPA) | Declaration - Limitations on Use of Federal Funds for Lobbying |
| III. 07-19-80 (LPA) | DBE Contract Goal |
| IV. 01-01-11 (LPA) | Tax Clearance Certificate |

CERTIFICATION:

I CERTIFY THAT I AM AUTHORIZED TO REPRESENT THE CONTRACTOR IN PREPARING AND PRESENTING THIS PROPOSAL. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING (INCLUDING, BUT NOT LIMITED TO, THE INFORMATION CONTAINED IN THE REQUIRED CONTRACT PROVISIONS REFERENCED ABOVE) IS TRUE AND CORRECT.

SIGNATURE _____

EXECUTED ON _____ (DATE)

FEDERAL LABOR-STANDARDS AND EQUAL OPPORTUNITY PROVISIONS

DIVISION 200--GENERAL SPECIFICATIONS

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DIVISION 200--GENERAL SPECIFICATIONS

(FEDERAL LABOR-STANDARDS AND EQUAL OPPORTUNITY PROVISIONS)

201 APPLICABILITY:

The Project or Program to which the work covered by this Contract pertains is being assisted under Title I of the Housing and Community Development Act of 1974, by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

202 MINIMUM WAGE RATES FOR LABORERS AND MECHANICS

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the city of Olathe for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also, for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

203 UNDERPAYMENTS OF WAGES OR SALARIES

In case of underpayments of wages by the CONTRACTOR or by any subcontractor to laborers or mechanics employed by the CONTRACTOR or subcontractor upon the work covered by this Contract, the city of Olathe in addition to such other rights as may be afforded it under this Contract shall withhold from the CONTRACTOR, out of any payments due the CONTRACTOR, so much there of as the city of Olathe may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the city of Olathe for and on account of the CONTRACTOR or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

204 ANTICIPATED COSTS OF FRINGE BENEFITS

If the CONTRACTOR does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this Contract: Provided, however, the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account, assets for the meeting of obligations under the plan or program. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the CONTRACTOR must be submitted to the city of Olathe with the first payroll filed by the CONTRACTOR subsequent to receipt of the findings.

205 OVERTIME COMPENSATION REQUIRED BY CONTRACT WORK HOURS AND SAFETY STANDARDS: AST (76 Stat. 357-360: Title 40 U.S.C., Section 327-332)

- A. **Overtime Requirements:** No CONTRACTOR or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, as the case may be.
- B. **Violation: Liability for Unpaid Wages Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 205 A, the CONTRACTOR and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in paragraph 205 A, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 205 A.
- C. **Withholding for Liquidated Damages:** The city of Olathe shall withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for liquidated damages as provided in the clause set forth in paragraph 205 B.
- D. **Subcontracts:** The CONTRACTOR shall insert in any subcontracts the clauses set forth in paragraphs 205 A, B, and C of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

206 EMPLOYMENT OF APPRENTICES/TRAINEES

- A. **Apprentices:** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such apprenticeship program, who is not

individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision B of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The CONTRACTOR or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the Contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

- B. **Trainees:** Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress.

Any employee listed on the payroll as a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The CONTRACTOR or subcontractor will be required to furnish the contracting office or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

207 EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

208 REGULATION PURSUANT TO SO-CALLED "ANTI-KICKBACK ACT"

The CONTRACTOR shall comply with the applicable regulations (a copy of which is attached and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934, (48 Stat. 948: 62 Stat. 862; Title U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modification thereof, shall cause appropriate provisions to be inserted in subcontracts to ensure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

209 EMPLOYMENT OF LABORERS OR MECHANICS NOT LISTED IN AFORESAID WAGE DETERMINATION DECISION

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformable to the wage determination of the city of Olathe, and a report of the action taken shall be submitted by the city of Olathe, through the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor.

In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the questions accompanied by the recommendation of the city of Olathe shall be referred through the Secretary of Housing and Urban Development to the Secretary of Labor for final determination.

210 FRINGE BENEFITS NOT EXPRESSED AS HOURLY WAGE RATES

The city of Olathe shall require, whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the CONTRACTOR is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the questions, accompanied by the recommendation of the city of Olathe, shall be referred through the Secretary of Housing and Urban Development, to the Secretary of Labor for determination.

211 POSTING WAGE DETERMINATION DECISIONS AND AUTHORIZED WAGE DEDUCTIONS

The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decision of said Secretary of Labor with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate, conspicuous points at the site of the work.

212 COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

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

213 CLAIMS AND DISPUTES PERTAINING TO WAGE RATES

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the CONTRACTOR in writing to the city of Olathe for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

214 QUESTIONS CONCERNING CERTAIN FEDERAL STATUTES AND REGULATIONS

All questions arising under this Contract which relate to the application or interpretation of

1. The aforesaid Anti-Kickback Act,
2. The Contract Work Hours and Safety Standards Act,
3. The aforesaid Bacon-Davis Act,
4. The regulations issued by the Secretary of Labor, United State Department of Labor, pursuant to said Acts, or
5. The labor standard provisions of any other pertinent Federal statute

shall be referred, through the city of Olathe, and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purpose of this Contract.

215 PAYROLLS AND BASIC PAYROLL RECORDS OF CONTRACTOR AND SUBCONTRACTORS

The CONTRACTOR and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the city of Olathe. The CONTRACTOR shall submit weekly to the city of Olathe one certified copy of all payrolls of the CONTRACTOR and of the subcontractors, it being understood that the CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors. Department of Labor payroll form #WH-347 is recommended. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. This statement is found on the reverse of form WH-347. The payrolls and basic payroll records of the CONTRACTOR and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1 (b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5 (a)(1)(iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(b) of the Davis-Bacon Act, the CONTRACTOR or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The CONTRACTOR and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the city of Olathe, and the United States Department of Labor. Such representative shall be permitted to interview employees of the CONTRACTOR or any subcontractor during working hours on the job.

216 SPECIFIC COVERAGE OF CERTAIN TYPES OF WORK BY EMPLOYEES

The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the employees of the CONTRACTOR or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the project or program to which this Contract pertains by persons employed by the CONTRACTOR or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the

foregoing provisions of this Contract, be deemed to be work to which these Federal Standards Provisions are applicable.

217 INELIGIBLE SUBCONTRACTORS

The CONTRACTOR shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the city of Olathe's prior written approval of the subcontractor. The city of Olathe will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor or the Secretary of Housing and Urban Development, to receive an award of such subcontract.

218 PROVISIONS TO BE INCLUDED IN CERTAIN SUBCONTRACTS

The CONTRACTOR shall include or cause to be included in each subcontract covering any of the work covered by the Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

219 BREACH OF FOREGOING FEDERAL LABOR STANDARDS PROVISIONS

In addition to the causes for termination of this Contract as herein elsewhere set forth, the city of Olathe reserves the right to terminate this Contract if the CONTRACTOR or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

220 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the CONTRACTOR agrees as follows:

- A. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, 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 their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the city of Olathe setting forth the provisions of this nondiscrimination clause.
- B. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- C. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contracts or understanding, a notice, to be provided, advertising the labor union or workers' representative of the CONTRACTORS' commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto and will permit access to his books, records, and accounts by the city of Olathe, the Secretary of Housing and Urban Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the CONTRACTOR'S noncompliance with the non-discrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contractors or federally-assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 4, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
- G. The CONTRACTOR will include the provisions of paragraph 220 A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the city of Olathe or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the city of Olathe or the Department of Housing and

Urban Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

221 COMPLIANCE WITH SECTION 3 OF HUD ACT OF 1968 (135.20)

- A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal Financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and Contract for work in connection with the project be awarded to business concerns which are located in or owned in the area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- C. The CONTRACTOR will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- D. The CONTRACTOR will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for Federal Financial assistance or recipient of same, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The CONTRACTOR will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulation set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal Financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and subcontractors, its successors, and assignees to these sanctions specified by the grant or loan agreement or Contract through which Federal assistance is provided and to such sanctions as are specified by 24 CFR 135.

222 INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS

- A. No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from the same: Provided, that the foregoing provision of this section shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- B. No member of the governing body of the city of Olathe who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains, and no other officer or employee of the city of Olathe who exercises any such functions or responsibilities, shall have any private interest, direct or indirect, in this Contract which is incompatible or in conflict with the discharge or fulfillment of his functions and responsibility in connection with the carrying out of the project to which this Contract pertains.

Required Contract Specifications For Local Authority Let Projects

08-10-66-R05(LPA)	Required Contract Provision – Certification – Noncollusion and History of Debarment
04-26-90-R05(LPA)	Required Contract Provision – Limitations on Use of Federal Funds for Lobbying
07-19-80-R13(LPA)	Required Contract Provision – DBE Contract Goals
11-03-80-R09	Required Contract Provision – Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
11-15-96-R05	Required Contract Provision – Specific Equal Employment Opportunity Contractual Requirement
09-06-94-R01	Notice to Contractors – U.S. Department Of Transportation Hotline
FHWA-1273	Required Contract Provision – Federal Aid Construction Contracts
15-01017	Cargo Preference Act
03-10-06-R01	Required Contract Provision – Federal Aid Contracts Utilization of Disadvantaged Businesses Suppliers/Regular Dealers
07-18-80-R29	Required Contract Provision – Federal Aid Contracts Utilization of Disadvantaged Businesses
15-PS0008	Federal Aid Contracts Utilization of Disadvantaged Businesses (Revision to 07-18-80-R27)
02-01-95-R02	Required Contract Provision – Area Practice for Douglas, Johnson, Leavenworth, Miami, Shawnee, and Wyandotte Counties in Kansas
08-04-92-R03(LPA)	Required Contract Provision – Contractual Services with a Current Legislator or a Current Legislator’s Firm
01-01-11(LPA)	Required Contract Provision – Tax Clearance Certificate
15-01018	“Buy America” Materials
Wage Rates	Davis Bacon Wage Determinations (Obtain from web site)

REQUIRED CONTRACT PROVISION

CERTIFICATION - NONCOLLUSION AND HISTORY OF DEBARMENT

K.A.R. 36-30-4, 49 C.F.R. 29.335, 23 U.S.C. 112(c), 49 U.S.C. 322

Complete the exceptions below if applicable. The Contractor's signature on the Contractor's proposal supplies the necessary signature for this Certification.

NONCOLLUSION

I certify that the Contractor submitting this bid has not, 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 the submitted bid.

HISTORY OF DEBARMENT

I certify that, except as noted below, the Contractor submitting this bid and any person associated with this Contractor in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or any position involving the administration of federal funds:

1. Are not currently suspended, debarred, voluntarily excluded or disqualified from bidding by any federal or state agency;
2. Have not been suspended, debarred, voluntarily excluded or disqualified from bidding by any federal or state agency within the past three years;
3. Do not have a proposed debarment pending;
4. Within the past three years, have not been convicted or had a civil judgment rendered against them by a court of competent jurisdiction in any matter involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; and
5. Are not currently indicted or otherwise criminally or civilly charged by a federal, state, or local government with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; and
6. Have not had one or more federal, state, or local government contracts terminated for cause or default within the past three years.

The exceptions, if any, are:

REQUIRED CONTRACT PROVISION

DECLARATION

LIMITATIONS ON USE OF FEDERAL FUNDS FOR LOBBYING PURSUANT TO 31 U.S.C. 1352

The Contractor's signature on the Contractor's proposal supplies the necessary signature for this Declaration and the certifications contained therein.

DEFINITIONS:

1. Designated Entity: an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.
2. Federal Grant: An award of financial assistance by the Federal government. (Federal Aid Highway Program is considered a grant program.)
3. Influencing (or attempt): making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of a Federal contract or Federal grant.
4. Person: An individual, corporation, company, association, authority, firm, partnership, society, State, or local government.
5. Recipient: All contractors, subcontractors, subgrantees, at any tier, and other persons receiving funds in connection with a Federal grant.

EXPLANATION:

As of December 23, 1989, 31 U.S.C. Section 1352 limits the use of appropriated Federal funds to influence Federal contracting. Under this law, recipients of Federal grants shall not use appropriated funds to pay any person for influencing or attempting to influence a designated entity in connection with the making of a Federal grant or the extension, continuation, renewal, amendment or modification of a Federal grant. These restrictions apply to contracts and grants exceeding \$100,000.00. Federal law requires submission of this declaration. If a recipient fails to file the declaration or amend a declaration, the recipient shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure. If the recipient uses appropriated Federal funds to influence or to attempt to influence a designated entity contrary to this provision, the recipient shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such payment.

CERTIFICATIONS:

I certify that the Contractor recipient (including its owners, partners, directors, officers, or principals) has not paid and will not pay federally appropriated funds to any person for influencing or attempting to influence a designated entity in connection with the making of a Federal grant, or the extension, continuation, renewal, amendment or modification of a Federal grant.

The following person(s) if any, is registered under the Lobbying Disclosure Act of 1995 (Registrant) and has made lobbying contacts on the Contractor recipient's behalf with respect to this contract.

I certify that the Contractor recipient will report payments made to a person for influencing or attempting to influence a designated entity, that come from funds other than appropriated Federal funds. The Contractor recipient shall report such payments on Form LLL "DISCLOSURE FORM TO REPORT LOBBYING" according to the instructions and may obtain Form LLL from the KDOT Bureau of Construction and Materials.

I certify that, if information contained in this DECLARATION changes, the Contractor recipient will amend the DECLARATION within 30 days of the change(s).

I certify that the Contractor recipient will provide to and require subcontractors to sign a like DECLARATION, if the subcontract work exceeds \$100,000.

The Contractor recipient understands that this declaration is a material representation of fact and the Local Public Authority will have relied upon this declaration in entering into a contract with the Contractor recipient.

NOTE: This Reporting requirement does not apply to payments made to the recipient's regular employees and contracts, subcontracts, and grants less than \$100,000.

REQUIRED CONTRACT PROVISION DBE CONTRACT GOAL

The percentage goal to be subcontracted to KDOT-Certified DBE firms on this contract is _____.

List all KDOT-Certified DBE subcontractors to be utilized. For each DBE subcontractor, identify the line item(s) of work from the Unit Prices List and the dollar value of the work to be subcontracted to the DBE.

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor & Associated NAIC Code	Line Item Number	\$ Value of work (including DBE Mobilization, if any)	\$ Value of DBE Mobilization (even if \$0.00)
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
Total KDOT-Certified DBE \$		_____	
Total KDOT-Certified DBE Mobilization			\$ _____

(Bidder Number and Name)

(Note: Total Dollar Value of DBE Mobilization, if any, shall equal the bid amount for Bid Item "MOBILIZATION (DBE)". Also include the Dollar Value of DBE Mobilization in the Dollar Value of Work column above. If additional sheets are needed, attach to this sheet. However, show the contract total on this sheet. A list of KDOT-Certified DBEs can be found in the Directory of Disadvantaged Business Enterprises at KDOT's website: <http://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx>.)

REQUIRED CONTRACT PROVISION

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY CONTRACTUAL REQUIREMENT" (11-15-96, latest revision) set forth in this Contract, and the following "Equal Opportunity Clause":

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, age, sex, disability, color, or national origin. Such action shall include: 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, and on-the-job training."

2. The goals and timetables for minority and women participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered areas, are as follows:

COVERED AREAS IN STATE OF KANSAS	TIMETABLE	TRADE	% GOALS MINORITY	% GOALS WOMEN
All Counties	Until Further Notice	Aggregate Work Force		6.9
Johnson and Wyandotte	Until Further Notice	Aggregate Work Force	12.7	
Anderson, Atchison, Brown, Doniphan, Franklin, Leavenworth Linn, and Miami	Until Further Notice	Aggregate Work Force	10.0	
Jefferson, Osage and Shawnee	Until Further Notice	Aggregate Work Force	9.0	
Butler and Sedgwick	Until Further Notice	Aggregate Work Force	7.9	
City of Lawrence in Douglas County	Until Further Notice	Aggregate Work Force	7.2	
Clay, Coffey, Geary, Jackson, Lyon, Marshall, Morris, Nemaha, Pottawatomie, Riley, Wabaunsee and Washington	Until Further Notice	Aggregate Work Force	8.5	
Barber, Barton, Chase, Chautauqua, Clark, Comanche, Cowley, Edwards, Elk, Finney, Ford, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Kearny, Kingman, Kiowa, Lane, McPherson, Marion, Meade, Morton, Ness, Pawnee, Pratt, Reno, Rice, Rush, Scott, Seward, Stafford, Stanton, Stevens, Sumner and Wichita	Until Further Notice	Aggregate Work Force	5.7	
Allen, Bourbon, Cherokee, Crawford, Labette, Montgomery, Neosho, Wilson and Woodson	Until Further Notice	Aggregate Work Force	2.3	
Cheyenne, Cloud, Decatur, Dickinson, Ellis, Ellsworth, Gove, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Ottawa, Phillips, Rawlins, Republic, Rooks, Russell, Saline, Sheridan, Sherman, Smith, Thomas, Trego and Wallace	Until Further Notice	Aggregate Work Force	1.5	

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

4. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and women employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The hours worked by women and minorities to fulfill "Bid Item Trainee" do not count toward the Contractor's employment goals. The transfer of minority or women employees or trainees from contractor to contractor, or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed in each craft utilized.

5. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, Two Pershing Square Building, 2300 Main St, Suite 1030, Kansas City, Missouri 64108, within ten working days of award of any construction subcontract in excess of \$10,000, at any tier, for construction work under the Contract resulting from this solicitation. In addition to the estimated dollar amount of the subcontract, the estimated starting and completion dates of the subcontract, and the geographical area (city, county, and state), in which the subcontract is to be performed. The notification shall list the name, identification number, address, and telephone number of the subcontractor.

01-26-09 OCR (DW)
Format alterations
Jul-09 Letting

REQUIRED CONTRACT PROVISION
SPECIFIC EQUAL EMPLOYMENT
OPPORTUNITY CONTRACTUAL REQUIREMENT

1. General:

Equal employment opportunity requirements to NOT discriminate and to take affirmative action to assure equal employment opportunity shall apply to all Contractors, subcontractors and suppliers who have a contract, subcontract or purchase order that equals or exceeds \$10,000.

A. Federal Aid Projects

The specific affirmative action requirements for these contracts are imposed pursuant to 41 CFR Part 60-1, 60-250, 60-741, 23 CFR Parts 633 and 230, FHWA Form 1273 and the Americans With Disabilities Act of 1990.

B. State Funded Projects

The specific affirmative action requirement for these contracts are imposed pursuant to the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq. as amended and the rules and regulations promulgated thereunder.

The Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.); the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.)(ADA) and to not discriminate against any person because of race religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are bind upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements set forth herein or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the Kansas Department of Transportation (KDOT) or the Kansas Department of Administration; (f) if it is determined that the Contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the KDOT or the Kansas Department of Administration. The provisions of this paragraph, with the exception of those relating to the ADA, are not applicable to a Contractor who employs fewer than four employees during the term of such contract or whose contracts with KDOT cumulatively total \$5,000 or less during the fiscal year.

2. Equal Employment Opportunity (EEO) Policy:

A. The Contractor will accept as a minimum operating policy the following statement:

"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, age, sex, color, disability, national origin, or veteran status. Such action shall include: employment, upgrade, demotion, transfer, recruitment, recruitment advertising, layoff, termination, wages, benefits, and selection for training including preapprenticeship, apprenticeship and on the job training."

All other EEO requirements will need to be incorporated by each Contractor into their policy.

B. Annually the Contractor will send to the KDOT Office of Civil Rights (OCR) one copy of the company's EEO policy signed and dated by the company's Policy Officer. The EEO Policy must be approved by the KDOT before the award of a contract, subcontract or purchase order over \$10,000. Contractors are encouraged to submit their policies for approval before bidding projects so as not to delay contract or subcontract award. Firms with more than 50 employees must also submit an Affirmative Action (AA) plan.

C. To comply with requirements of TEA 21, all Contractors and subcontractors must annually provide information on the firm's age, gross receipts, and work type. This information will be due on the same date as the EEO policy, and is required before a Contractor can perform work.

3. Contents of EEO Policy/AA Plan:

A. The minimum operating statement listed in 2.A and additions designated by the company to comply with all relevant laws.

B. The designation of the EEO Officer responsible and capable of effectively administering and promoting an active EEO program and the designation of the full authority to do so.

C. The company's recruitment policy with specific actions to be taken for the coming year, relevant to the current work force.

D. Certification that the Contractor does not maintain or permit any segregation of its facilities and that no employee will be denied access to any facility based on sex or disability.

E. The company's training and promotion policy to upgrade the skills of minorities and women.

F. The Company's personnel actions in regard to job site inspection, wages, benefits, transfers, demotions, layoffs, terminations, promotions, new hires and upgrades, and the company's complaint procedure.

4. Dissemination of EEO Policy /AA Plan:

A. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To confirm that the above agreement will be met, the following actions will be taken and documented as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory or personnel employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following reporting for duty with the Contractor.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.

B. In order to make the Contractor's EEO policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:

- (1) Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- (2) The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by meetings, employee handbooks, and other appropriate means. Meetings should be conducted periodically and documented to confirm new employees are included.

5. Unions:

If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use best efforts to obtain the cooperation of such unions to increase opportunities for minorities and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a Contractor's association acting as agent will include the procedures set forth below:

A. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

B. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, age, sex, disability, national origin, or veteran status.

C. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the KDOT and shall set forth what efforts have been made to obtain such information.

D. In the event the union is unable to provide the Contractor with a reasonable flow of minority and female referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, age, sex, disability, national origin, or veteran status; making full efforts to obtain qualified and/or qualifiable minority group members and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, for federal or federal-aid construction projects, and these special provisions, such Contractor shall immediately notify the KDOT.

6. Subcontracting:

The Contractor, when seeking to subcontract a portion of the work on this project, is required to take affirmative action to consider DBEs as potential subcontractors. In the event assistance is needed to locate or obtain a list of potential DBEs, the KDOT's Plans and Proposals Section and the OCR may be contacted.

"Disadvantaged Business Enterprises" are businesses which have been certified as disadvantaged by the OCR and are listed in the current DBE directory which is also available at www.ksdot.org.

The Contractor will certify on DOT Form 260 that all EEO provisions applicable to this contract are included in all subcontracts.

The Contractor will exert concerted efforts to train and develop DBEs by providing direct assistance in such areas as preparing quotations, understanding highway construction plans and standard specifications applicable to the portion(s) of the work to be subcontracted, and familiarizing DBEs with business practices and other actions which will facilitate their development into viable highway construction Contractors.

By making systematic written and verbal contact with DBEs likely to have an interest in highway construction work, the Contractor will make every effort to solicit DBE subcontractor quotes. Additionally, the Contractor will not restrict DBEs in the furnishing of subcontractor quotes to any other bidder/Contractor who may be preparing bid proposals for submission on this Contract.

In order to afford DBEs an opportunity to participate as subcontractors on portions of the work to be subcontracted, it is required that itemized quantities and particular incidentals to such work be furnished to DBEs in order to solicit quotes for prospective subcontractors. Bid solicitation should be directed only to those Contractors whose specialties and skills encompass those bid quantities for which bids are being solicited.

The Contractor will affirmatively solicit the interest, capabilities, and prices of DBEs and document results of such solicitation in detail. The Contractor fully understands that requests for Approval of Subcontractor (DOT Form 259) submitted to the KDOT for approval may be denied if such affirmative action cannot be demonstrated when requested. When requested to establish evidence of affirmative action being taken, the prime Contractor shall provide:

A. Copies of letters and requests for bids sent to potential DBEs and of certified mail receipts.

B. Copies of letters and bid quotes received from DBEs. Copy of the letter and bid quote received from the subcontractor for whom the Request for Approval is submitted, if the subcontractor is not a DBE.

7. Required Notices and Posters:

A. Required on State Funded and Federal-Aid Projects:

1. Unemployment Insurance Notice K-CNS 405
2. Workers Compensation Law K-WC 40
3. Kansas Equal Opportunity
4. Child Labor K-ESLR 100

B. Required on Federal-Aid Projects Only:

1. Contractor's EEO Policy and Contact Number for EEO Officer
2. Wage Rate Information FHWA 1495 and 1495A
3. Wage and Hour Posters WH 1321 and WH 1088
4. Fraud Notice FHWA 1022
5. Equal Opportunity Poster
6. Job Safety and Health Poster OSHA 3165 and 3167
7. Contract Wage Rates
8. Family Medical Leave Act WH 1420
9. Polygraph WH 1462
10. Government Contracts WH 1313

8. Noncompliance with EEO/AA Requirements:

A. KDOT will not award a contract, approve a subcontract or sign a purchase order until the required EEO/AA policy has been submitted to and approved by the KDOT Civil Rights Administrator in the OCR.

B. If discrimination, harassment or a hostile work environment exists on any project, the KDOT will take every action needed to confirm the problem is corrected in a timely manner. KDOT will also monitor the project to determine if retaliation is taken against any employee who files a complaint.

C. Contract Compliance reviews are conducted by OCR on selected federal aid contracts. A Contractor can expect to be reviewed once every three years or more often if any deficiencies had been previously found. During a Compliance Review all areas listed previously in items 2-7 will be verified for compliance. *The compliance review is the Contractor's ONLY opportunity to provide documentation of ALL efforts undertaken to meet or exceed all EEO/AA requirements of the contract. It is IMPORTANT that all relevant documentation be provided at this time. During any subsequent appeal process new documentation not previously submitted to the OCR will NOT be considered in the appeal.* A deficiency occurs when the Contractor fails to comply with a requirement and/or fails to document every good faith effort to comply. A Voluntary Corrective Action Plan (VCAP) is required to correct certain deficiencies that do not directly affect a protected group or result in discrimination. A follow up review is conducted to confirm that the VCAP was enacted and determine if it is effective.

D. When a Contractor's action or inaction adversely affects a protected group member (discrimination) or when a Contractor has failed to provide written documentation of every good faith effort to provide equal opportunity and to take affirmative action, these procedures will follow:

- (1) For the first documented occurrence of such a deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days a written notice of a show cause hearing is sent to the Contractor. The show cause hearing is an informal hearing providing the Contractor's opportunity to submit a Corrective Action Plan (CAP) for the immediate correction of the noted deficiency and to eliminate any future reoccurrence. The hearing is chaired by the Chief of the Bureau of Construction and Maintenance

and attended by a staff of OCR and an FHWA representative. KDOT (the Chief of the Bureau of Construction and Maintenance and the Civil Rights Administrator) must approve and the FHWA representative must concur that the CAP will achieve compliance before it is accepted.

(2) For the second documented occurrence of the same deficiency within 3 years the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Maintenance, the Director of Operations and the District Engineer will review the Contractor's documentations and the findings of the OCR and either concur or disagree with those findings. Upon concurrence by the Compliance Review Committee a notification of monetary assessment will be sent to the Contractor with a copy to KDOT's Prequalification Committee and the field office, and the assessment will begin on the date of the letter. As noted above, *the Contractor's opportunity to document every good faith effort is during the compliance review.* The applicable monetary assessments are listed in Table 1. The assessment will be collected for a minimum of five days or so long as the Contractor remains in non compliance.

(3) For the third documented occurrence of the same deficiency within 3 years of the second deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Maintenance, the Director of Operations and the District Engineer will review the Contractor's documentations and the findings of the staff of OCR and either concur or disagree with those findings. Upon concurrence the Compliance Review Committee sets a debarment period of up to six months and notification is sent to the Contractor, KDOT's Prequalification Committee and other interested agencies. During the debarment period the Contractor will not be eligible to request KDOT plans, submit a bid as prime or subcontractor or otherwise acquire new work on KDOT projects. Any work currently in progress can be completed.

(4) For the fourth documented occurrence of the same deficiency within 3 years of the third deficiency the OCR will discuss the deficiency with the Contractor's representative during the compliance meeting or at an exit conference held shortly after the compliance meeting. Within 15 days the KDOT Compliance Review Committee consisting of the Chief of the Bureau of Construction and Maintenance, the Director of Operations and the District Engineer will review the Contractor's documentations and the findings of the OCR and either concur or disagree with those findings. Upon concurrence the Compliance Review Committee sets a debarment period of one year and notification is sent to the Contractor, KDOT's Prequalification Committee and other interested agencies. During the debarment period the Contractor will not be eligible to request KDOT plans, submit a bid as prime or subcontractor or otherwise acquire new work on KDOT projects. Any work currently in progress can be completed.

(5) The Contractor may request an appeal to the KDOT Compliance Appeal Board (CAB) within five days of the receipt of the notice of assessment or debarment (2, 3 or 4 above). The request is made to the Deputy Secretary for Engineering & State Transportation Engineer (Deputy Secretary) who chairs the CAB. The two other members include one member named by the Deputy Secretary and one member named by the Contractor within 5 days of the appeal request. A date and time will be set by the Deputy Secretary for hearing the appeal and will notify the Contractor, FHWA, KDOT's Civil Rights Administrator and the CAB members. The CAB reviews the documents previously submitted by the Contractor and the previous decision of the Compliance Review Committee. The Contractor presents verbal or written statements to the CAB as to why they disagree with the finding of noncompliance. *The CAB cannot consider any new documentation at this time because its purpose is to concur or disagree with the findings previously made.* The Deputy Secretary will advise the Secretary of Transportation of the decision of the CAB and the final administrative decision will be issued by the Secretary and made known to all concerned parties. During the appeal process the Contractor is not relieved from taking corrective action to eliminate noted deficiencies and the sanction imposed remains in place pending the decision.

TABLE 1		
SCHEDULE OF DAILY MONETARY ASSESSMENTS		
Original Contract Amount Range		Amount of Assessment to be Deducted for Each Day of Non-Compliance
\$0.00	\$100,000.00	\$200.00
\$100,000.01	\$500,000.00	\$400.00
\$500,000.01	\$1,000,000.00	\$800.00
\$1,000,000.01	\$2,500,000.00	\$1,000.00
\$2,500,000.01	\$5,000,000.00	\$1,500.00
\$5,000,000.01	\$10,000,000.00	\$2,000.00
\$10,000,000.01	\$25,000,000.00	\$2,500.00
Over \$25,000,000.01		\$3,000.00

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NOTICE TO CONTRACTORS

U.S. DEPARTMENT OF TRANSPORTATION HOTLINE

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

Rev. 04/95

CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Davis-Bacon and Related Act Provisions
- IV. Contract Work Hours and Safety Standards Act Provisions
- V. Subletting or Assigning the Contract
- VI. Safety: Accident Prevention
- VII. False Statements Concerning Highway Projects
- VIII. Implementation of Clean Air Act and Federal Water Pollution Control Act
- IX. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- X. Certification Regarding Use of Contract Funds for Lobbying
- XI. Use of United States-Flag Vessels

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only).

I. GENERAL

1. Historically, contracting agencies using Federal-aid highway funds were required to ensure Form FHWA-1273 was physically incorporated into all contracts and subcontracts. Effective June 10, 2026, this requirement was eliminated [91 FR 25492]. Future use of Form FHWA-1273 is now optional on the part of the contracting agency using Federal-aid highway funds. FHWA continues to make Form FHWA-1273 available as a convenience to contracting agencies. Contracting agencies must continue to ensure compliance with the provisions cited in Form FHWA-1273 in accordance with the provisions regardless of the use of Form FHWA-1273. Accordingly, the contracting agency retains the authority to determine whether the contractor must use Form FHWA-1273 to physically incorporate required contract provisions in each subcontract and in lower tier contracts. Where permitted by the contracting agency, the contractor may choose other ways to include required contract provisions in each subcontract, besides incorporating Form FHWA-1273. Contract provisions in Form FHWA-1273 are not required to be physically included in subcontracts for design services on Federal-aid design-build contracts, or in purchase orders, rental agreements and other agreements for supplies or services.

The applicable provisions of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor or design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents.

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's

immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION

The contractor and all subcontractors must comply with the following policies: 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27, including any amendments thereto.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27, including any amendments thereto.

The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract.

1. Assurances Required:

a. The requirements of 49 CFR Part 26, including any amendments thereto, and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26, including any amendments thereto, in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1)) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2)) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3)) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(2)) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3)) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4)) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3)) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

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

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1)) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2)) the prime contractor remains responsible for the quality of the work of the leased employees;

(3)) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4)) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1)) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment 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) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3)) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2015**

CARGO PREFERENCE ACT

The Cargo Preference Act (CPA) establishes certain requirements for the use of privately owned United States-flag commercial vessels in transporting equipment, materials, and commodities by ocean vessel. Comply with the CPA requirements and 46 CFR 381. Include this Special Provision in all subcontracts to ensure that subcontractors are aware of and bound by the obligation to comply with the CPA and 46 CFR 381. The implementing regulations for required contract and subcontract provisions are located in 46 CFR 381.7(a)-(b), and included in this Special Provision below:

Title 46 - Shipping

Volume: 8

Date: 2014-10-01

Original Date: 2014-10-01

Title: Section 381 .7- Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

Context: Title 46- Shipping. CHAPTER II- MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. SUBCHAPTER J- MISCELLANEOUS. PART 381- CARGO PREFERENCE- U.S.FLAG VESSELS.

§ 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected department or agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least 50 percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in § 381.3. A copy of the appropriate clauses required by this part shall be submitted by each affected agency or department to the Secretary, Maritime Administration, for approval no later than 30 days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) Agreement Clauses. "Use of United States-flag vessels:

"(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

"(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) Contractor and Subcontractor Clauses. "Use of United States-flag vessels: The contractor agrees-

"(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

"(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

"(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973)) [42 FR 57126, Nov. 1, 1977]

12-18-15 C&M
Feb-16 Letting

REQUIRED CONTRACT PROVISION**FEDERAL AID CONTRACTS
UTILIZATION OF DISADVANTAGED BUSINESSES
SUPPLIERS/REGULAR DEALERS**

This Special Provision modifies the provisions contained in Section III.C. of Required Contract Provision 07-18-80(latest revision).

I. Aggregate Suppliers. KDOT has been made aware that the U.S. Department of Transportation, Office of Inspector General has concerns regarding KDOT's policy as to when DBE aggregate suppliers may be counted toward goal. Until these concerns have been addressed, KDOT will not allow the use of DBE aggregate suppliers to be counted toward the DBE goal.

II. Regular Dealers. KDOT has also received informal guidance from the U.S. Department of Transportation, Office of Inspector General regarding when the use of a DBE regular dealer may be properly counted toward the DBE goal. Unless a DBE regular dealer ships materials from its own inventory, the contractor cannot count 60% of the costs toward the DBE goal.

These changes are interim only, and will be incorporated into 07-18-80(latest revision) after KDOT receives formal guidance from the Federal Highway Administration.

09-01-09

Oct-09 Letting

REQUIRED CONTRACT PROVISION
FEDERAL AID CONTRACTS
UTILIZATION OF DISADVANTAGED BUSINESSES

I. INTRODUCTION.

The specific requirements for the utilization of Disadvantaged Business Enterprises, hereinafter referred to as DBEs, are set forth in this Required Contract Provision and are imposed pursuant to 49 CFR Part 26, hereinafter referred to as the regulations. This provision meets or exceeds the regulatory requirements. The regulations always take precedence over normal industry practice.

A. ASSURANCE. The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, religion, age, disability, income status, veteran status or gender in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, or such other remedy as the Kansas Department of Transportation deems appropriate.

B. DEFINITIONS. For the purpose of this Required Contract Provision, the following words and phrases shall have the meanings as stated herein:

(1) Disadvantaged Business Enterprise (DBE) means a small business concern which is independently owned and controlled by one or more socially and economically disadvantaged individuals and which KDOT has certified as a DBE in accordance with 49 CFR Part 26.

(2) Small business concern means a small business as defined by Section 3 of the Small Business Act and relevant regulations except that a small business concern shall not include any firms or affiliated firms owned and controlled by the same socially and economically disadvantaged individual or individuals whose value has average, annual gross receipts in excess of \$ 22,410,000 over the previous three fiscal years.

(3) Owned and controlled means a business:

- (a) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals, and
- (b) Whose management and daily business operations are controlled by one or more such individuals.

(4) Socially disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States, has suffered social disadvantage in education, employment, or business, and who is a(an):

- (a) Black American (a person having origins in any of the black racial groups of Africa);
- (b) Hispanic American (includes a person of Mexican, Puerto Rican, Cuban, Central or South American, or any Spanish or Portuguese culture or origin, regardless of race);
- (c) Native American (includes a person who is American Indian, Eskimo, Aleut or Native Hawaiian);
- (d) Asian-Pacific American (includes a person whose origin is from the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
- (e) Subcontinent Asian American (includes a person whose origin is India, Pakistan, Bangladesh, Bhutan, Nepal, Sri Lanka, or the Maldives Islands);
- (f) Member of a group, or any other individual of any race or sex, found to be both economically and socially disadvantaged; or
- (g) Women.

(5) Economically disadvantaged means an individual who has a personal net worth of less than \$1,320,000 excluding the value of the individual's ownership share of the DBE firm and primary personal residence. The individual has had diminished access to capital and credit compared to non-disadvantaged persons.

(6) Commercially useful function means the qualifying DBE owner performs, manages and supervises its work and manages and supervises the work of subcontractors, suppliers, manufacturers, truckers, brokers and other persons with whom the DBE contracts.

(7) Race and gender neutral measure means one that is used to assist any small business.

II. DBE CONTRACT GOALS.

A. KDOT strongly encourages all contractors to utilize DBE firms as subcontractors, suppliers, manufacturers, truckers, and brokers whenever possible and feasible. Greater voluntary participation will result in lower and fewer DBE contract goals. KDOT will set DBE contract goals only to meet the portion of its annual goal that is not met by race and gender neutral means and voluntary participation.

B. Only Eligible DBEs satisfy DBE contract goals. An Eligible DBE is one which KDOT has certified meets the legal requirements for social and economic disadvantage, ownership, and control with respect to the specific types of work which the DBE will be performing (Eligible DBE or KDOT Certified DBE). KDOT Certified DBEs, by name and the NAISC code(s) applicable to the work for which the DBE is certified, are listed in the KDOT DBE directory that is located on the internet at: <http://www.ksdot.org/divadmin/civilrights/>. KDOT also prints a paper directory quarterly, and Contractors may ask the KDOT Office of Civil Rights for a copy of the printed directory. However, as it is only published quarterly, Contractors should be aware that the printed directory may list DBE's who were decertified after the directory was printed, and these DBE's would not be considered eligible DBE's in a letting that followed decertification or when examining good faith efforts. Also, the printed directory will not list DBE's who have been certified after the directory was printed, but KDOT will consider these DBE's in a letting and when examining good faith efforts. Thus, the electronic directory controls as it is the most current information KDOT has available. Any bid proposal listing a firm that is not a KDOT certified DBE with respect to ownership/control at the time of bidding will be considered non-responsive unless the bidder has still met the DBE goal after KDOT has removed the ineligible DBE firm(s) from the bidder's DBE Goal Sheet. Any bid proposal listing a firm that is not a KDOT certified DBE with respect to the work type(s) (NAISC Code(s)) the firm will be performing on the project will be considered non-responsive unless the bidder has still met the DBE goal after KDOT has removed the ineligible work from the bidder's DBE Goal Sheet.

C. Contractors shall, as a minimum, seek DBE firms working in the same geographic area in which they seek subcontractors for a given solicitation.

D. Contractors are required to make good faith efforts to replace a DBE firm that is unable to perform successfully with another DBE firm. Any substitution of DBE firms from the time the Contractor has submitted a bid to KDOT through Project completion shall be approved by KDOT Office of Civil Rights. Substitutions will only be allowed for good cause. (See Section III.G).

E. When projects are State or Contractor tied, the assigned DBE Contract Goals shall be met for each project that contains a DBE contract goal. To compute DBE participation on tied projects the following method will be used:

(1) If the dollar amount actually subcontracted to DBEs on each contract is equal to or greater than the minimum dollar amounts assigned to each contract, the DBE goals shall have been met.

(2) If a State of Kansas funded project is tied to a federal aid funded project, the DBE contract goal can only be met by the amounts subcontracted to DBE firms on the Federal Aid Project.

III. MEETING DBE CONTRACT GOAL CRITERIA.

The award of the Contract will be conditioned upon satisfaction of the requirements herein established. The apparent low bidder must either meet or exceed the DBE goals for the contract or satisfy KDOT that good faith efforts were made to meet the goals prior to the bid letting.

A. REQUIRED DBE PARTICIPATION INFORMATION. All bidders are required to use the electronic bidding system file [EBSX file] created by KDOT for the Project to complete the DBE participation information described below .

- (1) Use the DBE folder in the EBSX file of the Project to select the names of KDOT Certified DBE firms that will participate in the Contract and accurately complete all the required fields for each certified DBE firm;
- (2) For each selected KDOT Certified DBE firm, identify the function the firm will serve on the project (subcontractor, manufacturer, supplier, broker), insert the NAISC code(s) applicable to the work the firm will be performing on the Project, and choose the bid item(s) that the firm will perform;
- (3) The actual dollar amount anticipated to be paid to each named KDOT Certified DBE firm; including DBE suppliers. Note: For DBE suppliers, the electronic bidding system will compute and apply towards the DBE goal the proper credit of 60% of the actual dollar amount anticipated to be paid ;
- (4) The actual dollar amount (not to exceed 10 percent of DBE subcontract) to be paid ahead of work as DBE mobilization to each named KDOT Certified DBE firm receiving DBE mobilization.
- (5) For federal aid contracts with a zero DBE goal, list all KDOT Certified DBE firms to be utilized, if any.

B. GOOD FAITH DETERMINATION. It is the bidder's responsibility to meet the DBE contract goal with KDOT Certified DBEs or to provide information to enable KDOT to determine that, prior to bidding, the bidder made good faith efforts to meet such goal. Note: the bidder cannot establish good faith efforts and KDOT will not consider good faith efforts when the failure to meet the DBE goal arises from the use of non-KDOT Certified DBEs. (See Section II.B).

(1) Good Faith Information Submittal. If the low bidder's required DBE information indicates that the DBE contract goal will be met with KDOT Certified DBEs, the contract will proceed toward award and the low bidder need not submit any further DBE information. If the low bidder's required DBE information indicates that the actual dollar amount of the eligible work anticipated to be paid to KDOT Certified DBEs is insufficient to meet the DBE contract goal, the Contractor shall submit good faith documentation within two working days of the bid opening. Example: if bids are read publicly on Wednesday at 1:30 p.m., the good faith documentation must be at KDOT Office of Civil Rights before 5 p.m. on Friday.

(2) KDOT Review. KDOT will review all information submitted to determine if the low bidder has met the DBE contract goal and, if not, whether the low bidder made sufficient good faith efforts to meet such contract goal. The determination of good faith efforts is made on a case-by-case basis and depends on the particular circumstances of the procurement. The issue KDOT will consider is whether the bidder took those steps, a reasonable bidder would have taken to actively and aggressively obtain KDOT Certified DBE participation sufficient to meet the goal. A KDOT determination that the low bidder's information failed to show sufficient good faith efforts shall cause rejection of the bid. If the low bid is rejected, the above procedure will be applied to the next lowest bidder, and other bidders if necessary, until a bidder is found that meets the DBE contract goals or establishes that good faith efforts were made to meet the goal. KDOT reserves the right to reject all bids and re-advertise the Contract.

(3) Establishing Good Faith Efforts. To demonstrate good faith efforts to meet the DBE contract goal, submit to KDOT documentation on the factors listed as (a) through (g). KDOT has assigned a percentage to each factor that shows the relative importance of each factor to KDOT and to the other factors. These percentages are a guide only; the circumstances of a particular procurement may justify different percentages or consideration of factors not mentioned. In evaluating the reasonableness of the low bidder's

efforts, KDOT may consider whether other bidders met the goal or failed to meet the goal. In evaluating the reasonableness of the low bidder's efforts, KDOT will consider all documentation submitted; yet, documentation created during the bidding process is more credible than documentation created after the letting.

- (a) The bidder negotiated in good faith with interested KDOT Certified DBEs. It is the bidder's responsibility to consider the available pool of KDOT Certified DBEs when determining subcontract or supply needs. It is the bidder's responsibility to furnish DBEs with information about plans or specifications to facilitate the bid. Include names of DBEs considered, information given to the DBE, if any, and an explanation of why agreements could not be reached for DBEs to perform the work. (25%)
- (b) The bidder selected portions of work for which KDOT has capable, KDOT Certified DBE's to perform. This may include breaking out work items or subcontracting items the prime Contractor normally performs. (20%)
- (c) The bidder used good business judgment in rejecting a KDOT Certified DBE quote, considering both price and capabilities. If a DBE quote represents a reasonable price for performing the work, the bidder should use that quote even though the DBE quote is higher than a non-DBE quote. However, bidders do not have to use excessive or unreasonable quotes. Before determining that a DBE quote is excessive, the bidder should inquire as to the reason for the disparity between the DBE and non-DBE quotes. The bidder should also evaluate what impact, if any, using a higher DBE price would have on the bidder's overall project bid. A higher DBE price may not be excessive or unreasonable if the price differential is a very small part of the project bid. (20%)
- (d) The bidder solicited capable, KDOT Certified DBEs through pre-bid meetings, advertising, telephone, mail, facsimile, e-mail, or a combination of the foregoing. The solicitation must have occurred within sufficient time to allow a DBE to respond. Follow up all initial contacts, whether the contact was solicited or unsolicited. If a DBE expresses an interest in the contract or a desire to quote and fails to submit a quote, follow up that contact, whether the contact was solicited or unsolicited. Receiving substantial unsolicited quotes may not be considered actively and aggressively pursuing DBE participation. (10%)
- (e) The bidder assisted interested KDOT Certified DBEs in obtaining equipment, supplies, or materials for the project being bid. (10%)
- (f) The combinations of KDOT Certified DBEs the bidder considered in trying to meet the goal. It is acceptable to use a portion of several DBE bids. (10%)
- (g) The bidder assisted interested KDOT Certified DBEs in obtaining bonding, credit, or insurance on the project being bid. (5%)

(4) Staff of KDOT's Office of Civil Rights and the Chief of Construction and Materials will review the documentation submitted and either accept or reject the good faith effort submittal.

(5) At the bidder's request, KDOT's Director of Operations will hold an informal hearing to discuss the bidder's good faith effort submittal. The bidder may have legal counsel present, at the bidder's expense. After the appeal hearing, the Director of Operations will issue the Agency's final administrative decision on whether the bidder made a good faith effort. The decision will be in writing and will explain the basis for the Agency's decision. This will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

DBE participation shall be counted toward meeting the DBE contract goals pursuant to this contract as follows:

- (1) A Contractor may count toward its DBE contract goals the total dollar value of a contract paid to an Eligible DBE, including an approved DBE protégé.

NOTE: At the time the bid is submitted on the DBE goal sheet, list the actual amount intended to be paid to the DBE. On Form 259, submitted after award, list the same amount as in the contract line item. If this amount differs from the DBE subcontract amount, list the latter amount on the bottom of the form with an explanation.

(2) A DBE, bidding as a prime contractor, may count toward its DBE contract goals the total dollar value of the work actually performed by the Eligible DBE prime contractor, including the cost of supplies and materials the DBE obtains.

Example: A DBE contractor bids as a prime contractor. The contract specifies a \$10,000.00 DBE goal. The DBE prime contractor performs \$50,000 of the work with its own forces. The DBE prime contractor has met the \$10,000 goal.

(3) A Contractor may count toward its DBE goals a portion of the total dollar value of a subcontract with an Eligible DBE joint venture equal in proportion to the percentage of ownership and control of the DBE partner in the joint venture.

Example: A contract specifies a \$5,000.00 DBE contract goal. Prime contractor bids \$100,000.00 subcontracting with a joint venture DBE/non-DBE contractor for \$20,000.00 of the work. The percentage of ownership and control of the DBE/non-DBE joint venture is 25% DBE and 75% non-DBE. The prime contractor may count \$5,000.00 ($\$20,000.00 \times .25$; i.e. total dollar value times the percentage of DBE ownership) toward the DBE contract goal, thus fulfilling the DBE requirements of the contract.

(4) If a non-DBE contractor and an Eligible DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture.

Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$10,000.00. The DBE participant in the joint venture performs \$50,000 of the work with its own forces. The joint venture has met the \$10,000 goal.

Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$100,000.00. The DBE participant in the joint venture performs \$80,000 of the work with its own forces. The joint venture must obtain the remaining \$20,000 in goal through use of another certified DBE firm, or show good faith efforts if the joint venture fails to meet the \$100,000 goal.

(5) A Contractor may count toward its DBE goal 60 percent of its expenditures for materials and supplies obtained from an Eligible DBE regular dealer, and 100 percent of its expenditures for materials and supplies obtained from an Eligible DBE manufacturer. A letter must be submitted to KDOT, detailing the amount, but the amount does not count as a subcontracted percentage.

(a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.

(b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.

(6) A Contractor may count toward its DBE goals the following expenditures to Eligible DBE firms that are not manufacturers or regular dealers:

(a) The commission charged for providing a bona fide service in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract, provided the commission is reasonable and customary.

(b) The commissions charged for bonds or insurance provided by a DBE broker for the specific performance of the contract, provided the fee is reasonable and customary. A letter must be submitted detailing the amount but does not count as a subcontracted percentage.

(7) A Contractor may count toward its DBE goals the amount paid to an Eligible DBE trucker for transportation services (labor and equipment used in delivering material to a Project).

(a) A DBE trucker who picks up a product at point A and delivers the product to the Contractor at point B provides a transportation service. The full amount paid for this transportation service (including the DBE trucker's overhead and profit) counts toward the DBE goal if the conditions in this subsection IIIC(7) are met.

(b) Some DBE truckers are also a regular dealer (supplier) of a bulk item(s). In this case, 60% of the amount paid for the material delivered will count toward the DBE goal in addition to the amount paid for the transportation service. The DBE trucker is responsible for the quality of the material.

(c) For amounts paid to DBE truckers to be credited toward the DBE contract goal, the Contractor shall submit a letter to KDOT requesting DBE subcontract credit for delivering the materials or credit for both delivering and supplying the materials. Make this request before the DBE trucker begins delivering the material and include in the request the DBE trucking company's name, the applicable line items, the contact amount and the percent of the original contract being subcontracted to the DBE trucking company.

(d) For 100% of amounts paid to DBE truckers for transportation services to be credited toward the DBE contract goal, the DBE trucking company shall meet the following requirements and conditions:

1. Own and operate at least one fully licensed, insured, and operational truck on the project. Use owned or a combination of owned and leased trucks in accordance with this subsection
 - Trucks owned by the DBE trucking company operated by drivers the DBE trucking company employs
 - Trucks leased from another certified DBE firm operated by drivers the DBE trucking company employs.
 - Trucks leased from a non- DBE firm operated by drivers the DBE trucking company employs. (see Special Rule 5 (e))
2. Exercise control over all owned and leased trucks.
 - Control means the DBE trucking company is responsible for scheduling the use of the leased truck and for approving the owner's use of the leased truck for other purposes.
 - The DBE trucking company shall manage the leased truck(s) in a manner that gives the DBE trucking company absolute priority over the use of that truck for the project for which DBE credit is being counted.
3. Haul material to a dedicated project stockpile (unless KDOT approves hauling material to a commercial plant in accordance with the procedure provided below).
4. Furnish the KDOT field office the opportunity and information needed to monitor the DBE trucking. The KDOT field office will make a consistent effort to monitor the trucking as time and resources allow; however, trucking activity that is not monitored shall not count toward DBE goal. The information the Contractor and DBE trucking company are required to provide to enable the KDOT field office to monitor the DBE trucking include the following:
 - On or before the preconstruction conference meeting, submit to the KDOT field office all subcontract or lease agreements with trucking/equipment companies. Such agreements shall include a list of trucks to be leased by VIN and the agreed upon amount and method of payment.
 - On or before the preconstruction conference meeting, submit to the KDOT field office a list of trucks and truck drivers to be utilized for the duration of the project. For each truck, include the VIN, tag number, or other vehicle identification that enables the KDOT field office to verify which vehicles may be counted toward the DBE goal. Update the list and associated information throughout project construction as changes occur and provide updated lists to the KDOT field office.

- Monthly, submit to the KDOT field office a spread sheet or list which contains all trucks that hauled on the project the previous month and the dates and tons hauled which the Contractor claims count toward DBE goal.
- Weekly, submit to the KDOT field office certified payrolls from the DBE trucking company.
 - The prime contractor may submit the certified payrolls to the KDOT field office separately or with all other payrolls for the Project.
 - Instruct the DBE trucker to list Davis Bacon wages separately from non-Davis Bacon wages if the DBE trucker is being paid both wage types on a project (i.e. the trucking company is performing both on-site and off-site work).
- Ensure the name and identification number of the DBE trucking company is displayed on both owned and leased vehicles.

5. Special Rules for delivering materials to commercial batch plants. As a general rule, for DBE trucking to count toward the DBE goal, the DBE has to deliver the material to a dedicated stockpile on the project. However, before the bid letting, the Contractor may submit a written request to the KDOT field office, asking that KDOT allow DBE goal credit for delivering material to a dedicated stockpile location at a commercial plant.

- In its request, the Contractor shall identify how the material will be separated from other aggregate at the commercial plant and how the material will be identified as material for the project being constructed.
- In evaluating the request, the KDOT field office shall determine if KDOT has sufficient resources to monitor the trucking to the commercial plant. If the KDOT field office determines that time and resources allow that office to monitor this trucking, the KDOT field office will notify the Office of Civil Rights. The Office of Civil Rights will issue to the Contractor a letter of concurrence, approving DBE goal credit for the DBE trucking to the dedicated stockpile at the commercial plant.

(e) Special Rule for Trucks leased from non-DBE firms. Obtain written permission from the KDOT Office of Civil Rights before using trucks leased from a non-DBE firm to count toward DBE goal. If approved, trucks leased from non-DBE firms may be counted toward goal along with trucks owned or leased from DBE firms if the total value of transportation services (equipment and labor costs) provided by the non-DBE owned trucks is equal to or less than the value of the transportation services provided by DBE-owned or leased trucks on the contract. However, if the value of the transportation services provided by the non-DBE owned trucks exceeds the value of the services provided by the DBE-owned or leased trucks, the DBE goal credit will be the value of the transportation services provided by the DBE-owned or leased trucks plus the value of the transportation services provided by the non-DBE owned trucks but only up to the limit of the value of the DBE-owned trucks. ~~plus the fee or commission allowed on the difference between the value of the transportation services provided by the non-DBE owned trucks and the value of the transportation services provided by the DBE owned or leased trucks.~~

(f) DBE Brokers. A DBE that has no DBE trucks or DBE employees is not considered to have full control over the trucking services provided for the project and thus will only be considered a broker. A broker arranges or expedites transactions only. Once considered a broker, 100% of the broker fee or commission received by the DBE may be counted toward the DBE goal; however, no trucking labor or materials costs may be counted toward the DBE goal.

D. COMMERCIALLY USEFUL FUNCTION.

The prime contractor is responsible for ensuring that Eligible DBE firms under subcontract to meet a DBE goal perform a commercially useful function (CUF). Failure to fulfill this obligation is a breach of contract and KDOT may invoke the sanctions listed in Section IV (Sanctions). The three criteria for a CUF are:

(1) The DBE firm shall manage the work through personal direct supervision by the DBE owner or a skilled, knowledgeable, full-time superintendent. Management includes scheduling work, ordering equipment and materials, hiring and firing employees, and submitting all required forms and reports. The DBE is not in compliance with this provision if the DBE subcontracts out part or all of the work to another entity.

(2) The DBE shall own all equipment, long term lease all equipment, or own some equipment and long term lease the remaining equipment except for specialized equipment as noted below.

(a) If the DBE leases equipment, the DBE shall have a written lease that gives the DBE full control of the equipment during the lease period. The DBE shall use its own workers to operate leased equipment.

(b) A DBE may enter into long term leases with companies operating as prime contractors. The DBE is not in compliance with this provision if the DBE leases equipment from the prime contractor on the project for that project only.

(c) Exception for specialized equipment: The DBE may lease short term specialized equipment such as a crane from another contractor or third party if this equipment is necessary for the DBE to perform its work and the equipment is of such a nature that it is not economically feasible or practical for the DBE to lease the equipment long term. The Contractor shall bill the DBE for this equipment and the DBE shall pay the contractor for the equipment. The DBE is not in compliance with this provision if the Contractor deducts from the DBE's pay estimate specialized equipment costs rather than submitting an invoice to and receiving payment from the DBE.

(3) The DBE shall negotiate the cost of, arrange delivery of, and pay for materials, supplies, labor, and equipment. Invoices shall be billed to the DBE and paid by the DBE.

(4) KDOT will not count towards goal or give DBE contract goal credit for the following:

(a) Monies the prime contractor pays directly for supplies, materials, labor or equipment on the DBE's behalf except for two-party checks approved under Section III.F below.

(b) Costs deducted from a DBE's pay estimate for supplies, materials, labor or equipment the prime contractor or its affiliate provided.

(c) Costs incurred for equipment the DBE leases from the Contractor on the project if the DBE is using the equipment for that project only and the equipment is not part of a long term lease agreement.

(d) Costs associated with a portion of a bid item that the Agency is unable to measure clearly.

(e) Costs incurred for work subcontracted outside normal industry practices, just to meet a goal.

(5) KDOT's determination that a DBE is not performing or did not perform a CUF is not appealable to the US Department of Transportation. KDOT's determination will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

E. BUSINESS INTEGRITY

Any person or entity will be found to be out of compliance with this required contract provision if any investigation reveals a commission or omission of any act of such serious or compelling nature that the act indicates a serious lack of business integrity or honesty. Such commission or omissions include, but are not limited to:

(1) Violating any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a KDOT financial assistance program or,

(2) Making, or procuring to be made, any false statement or using deceit to influence in any way any action of KDOT.

F. TWO PARTY CHECKS.

To comply with the current regulation, KDOT is implementing the following two-party check procedures. The prime contractor is responsible for following the procedure and for ensuring that Eligible DBE firms follow the procedure.

- (1) The DBE owner shall make the request for a two-party check to the KDOT Office of Civil Rights and shall explain the benefit to the DBE firm. On a case-by-case basis, it may be necessary for the prime contractor to initiate the issuance of two party checks.
- (2) The prime contractor shall send the check to the DBE owner who will endorse and forward the check to the supplier. This should be done within the 10-day prompt pay timeframe.
- (3) The amount of the check should not exceed the amount of material paid by KDOT on the latest estimate. *For example, if the estimate was taken on 7/23, pay the material bill through 7/23 not through 7/31.*
- (4) Two party checks shall be issued only long enough to establish credit for the DBE firm.
- (5) KDOT will not count towards goal or give DBE contract goal credit for two party checks that have not been pre-approved by KDOT.

G. TERMINATION AND SUBSTITUTION OF DBEs.

Contractors may substitute a KDOT Certified DBE firm listed on the Contractor's DBE goal sheet without Sanctions under Section IV if either the DBE voluntarily withdraws from the project or the Contractor has good cause to terminate the DBE, if the Contractor has complied with the procedures for requesting termination and substitution, if KDOT has consented in writing to the termination and substitution, and if the Contractor has either met the terminated DBE's remaining goal commitment with KDOT-approved substitute DBEs or made documented, good faith effort to meet the terminated DBE's remaining goal commitment.

- (1) If the DBE wants to withdraw from the project, the Contractor shall provide KDOT Office of Civil Rights a letter requesting termination as well as a letter from the original DBE in which the DBE states the reason for the DBE's withdrawal or inability to perform. The Contractor shall notify KDOT Office of Civil Rights if the DBE fails to provide this letter to the Contractor. KDOT will review the documentation and determine if additional information or an informal hearing is needed for KDOT to determine whether to consent to termination. KDOT will inquire whether the DBEs reason for withdrawal is attributable to bad faith, discriminatory action, or other fault of the Contractor.
- (2) If the Contractor wants to terminate the DBE firm for good cause (and reason other than a DBE's voluntary withdrawal), the Contractor shall give written notice to the DBE firm of its intent to request that KDOT consent to the Contractor terminating the DBE firm. The Contractor shall identify the reasons for the requested termination and copy KDOT Office of Civil Rights on the letter to the DBE firm. Unless the Contractor requests and KDOT determines that a shorter response time is needed for public safety, the letter shall notify the DBE firm that it has five business days to respond in writing to the Contractor's notice and provide reasons, if any, why the DBE objects to the proposed termination and why KDOT should withhold its consent to the termination. If the Contractor desires to proceed with termination after receiving the DBE firm's response, the Contractor shall provide KDOT Office of Civil Rights written notice requesting that KDOT allow the Contractor to terminate the DBE and identifying the reasons for the requested termination. KDOT will then review the documentation and determine if additional information or an informal hearing is needed for KDOT to determine whether to consent to the termination.
- (3) Contractors are required to obtain written consent from KDOT Office of Civil Rights before terminating and before substituting a KDOT Certified DBE firm listed on the Contractor's DBE goal sheet (listed DBE firm) with another KDOT Certified DBE firm, a non-DBE firm, or the Contractor's own forces or an affiliate of the Contractor.

(4) KDOT will only approve termination of DBEs for good cause. Good cause includes the following circumstances, though the existence of any circumstance does not excuse termination before written notice to and written consent by KDOT:

- (a) The listed DBE firm fails or refuses to execute a written contract;
- (b) The listed DBE firm fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards through no fault of the Contractor.
- (c) The listed DBE firm fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
- (d) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (e) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to state law, federal law, or both;
- (f) The listed DBE firm is non-responsible based upon KDOT's determination that the DBE lacks the skills, abilities, or integrity to perform the work for the reasons stated in Standard Specification Subsection 102.18c;
- (g) The listed DBE firm voluntarily withdraws from the project and provides the Contractor written notice of its withdrawal and the reason(s) for withdrawal;
- (h) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (i) The listed DBE firm is unable to complete its work on the contract because of the death or disability of the DBE owner;
- (j) Other documented good cause that the Contractor determines and KDOT agrees compels the termination of the DBE firm.

Note: In evaluating good cause, KDOT will consider whether the Contractor acted in good faith and in a non-discriminatory manner in its dealing with the DBE firm and whether the Contractor is seeking termination so that the Contractor can self-perform the work for which the DBE firm was engaged or so that the Contractor can substitute another DBE or non-DBE firm after contract award.

(5) If KDOT provides written consent to termination of a listed DBE firm, the Contractor shall make good faith effort to substitute the terminated DBE firm with another KDOT Certified DBE firm. The Contractor shall obtain KDOT's written consent to the substitute DBE firms the Contractor proposes for meeting the remaining goal commitment of the terminated DBE. KDOT will not consider substitution with a non-DBE firm, the Contractor's own forces or an affiliate of the Contractor unless and until the Contractor demonstrates that it used good faith efforts to substitute the terminated DBE with another DBE. The Contractor may solicit substitute DBEs that perform the same work as the original DBE or different work than the original DBE. The Contractor shall obtain DBE substitution participation that at least equals the monetary value of the work needed to satisfy the goal commitment for the terminated DBE after that commitment has been reduced by the value of the work performed by the terminated DBE, if any (Substitution DBE goal). If the Contractor fails to meet or exceed the terminated DBE's remaining goal commitment with KDOT-approved substitute DBEs, KDOT will determine whether the Contractor made good faith effort to meet the terminated DBE's remaining goal commitment. The issue KDOT will consider is whether the Contractor took those steps a reasonable Contractor would have taken to actively and aggressively obtain substitute DBE participation sufficient to meet the monetary value of the work needed or remaining to satisfy the goal commitment for the terminated DBE. To demonstrate good faith effort, the Contractor shall provide documentation to KDOT on the factors listed in Section III.B(3)(a) through (g) within 7 days of KDOT's request.

(6) Staff of KDOT's Office of Civil Rights and the Chief of Construction and Materials will review the documentation submitted and either accept or reject the good faith effort submittal.

(7) If the Contractor's good faith effort is rejected, the Contractor may request an informal hearing with KDOT's Director of Operations. The Contractor may have legal counsel present, at the Contractor's expense. After the appeal hearing, the Director of Operations will issue the Agency's final administrative decision on whether the Contractor made a good faith effort. The decision will be in writing and will explain the basis for the Agency's decision. This will be final agency action and a final order under the

Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

(8) If the Contractor's good faith effort is accepted either on initial review or in the Agency's final determination, no sanctions will be imposed for the Contractor's inability to satisfy the remaining goal commitment for the terminated DBE.

(9) KDOT will not count towards goal credit costs incurred for work subcontracted to unapproved, substitute DBEs.

(10) Only work performed by the listed DBE or a substitute approved by KDOT is eligible for payment. Thus, in addition to lack of goal credit, KDOT will not pay for work (labor, materials, equipment) performed by a DBE firm, non-DBE firm, the Contractor, or a Contractor affiliate that has not been approved by KDOT as a substitute for the terminated DBE firm.

(11) The procedures in this subsection III.G apply to termination and substitution of approved substitute DBE firms as well as listed DBE firms.

IV. SANCTIONS.

If KDOT finds any contractor, sub-contractor, DBE, joint venture, or mentor/protégé to be out of compliance with this required contract provision, KDOT may impose one or more of the following sanctions:

(1) Withhold payment of progress payments until the contractor or DBE contractor complies with the payment requirements of this Special Provision.

(2) Remove the non-complying DBE from the DBE directory until the DBE shows the company is meeting the requirements necessary to perform a CUF, including payment of all bills.

(3) Deny goal credit as previously stated for failure to replace a non-performing DBE with another DBE (unless good faith effort was made), failure to meet the requirements necessary to perform a CUF, or failure to follow two party check procedures.

(4) Assess and deduct as liquidated damages the monetary difference between the DBE goal amount and the amount actually paid to the DBEs for which KDOT has allowed DBE goal credit.

(5) Reject the bidder's bid if the bidder failed to meet the DBE goal and failed to show good faith effort to meet the goal.

(6) Refer the matter to the Office of the Attorney General, the US Department of Justice, or both for follow-up action.

(7) Enforce all other remedies KDOT has under other contract provisions such as contract termination, contractor suspension, contractor debarment, and sanctions for failing to pay promptly.

(8) Deduct from contract funds the value of work performed by any firm for which KDOT did not consent to substitution.

V. USE OF MINORITY OWNED FINANCIAL INSTITUTIONS (49 CFR 26.27).

KDOT encourages prime contractors to use the services of institutions owned and controlled by socially and economically disadvantaged persons. All eligible institutions are certified by KDOT and are listed on the internet at <http://www.ksdot.org/divadmin/civilrights/>.

05-21-18 C&M (CDB)
Aug-18 Letting

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2015**

07-18-80, latest revision

**FEDERAL AID CONTRACTS
UTILIZATION OF DISADVANTAGED BUSINESSES**

Sheet 2, delete subsection II.E. and replace with the following:

E. When projects are State or Contractor tied, the assigned DBE Contract Goals must be met for each project. To check DBE participation on tied projects the following method will be used:

(1) If the dollar amount actually subcontracted to DBEs on each contract is equal to or greater than the minimum dollar amounts assigned to each contract, it will be determined that the DBE goals have been met.

(2) If a State of Kansas funded project is tied to a federal aid funded project, the DBE contract goals can only be met by DBE subcontractors on the Federal Aid Project.

06-01-15 C&M
Jul-15 Letting

REQUIRED CONTRACT PROVISION

AREA PRACTICE FOR DOUGLAS, JOHNSON, LEAVENWORTH, MIAMI, SHAWNEE, AND WYANDOTTE COUNTIES IN KANSAS

Area Practice is determining proper classification of various work and types of construction. When the wages reflected in the wage decision are the same as union-negotiated rates, the duties ascribed to the classification must be the same as those performed under the union-negotiated agreement.

Working Foremen shall be classified as to which trade he/she supervises and works, for example; Ironworker foreman, carpenter foreman, laborforeman, etc. The foreman shall receive wages not less than those specified in the General Wage Decision for which trade he/she supervises.

I. IRONWORKERS.

Workers shall be paid the Ironworkers rate when performing the following:

a. The occupational title of work description for Ironworkers shall apply to workers who perform work in connection with field fabrication and/or erection, installation, removal, wrecking and dismantling of structural, architectural and reinforcing iron and steel, ornamental lead, bronze, brass, copper and aluminum, and plastic or other material when used in place thereof.

b. Structural. The unloading, erecting, bolting-up, plumbing-up, welding and installing of structural steel, including any field fabrication.

c. Precast. The unloading and erection of all precast bridge girders of any kind, single T's, double T's, all top panels, structural shaped buildings, tilt-up slabs.

d. Reinforcing. The placing and tying of all concrete reinforcing, such as re-bar, expanded metal or post tensioning cable (including the tension process or prestress cables when installed on the job site).

e. Rigging. The unloading, moving, handling, placing and setting of electrical machinery and equipment when rigging and/or power equipment is used (with the exception of electrical transmission towers). The unloading, handling, moving and placing of machinery to be assembled or dismantled, erected or installed to its approximate position (over the anchor bolts).

f. Sheeting and Decking. The installation of sheeting which is attached to metal framework including metal floor decking and roof decking.

g. Other:

(1) The installation of all catwalks, stairways and handrails made of aluminum, bronze or any type of metal, glass or plastic.

(2) The installation of ornamental iron, such as revolving doors, gates, handrails, window grills and fences.

(3) The installation of dry storage bins, hoppers, chutes and conveyors where sand, ore, or any dry component is stored or transferred.

(4) The erecting, installation, removal, wrecking and dismantling of bridges, viaducts, cableways, tramways, monorail transportation systems.

(5) The erection, installation, removal, wrecking and dismantling of locks, gates, metal forms, railing (including pipe).

(6) The handling, burning, welding and tying of all material used to reinforce concrete structures.

(7) The handling and erection of chain link fence.

II. LABORERS.

Workers shall be paid the laborer rate, in the appropriate group when performing the following: Placing of all pavement steel, including wire fabric and expansion joints; working on cribbing, blocking, loading and unloading of all Contractors' machinery, except the operation of the machine; grading, setting and laying of street, slab or road forms; rubbing concrete; grade checker in cuts and fills; dumpman; ticket taker; mastic kettelman; sand pot man; flagger; laser beam man (except where professional engineers are required); manhole builder; batter board man; and scale person; working with the tools or performing work described in the applicable U.S. Department of Labor General Wage Decision for the county in which the work is being performed.

III. POWER EQUIPMENT OPERATORS.

Workers shall be paid as Power Equipment Operators, in the appropriate Group, when the operating the equipment listed in the applicable U. S. Department of Labor General Wage Decision for the county in which work is being performed.

IV. CEMENT MASONS.

Workers shall be paid at the Cement Masons rate when the following is performed:

a. Finishes all plastic concrete.

b. Any bulkhead that is one single board in height, and that has no key attached or which is not notched or fitted shall be set and braced or staked by cement finishers, providing the same is used as a screed.

c. Sets screeds of lumber, metal, or other materials to determine the proper grade of concrete, when held in place by stakes and/or spreaders.

V. CARPENTERS.

Workers shall be paid the Carpenters rate when performing the following:

a. Work consisting of the fashioning, joining, assembling, erecting, fastening all material of wood, plastic, metal, fiber, cork and composition, and all other substitute materials. The manufacturing of all materials where the skill, knowledge and training of the Carpenter is required, either through the operation of power or hand tools at the job site.

b. Constructs, erects and positions forms for footings, foundations, column bases, columns, pier stems, pier caps, decking, or handrail of structures of all description whether forms are made of wood, prefabricated or other type of composition material.

c. Includes forming all riprap work; preparation and layout of all piles; including wood, steel and/or concrete, sheet piling, and bracing of same; caissons; cofferdams, where piles are bored, jetted, driven or sunk; pulling and removing of all material pertaining to piledriver's work; all precasting and dry packing of piling; underpinning; shoring and lagging; and signaling crane during for excavation and piledriving. All cutting, welding, burning pertaining to piledriving work whether wood, metal, concrete, plastic or of composition material.

d. The fabrication, erection, bracing of all falsework.

e. The operation of woodworking machinery and hand tools required in the fashioning or manufacturing of concrete molds, supports and/or bracing, or engaged in the handling, erecting and installing of forms.

f. The fabrication and/or setting of all templates including anchor bolts necessary for structural members and the placement and/or leveling of these bolts.

g. Any bulkhead that must be notched or fitted, or which has a key attached, or which is over one board high, or any bulkhead that is not used as a screed shall be fabricated and set by carpenters.

VI. TRUCK DRIVERS.

Workers shall be paid as Truck Driver, in the appropriate Group, when operating the type of truck described in the applicable U. S. Department of Labor General Wage Decision for the county in which work is being performed.

Traffic Control Service drivers shall be paid when performing the following duties:

Performing the initial work zone setup, including placing temporary pavement markings, laying out and erecting signs. Maintaining all devices during the life of the project and completing phase changes and removing all devices upon completion of the project.

VII. TRAFFIC SIGNAL AND STREET LIGHT CONSTRUCTION.

JOURNEYMAN LINEMEN, TRAFFIC SIGNAL TECHNICIAN/STREET LIGHT TECHNICIAN: The first employee on the project. Can operate any and all equipment used in the installation and/or maintenance of traffic signals and/or street lights. Digs holes for pushing pipe and

pushes pipe; digs holes for concrete foundations, builds forms, ties rebar, pours concrete, finishes concrete; installs screw in type bases; installs conduit; installs pull boxes; installs power supply; pull wire; frame and set poles; install any equipment on poles (sings, push buttons, etc.,) as required; installs controllers; make up all wire connections inside controller, on poles, or in manholes, and does any aerial work which is required.

These two classifications, and indentured apprentices (registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training) are the only employees who are allowed to climb or work out of any type of aerial lift equipment.

LINEMAN OPERATORS: Can operate any and all equipment used in the installation and/or maintenance of traffic signals and street lights, such as; tractor and pole trailer, crane, backhoe, trencher, earth saw, hole boring equipment and equipment used to lift men or material. This classification assists the Journeyman Lineman and Traffic Signal/Street Light Technician in the performance of the work but does not climb or do any work out of any type of aerial lift equipment. Does not do any work that requires the use of hand tools.

GROUNDMAN POWDERMAN*: This classification is used when there is any blasting required. Assists the Journeyman Lineman and Traffic Signal/Street Light Technician in the performance of the work but does not climb or do any work out of any type of aerial lift equipment. He can use jackhammers, air drills, shovels, picks, tampers, etc. for excavation or compacting dirt. Can operate the following equipment: concrete saw, farm tractor, dump truck, and trencher (with the exception of backhoe unit, if so equipped, which requires operator classification).

GROUNDMEN*: Assists the Journeyman Lineman and Traffic Signal/Street Light Technician in the performance of the work, but does not climb or do any work out of any type of aerial lift equipment. He can use jackhammers, air drills, shovels, picks, tampers, etc. for excavation and compaction of dirt. Can operate the following equipment: concrete saw, farm tractor, dump truck, trencher, (with the exception of backhoe unit, if so equipped, which requires operator classification).

GROUNDMEN (1st 6 months)*: This classification is for someone who has never worked in the industry. Six month probationary period doing the same work as a Groundman. We place this classification only if Groundman are not available.

** Groundman shall assist lineman and traffic signal/street light technician in the performance of their work and shall work under the supervision of the lineman or traffic signal/street light technician but at no time shall groundman be permitted to do lineman or traffic signal/street light technician work.*

REQUIRED CONTRACT PROVISION

CERTIFICATION - CONTRACTUAL SERVICES WITH A CURRENT LEGISLATOR
OR A CURRENT LEGISLATOR'S FIRM

Please indicate below whether this contract is with a legislator or a firm in which a legislator is a member. The Contractor's signature on the Contractor's proposal supplies the necessary signature for this Certification.

Kansas Law, K.S.A. 46-239(c), requires this agency to report all contracts entered into with any legislator or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The Contractor certifies that:

If this contract is with a legislator, that legislator is:

Name: _____

Address: _____

(City) (State) (Zip Code)

Business Telephone: _____

REQUIRED CONTRACT PROVISION
TAX CLEARANCE CERTIFICATE

(1) Contractors shall have a current Tax Clearance Certificate from the Kansas Department of Revenue (KDOR) at the time of contract award. The Tax Clearance process is a tax account review by KDOR to determine that the Contractor's account is compliant with Kansas tax laws administered by the Director of Taxation. The Contractor's Proposal will be rejected as non-responsive if the Contractor does not have a current Tax Clearance Certificate at the time of contract award.

(2) To obtain a Tax Clearance Certificate, the Contractor shall complete and submit to KDOR an Application for Tax Clearance obtained from KDOR's website at <http://www.ksrevenue.org/taxclearance.htm>. The Application Form can be completed and submitted on-line, by mail, or by fax. After the Contractor submits the Application, KDOR will provide the Contractor a Transaction ID number. The Contractor shall use the Transaction ID number to retrieve the Tax Clearance Certificate which includes the "Tax Clearance Confirmation Number". Decisions on on-line applications are generally available the following business day.

If the Contractor possesses a current Tax Clearance Certificate at the time of the letting, provide the following information:

1. Tax Clearance Confirmation Number: _____ and
2. Contractor's FEIN number: _____

(3) If the Contractor does not have the information in section 2 at the time of the letting, the Contractor shall submit a copy of the Tax Clearance Certificate to the Local Public Authority (LPA) by hand delivery, mail, or fax before the award of contract so it can be forwarded to KDOR. Before authorizing the LPA to award a contract, KDOR will authenticate the Certificate through the Confirmation Number inserted in section 2 on this Required Contract Provision or contained on the Certificate submitted after the letting.

(4) If the Contractor is unable to retrieve the Tax Clearance Certificate or if KDOR denies the Contractor's Application for Tax Clearance, the Contractor shall call KDOR's Special Projects Team at 785-296-3199 to determine why KDOR failed to issue the Certificate.

(5) Tax Clearance Certificates are valid for 90 days after issue. To renew a clearance, submit a new Tax Clearance Application. Information pertaining to a Tax Clearance is subject to change for various reasons, including a state tax audit, federal tax audit, agent actions, hearings, and other legal actions. The Tax Clearance Certificate is not "clearance" for all types of taxes the state of Kansas may assess.

(6) Subcontractors also shall have a current Tax Clearance Certificate from KDOR before the LPA approves them for subcontract work. The Contractor shall submit to the LPA the Subcontractor's Tax Clearance Certificate so the LPA can authenticate their Tax Clearance Confirmation Number.

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2015**

SECTION 106

CONTROL OF MATERIALS

c. "Buy America" Materials.

(1) Current federal regulations require the use of domestic iron and steel on federal-aid projects with limited exceptions. On federal-aid projects, use only iron and steel that have been manufactured, produced and processed in the United States. This includes any federally non-participating items.

(2) On all federal-aid projects, all iron or steel shall have been manufactured, produced, and processed in the United States. Manufacturing processes include any process which modifies the chemical content, the physical size or shape, or the final finish of the iron or steel. These processes include initial melting, mixing, rolling, machining, extruding, bending, grinding, drilling, and coatings applied to iron or steel (including epoxy coatings, galvanizing, painting, and any other coating that protects or enhances the value of the iron or steel used).

(3) Obtain the Engineer's written approval before using any iron or steel that has not been manufactured, produced, and processed in the United States as permitted in this **subsection 106.1c.(3)**. With the Engineer's written permission, foreign iron and steel may be used if:

(a) The combined total cost of all the foreign iron used, steel used, or the cost of both iron and steel used when both are required does not exceed 0.1% of the total cost of the Project or \$2,500.00 dollars, whichever is greater. The cost of the foreign iron used, steel used, or both includes material costs, manufacturing costs, assembly costs, transporting costs, and testing costs associated with the foreign iron, steel, or both.

(b) The Federal Highway Administration has waived specific products or processes according to 23 CFR 635.410, for the duration of that waiver.

The Contractor:

- Assumes the risk of including any foreign iron or steel in the Contractor's bid.
- Incurs any costs needed to remove and replace with domestic iron and steel the amount of foreign iron, steel, or both that exceeds 0.1% of the total Project costs or \$2,500.00, whichever is greater.
- Has the obligation to remove and replace foreign iron and steel that exceeds 0.1% of the total Project costs or \$2,500.00 whichever is greater. The obligation is regulatory and is not excused by:
 - Errors the Contractor, subcontractors, suppliers, fabricators, or other third parties make in determining the costs of foreign iron and steel as defined above.
 - The Engineer's approval under **subsection 106.1c.(3)**. The Contractor shall make no claim for contract adjustment (additional time, money, or both) because of the use of foreign iron or steel.

(4) Companies providing iron or steel or performing any manufacturing processes on the iron or steel shall include a "Buy America" statement on test reports and material certifications submitted to KDOT, the Contractor, or both. The "Buy America" statement shall identify the source of the iron or steel and the location(s) of the manufacturing processes. The statement shall certify that the company issuing the test report or material certification complies with all provisions of the Buy America Act.

(5) This **subsection 106.1c. and "Buy America"** requirements do not apply to temporary items (Example: temporary sheet piling, steel scaffolding, and falsework) on the contract, even if these items are left in place with the Engineer's approval.

(6) After work is completed on the Project, submit to the Engineer a certification stating the dollar amount of foreign iron used, steel used, or both. Include material costs, manufacturing costs, assembly costs, transporting costs, and testing costs in the dollar amount. Identify a zero dollar amount if no foreign iron or steel was used on the Project.

(7) This **subsection 106.1c. and Buy America** requirements do not apply to 100% state funded projects.

"General Decision Number: KS20260140 05/18/2026

State: Kansas

Construction Types: Highway

Counties: Kansas Counties of
Johnson

Modification Number	Publication Date
0	01/02/2026
1	05/18/2026

CARP0315-006 05/01/2023

	Rates	Fringes
CARPENTER.....	\$ 43.28	21.25

ENGI0101-026 04/01/2025

	Rates	Fringes
POWER EQUIPMENT OPERATOR: ROTO MILL.....	\$ 40.17	22.29
POWER EQUIPMENT OPERATOR: ROLLER.....	\$ 40.17	22.29
POWER EQUIPMENT OPERATOR: PAVER (ASPHALT, AGGREGATE, AND CONCRETE).....	\$ 40.17	22.29
POWER EQUIPMENT OPERATOR: LOADER.....	\$ 40.17	22.29
POWER EQUIPMENT OPERATOR: BROOM/SWEEPER.....	\$ 40.17	22.29
POWER EQUIPMENT OPERATOR: BACKHOE/EXCAVATOR/TRACKHOE.....	\$ 40.17	22.29

IRON0010-015 04/01/2025

	Rates	Fringes
IRONWORKER (REINFORCING AND STRUCTURAL).....	\$ 39.00	34.25

LAB00663-017 04/01/2025

	Rates	Fringes
LABORER: CONCRETE SAW (HAND HELD/WALK BEHIND).....	\$ 37.45	15.87

LAB01290-002 04/01/2025

	Rates	Fringes
LABORER: ASPHALT, INCLUDES RAKER, SHOVELER, SPREADER, AND DISTRIBUTOR.....	\$ 37.45	15.87

PLAS0518-004 04/01/2025

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER.....	\$ 39.06	18.71

SUKS2019-079 05/09/2019

	Rates	Fringes
TRUCK DRIVER: OFF ROAD TRUCK.....	\$ 19.06	0.00
TRUCK DRIVER: FLATBED AND LOWBOY.....	\$ 28.41	14.05
TRUCK DRIVER: DUMP AND TANDEM.....	\$ 29.04	12.45
TRAFFIC SIGNALIZATION: TRAFFIC SIGNAL INSTALLATION (GROUNDMAN).....	\$ 17.10	0.00
TRAFFIC CONTROL: SERVICE DRIVER.....	\$ 20.00	12.49
OPERATOR: STRIPING MACHINE.....	\$ 27.27	12.25
OPERATOR: ROTO MILL GROUNDMAN.....	\$ 18.43	0.00
OPERATOR: TRACTOR.....	\$ 24.28	0.00
OPERATOR: SCREED.....	\$ 17.38	3.52
OPERATOR: SCRAPER.....	\$ 17.67	0.00
OPERATOR: MECHANIC.....	\$ 32.25	15.31
OPERATOR: MATERIAL TRANSFER VEHICLE.....	\$ 14.65	0.00
OPERATOR: GRADER/BLADE.....	\$ 29.66	12.55
OPERATOR: CRANE.....	\$ 30.38	11.08
OPERATOR: CONCRETE SAW.....	\$ 33.87	15.16
OPERATOR: CONCRETE FINISHING MACHINE.....	\$ 24.26	0.00
OPERATOR: BULLDOZER.....	\$ 28.15	11.65
OPERATOR: BOBCAT/SKID STEER/SKID LOADER.....	\$ 34.88	15.40
LINE CONSTRUCTION: LINEMAN.....	\$ 41.52	17.26
LINE CONSTRUCTION: GROUNDMAN.....	\$ 24.92	12.15
LINE CONSTRUCTION: EQUIPMENT OPERATOR.....	\$ 30.67	14.36
LABORER: MASON TENDER - CEMENT/CONCRETE.....	\$ 29.75	12.83
LABORER: FORM WORK ONLY.....	\$ 30.21	14.57
LABORER: FLAGGER.....	\$ 13.20	0.00
LABORER: COMMON OR GENERAL.....	\$ 27.81	14.30
ELECTRICIAN.....	\$ 29.93	14.14

TEAM0541-013 04/01/2025

	Rates	Fringes
TRUCK DRIVER: WATER TRUCK.....	\$ 38.04	15.85

UAVGKS0006 01/01/2025

	Rates	Fringes
LABORER: PIPELAYER.....	\$ 32.12	14.73

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.65 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract from May 11, 2026, through December 31, 2026. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage

determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than SU , UAVG , SA , or SC denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The SU identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may

include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

SU wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The SA identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the SA identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be

directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

=====

END OF GENERAL DECISION

"

PROJECT REQUIREMENTS

1. CONDUCT OF WORK:

- A. CONTRACTOR shall conduct the work in a manner to avoid unnecessary noise, dust and dirt.
- B. CONTRACTOR shall cooperate with other occupants of the site for efficient utilization of available space.

2. RIGHT-OF-WAY AND EASEMENTS:

- A. The rights-of-way and easements considered necessary for this construction will be provided by the city. The CONTRACTOR shall confine his construction operations within the rights-of-way and easements as shown on the plans. The CONTRACTOR shall use care in placing materials, tools, machinery and the operation of equipment so as to cause the least possible damage to property and interference with traffic. The placing of all materials, tools, machinery, and operation of equipment shall be subject to the approval of the ENGINEER.

- B. Work Within Road, Street or Highway Right-of-Way:

All work performed and all operations of the CONTRACTOR or his employees or SUBCONTRACTORS, if any, within the limits of these rights-of-way shall be in conformance with the requirements, and be under the control (through the city) of the authority owning, or having jurisdiction and control over such rights-of-way in each case. The OWNER shall obtain all permits required by law and ordinances or regulations of such authorities.

- C. On Private Property:

- 1) Easement widths for construction purposes across private property and for permanent easement shall be as recorded with the Johnson County, Kansas, Register of Deeds, except where special conditions exist and in areas where buildings or permanent structures are within said easements.
- 2) The CONTRACTOR shall be responsible for all damage to crops, trees, shrubs, bushes, sod and other property outside of the boundaries of the rights-of-way and easements, and shall make satisfactory settlement for the damage directly with the property Owner and Tenant involved, as their interest may require.
- 3) If it is necessary or desirable that the CONTRACTOR use or occupy land outside the city's construction rights-of-way and easements, the CONTRACTOR shall obtain consent from, and shall execute a written agreement with the Owner and Tenant of the land. The CONTRACTOR shall not enter and occupy for any purposes with men, tools, equipment, construction materials or with materials excavated, any private property outside of the designated right-of-way and easement boundaries without written permission from the Owner and Tenant of the

entered or occupied property. Each Owner and Tenant of land or other property so occupied shall be notified by the CONTRACTOR not less than five (5) working days prior to such occupation.

- 4) The private property owner grants these rights-of-way and easements with the understanding that the CONTRACTOR shall preserve and protect from damage, to the greatest extent possible, all trees within the right-of-way and easement limits.

3. UNDERGROUND AND ABOVEGROUND INSTALLATIONS AND STRUCTURES:

- A. Existing utility lines have been plotted on the plans from available records, but other installations may be present. The relationship between proposed work and existing facilities, structures and utilities must be considered approximate, and it is the CONTRACTOR's responsibility to determine the existence of and exact location of any not shown on the drawings. Existing facilities, structures and utility lines, both aboveground and underground, shall be protected by the CONTRACTOR at his expense from damage during the process of the work. If the CONTRACTOR damages existing facilities, structures or utility lines, he shall immediately make a report of such damage to the Owner of the damaged item and also to the ENGINEER.
- B. Any delay or extra cost to the CONTRACTOR caused by pipelines or other obstructions not shown by the plans, or found in locations different than indicated, or, in the case of pipelines, not of the material as originally anticipated by the CONTRACTOR, shall not constitute a claim for extra work, additional payments, extension of time, or damages.
- C. The CONTRACTOR will be held responsible for any damage to existing manholes, storm sewers, utility lines and other structures both above ground and below ground because of his operations and shall repair, replace, or pay the Owner of the utility for making the repair of any damaged manholes, storm sewers, utility lines or other structures to the satisfaction of, and at no additional cost to, the Owner of the utility or company.

4. MAINTENANCE OF PUBLIC AND PRIVATE PROPERTY:

- A. The CONTRACTOR shall not disturb underground utilities, drainage structures and other structures uncovered or otherwise affected by the construction work being performed by him.
- B. The CONTRACTOR shall be responsible for any damage caused by settlement of backfill placed beneath pavements, streets, road and driveway surfacings, drainage and other structures, and beneath sod in yards, parkings and parks which may occur at any time prior to and during a period of two (2) years from and after the date of final acceptance of the work covered by this contract.
 - 1) During the above-mentioned period, the CONTRACTOR shall, at his expense, refill all excavations where backfill settlement has occurred, and shall repair or cause to be repaired all damage to structures, pavements, surfacing and sod caused by such settlement to the satisfaction of the city.

- 2) Should the CONTRACTOR fail to repair settlement which may occur as described above within thirty (30) days after being given notice thereof, the city shall have the right to repair such settlement and charge the cost of such repairs to the CONTRACTOR.
 - 3) In the event an emergency arises in connection with the work being performed under this contract during the construction period or within the two (2) year maintenance period, the City Engineer or his representative shall make a determined effort to locate and notify the CONTRACTOR of such emergency so that he can take immediate action to correct the circumstances causing the emergency. If the CONTRACTOR cannot be reached or cannot take immediate action, then the City will take such action deemed necessary to eliminate the emergency, and all cost in connection therewith will be chargeable to the CONTRACTOR or against the maintenance bond.
- C. The CONTRACTOR will be held responsible for all damage to roads, highways, shoulders, ditches, embankments, bridges, culverts and other property caused by him or any of his SUBCONTRACTORS in hauling or otherwise transporting materials to or from the work, regardless of the location of such damages, except as noted in subparagraphs 1 and 2 above. The CONTRACTOR shall make arrangements relative to the payment for, or repair or replacement of, such damage or damaged surfaces or structures which are satisfactory and acceptable to the Owners or Owner of such damaged surfaces or structures, or to their legally responsible officers, agents or other representatives, at the CONTRACTOR's own expense.

5. WEEKEND OR HOLIDAY WORK:

Work on Saturdays shall be as approved by the City Engineer. Requests for permission to work on Saturdays must be received no later than 3:00 p.m. on the preceding Thursday. Work on Sundays or legal holidays will not be allowed under any circumstance. Legal holidays observed by the city of Olathe are New Year's Day, Martin Luther King's Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day (including the following Friday) and Christmas. The actual days off for these holidays may vary and in certain situations additional days may be part of the amount of time granted as an official holiday by the city of Olathe.

6. NOISE CONTROL:

- A. CONTRACTOR shall take reasonable measures to avoid unnecessary noise. Such measures shall be appropriate for the normal ambient sound levels in the area during working hours. All construction machinery and vehicles shall be equipped with practical sound muffling devices, and operated in a manner to cause the least notice consistent with efficient performance of the work.

- B. During construction activities on or adjacent to occupied buildings, and when appropriate, CONTRACTOR shall erect screens or barriers effective in reducing noise in the building; and shall conduct his operations to avoid unnecessary noise which might interfere with the activities of building occupants.

7. DUST CONTROL:

CONTRACTOR shall take reasonable measures to prevent unnecessary dust both during and after completion of the project. Earth surfaces subject to dusting shall be moistened with water or by application of chemical dust suppressant. Dusty materials in pile or in transit shall be covered, when practical, to prevent blowing.

8. POLLUTION CONTROL:

CONTRACTOR shall prevent the pollution of drains and water courses by sanitary wastes, sediment, debris and other substances resulting from construction activities. No sanitary wastes will be permitted to enter any drain or water course other than sanitary sewers. No sediment, debris or other substance will be permitted to enter sanitary sewers, and reasonable measures will be taken to prevent such materials from entering any drain or water course.

9. TEST HOLES:

If auger borings have been taken along or over the site of the proposed work to be done under this contract, they were taken with a power auger where possible and by a hand auger in inaccessible places. All test hole locations, if taken, will be shown on the plans or the data included with the specifications. The test hole information is not a part of this contract, but is included only to assist the CONTRACTOR. There is no expressed or implied guarantee as to the accuracy of the data nor of the interpretation thereof. Each BIDDER must form his own opinion of the character of the materials which will be encountered from an inspection of the ground, from his own interpretation of the test hole information, and from such other investigations as he may desire.

10. SAMPLING AND TESTING:

All sampling and testing deemed necessary by the City to determine if materials or methods are in compliance with the specifications shall be performed by a qualified testing laboratory approved by the City. The cost of all such tests showing compliance with the specifications shall be paid by the CONTRACTOR unless otherwise specified. For this project, the City shall secure the services of a qualified testing laboratory to perform sampling and testing of poured in-place concrete, sampling and testing of soils including proctors, Atterberg limits, and compaction (nuclear density and moisture), in-place compaction testing (nuclear density) for asphalt pavements and aggregate gradation analysis for pavement subgrade and pipe bedding. This specified sampling and testing shall be paid by the City. However, in the event that any test indicates non-compliance with specifications, at least one additional test will be paid for by the CONTRACTOR to determine acceptability of material or methods.

11. CLEAN-UP:

The project site shall be kept as clean, neat, and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris, dust and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners. Final condition of the site must be acceptable to the ENGINEER prior to final payment.

12. REFERENCE STANDARDS:

Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative standard adopted and published at the date of receipt of bids, unless specifically stated otherwise.

13. ABBREVIATIONS AND SYMBOLS:

Abbreviations used in the contract documents are defined as follows:

AASHTO.....	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI.....	American National Standards Institute
ASCE.....	American Society of Civil Engineers
ASTM.....	American Society for Testing and Materials
AWG.....	American Wire Gauge
AWWA.....	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
Federal Specifications	Federal Specifications
KDOT Specifications	Kansas Dept of Transportation Standard Specifications for State Road and Bridge Construction
US	U.S. Bureau of Standards

14. PRECONSTRUCTION CONFERENCE:

- A. Prior to the commencement of work at the site, a preconstruction conference will be held at a mutually agreed time and place. The conference shall be attended by:

Contractor and his superintendent
Principal subcontractors
Engineer and his resident project representative
Representative of owner
Governmental representatives as appropriate
Utility representatives and others as requested by the contractor, owner or engineer

Unless previously submitted to ENGINEER, CONTRACTOR shall bring to the conference a tentative schedule for each of the following:

Progress
Procurement
Shop Drawings and Other Submittals

B. The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include:

- o Contractor's tentative schedule.
- o Transmittal, review, and distribution of contractor's submittals.
- o Processing applications for payment.
- o Maintaining record documents.
- o Critical work sequencing.
- o Field decisions and Change Orders.
- o Use of premises, office, and storage areas, security, housekeeping, and owner's needs.
- o Major equipment deliveries and priorities.
- o Contractor's assignments for safety and first aid.
- o Utility relocation schedules.
- o Traffic control.
- o Clean up.

ENGINEER will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

15. AS-BUILT DRAWINGS:

CONTRACTOR is to maintain a master set of manually marked-up "red line" As-Built Drawings throughout construction. As changes are made in the field and as all components of the project are completed, the CONTRACTOR is required to confirm that they are installed per the original Drawings or record the changes directly on the As-Built Drawings. A copy of the As-Built Drawings must be submitted to the ENGINEER prior to the final payment request.

TEMPORARY FACILITIES

1. WATER USED:

All water used for purposes such as, but not limited to, inundation of backfill or compaction of subgrade shall be provided by the CONTRACTOR at his own expense, and no extra payment for water used for these or other purposes will be allowed. The CONTRACTOR may purchase water required for the construction of this project from the CITY UTILITIES DEPARTMENT through the use of a fire hydrant water meter. Meters can be obtained at the Robinson Campus for a nominal deposit, refundable upon the return of the meter.

2. POWER USED:

All power for lighting, operation of CONTRACTOR'S plant or equipment, or for any other use by the CONTRACTOR shall be provided by the CONTRACTOR at his own cost and expense.

3. SANITARY FACILITIES:

- A. CONTRACTOR shall furnish temporary sanitary facilities at the site, as provided herein, for the needs of all construction workers and others performing work or furnishing services on the project.
- B. Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from the public view to the greatest practical extent. If toilets of the chemically-treated type are used, at least one toilet will be furnished for each twenty (20) workers. The CONTRACTOR shall enforce the use of such facilities by all personnel at the site.

4. WASTE AREAS:

All waste areas, if city of Olathe owned property, shall be approved by the ENGINEER prior to any material being deposited thereon. The materials to be wasted shall be deposited as directed by the ENGINEER and shall be considered a subsidiary obligation of the CONTRACTOR.

Material placed in waste areas shall be left in a mowable condition, shall not impede a drainage course or create a ponding condition, and shall not be left in a condition which would create a maintenance problem or a health hazard.

5. MAINTENANCE OF TRAFFIC:

- A. A specific traffic handling plan through the construction area shall be submitted by the CONTRACTOR and approved by the City Engineer prior to beginning work. Traffic plan shall abide by Manual on Uniform Traffic Control Devices (MUTCD) regulations. Contractor responsible for abiding by MUTCD at all times.

- B. The CONTRACTOR shall conduct his work so as to interfere as little as possible with the public travel, whether vehicular or pedestrian. Whenever it is necessary to cross or interfere with roads, driveways and walks, whether public or private, the CONTRACTOR shall, at his own expense, provide and maintain suitable and safe bridges, detours, temporary surfaces or other temporary installations expedient for the accommodation of public and private travel and shall give reasonable notice to owners of private drives before interfering with them; provided, however, that such maintenance of traffic will not be required at any point where the CONTRACTOR has obtained permission from the Owner and Tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at any designated point thereon, and for the duration of whatever period of time as may be agreed upon.

6. BARRICADES AND LIGHTS:

- A. All signing and barricades shall be provided and maintained by the CONTRACTOR.
- B. All signs, barricades and drums used to control traffic shall be reflectorized. All signs, barricades, cones and drums shall be securely erected and maintained in good condition at all times.
- C. All devices shall conform to the current Manual on Uniform Traffic Control Devices as to size and color.
- D. All barricades, signs, amber lights and other protective devices shall be installed as required by the current United States Department of Transportation and Federal Highway Administration Manual on Uniform Traffic Control Devices, Part IV Traffic Control for Street and Highway Construction and Maintenance Operations.

7. TEMPORARY SURFACING:

Whenever the ENGINEER determines the construction operation requires temporary surfacing to permit vehicular or pedestrian traffic, such temporary surfacing shall be as approved or directed by the ENGINEER and shall include all material and installation by the CONTRACTOR as a subsidiary item.

8. MAINTENANCE OF EXISTING FENCES:

- A. All existing fences which interfere with the construction operations shall be relocated to the limits of construction and maintained by the CONTRACTOR until the completion of the work affected thereby, unless written permission is obtained from the Owner thereof to leave an interfering fence dismantled for an agreed period of time. All temporary fencing shall be installed to give the same adequate protection as intended with the existing fencing in place. This protection includes, but may not be limited to, the restraint of children and animals as acceptable to the property owner and approved by the City Engineer. Where fences must be maintained across the rights-of-way, adequate gates shall be installed therein. Gates shall be kept closed and locked at all times when not in use.
- B. Upon completion of the work across any tract of land, the CONTRACTOR shall relocate all fences to their original location or to the new right-of-way line as the case may be, and

shall restore all fences to their original or to a better condition and quality, purchasing new material to replace all materials lost, damaged or destroyed. Temporary gates installed by the CONTRACTOR in any fence line may be left in place with the permission of the Owner and Tenant of the property.

- C. When required by the ENGINEER, the CONTRACTOR shall have qualified fence repairmen and erectors on the job to repair, remove and construct all fences during the construction of the project.
- D. All materials used in fence repairs or replacements, the fence repairmen and erectors shall be approved by the ENGINEER.
- E. All work required to maintain existing fences shall be subsidiary to the contract.

SUBMITTALS

1. CONSTRUCTION SCHEDULE:

- A. Before work is started, the CONTRACTOR shall submit to the ENGINEER, for review, a schedule of the proposed operations. The schedule shall indicate the sequence of the work and the time of start and completion of each part.
- B. The City Engineer may require CONTRACTOR to add to his plant, equipment, or construction forces, as well as increase the working hours, if operations fall behind schedule at any time during the construction period.
- C. CONTRACTOR'S attention is directed to the fact that he will have to accept the risk of any delays caused by the rate of progress of the work to be performed under other contracts and that, in the event he is delayed in the prosecution and completion of his work because of such conditions, he shall have no claim for damages or contract adjustment other than an extension of time and the waiving of liquidated damages during the period of time occasioned by the delay.

2. PROGRESS REPORTS:

- A. A progress report shall be furnished to ENGINEER with each application for progress payment. If the work falls behind schedule, CONTRACTOR shall submit additional progress reports at such intervals as ENGINEER may request.
- B. Each progress report shall include sufficient narrative to describe current and anticipated delaying factors, their effect on the construction schedule, and proposed corrective actions. Any work reported complete, but which is not readily apparent to ENGINEER, must be substantiated with satisfactory evidence.
- C. Each progress report shall also include three (3) copies of the accepted graphic schedule marked to indicate actual progress.

3. SCHEDULE OF PAYMENTS:

Within thirty (30) days after award of contract, CONTRACTOR shall furnish to ENGINEER a schedule of estimated monthly payments. The schedule shall be revised and resubmitted each time an application for payment varies more than ten percent (10%) from the estimated payment schedule.

4. SHOP DRAWINGS AND ENGINEERING DATA:

- A. All submittals, regardless of origin, shall be stamped with the approval of CONTRACTOR and identified with the name and number of this contract, CONTRACTOR'S name, and references to applicable specification paragraphs and contract drawings. Each submittal shall indicate the intended use of the item in the work.
- B. CONTRACTOR'S stamp of approval is representation to OWNER and ENGINEER that CONTRACTOR accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that he has reviewed or coordinated each submittal with the requirements of the work and the contract documents.
- C. Each submittal shall include a statement prepared by the originator of the drawings and data, certifying compliance with the Contract Documents except for deviations which are specifically identified.
- D. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in CONTRACTOR'S letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by CONTRACTOR (including modifications to other facilities that may be a result of each deviation).
- E. CONTRACTOR shall accept full responsibility for the completeness of each submission, and, in the case of a re-submission, shall verify that all exceptions previously noted by ENGINEER have been taken into account. In the event that more than one re-submission is required because of failure of CONTRACTOR to account for exceptions previously noted, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER for review of the additional re-submissions.
- F. Any need for more than one re-submission, or any other delay in obtaining ENGINEER'S review of submittals, will not entitle CONTRACTOR to extension of the contract time unless delay of the work is directly caused by a change in the work authorized by a change order or by failure of ENGINEER to return any submittal within twenty-one (21) days after its receipt in ENGINEER'S office.
- G. ENGINEER'S review of drawings and data submitted by CONTRACTOR will cover only general conformity to the drawings and specifications, external connections, and dimensions which affect the layout. ENGINEER'S review does not indicate a thorough review of all dimensions, quantities, and details of the material, equipment, device, or item shown. ENGINEER'S review of submittals shall not relieve CONTRACTOR from responsibility for errors, omissions, or deviations, nor responsibility for compliance with the Contract Documents.

- H. Five (5) copies of each drawing and necessary data shall be submitted to ENGINEER. ENGINEER will not accept submittals from anyone but CONTRACTOR. Submittals shall be consecutively numbered in direct sequence of submittal and without division by subcontracts or trades. Re-submittals shall bear the number of the first submittal followed by a letter (A, B, etc.) to indicate the sequence of the re-submittal.
- I. When the drawings and data are returned marked DISAPPROVED or CORRECT AND RESUBMIT, the corrections shall be made as noted thereon and as instructed by ENGINEER and five (5) corrected copies resubmitted.
- J. When corrected copies are resubmitted, CONTRACTOR shall, in writing, direct specific attention to all revisions and shall list separately any revisions made other than those called for by ENGINEER on previous submissions.
- K. When the drawings and data are returned marked APPROVED AS SUBMITTED, APPROVED AS NOTED, or RECORD COPY, no additional copies need be furnished.
- L. CONTRACTOR shall submit for approval, a detouring plan with adequate signs, barricades, warning lights, and all other equipment necessary to direct and re-route traffic and shall furnish all flagmen and other personnel necessary to provide the required traffic control.

TECHNICAL SPECIFICATIONS

The specifications that shall govern the materials furnished and work performed in the construction of the project covered by this contract shall be the latest revision of Technical Specifications and Design Criteria for Public Improvement Projects, City of Olathe, Kansas, as though fully set forth herein. The Technical Specifications shall govern over any apparent errors or inconsistencies between the Contract Documents and the Technical Specifications, unless otherwise stipulated by the City Engineer.

No attempt has been made in the above designated specifications to segregate work to be performed by any trade, contract or proposal item under any one specification section. Any segregation between trade or craft jurisdiction limits and the establishment of subcontract limits will be solely a matter of agreement between the CONTRACTOR and his employees and his SUBCONTRACTORS. The specifications will govern the construction of the entire work, and the provisions thereof will govern each item of the work to which such provisions apply.

SPECIAL CONDITIONS

1. SCOPE OF WORK

The work provided for in these specifications shall consist of furnishing all labor, materials, equipment and performing all work necessary to accomplish the I-35 and Santa Fe Street Fiber Optic Interconnect Project, City PN 3-C-025-18, KDOT PN 35-46 KA-6364-02, Federal PN STP-A636[402], together with all other incidental and related work, as set forth herein these specifications and the Contract Drawings and as directed by the City Engineer, in order to make a complete and finished product.

2. CONTRACT SPECIAL CONDITIONS

The work shall conform to these special conditions and to the City of Olathe's Technical Specifications and Design Criteria for Public Improvement Projects ("Olathe Technical Specifications") as referenced herein. The Olathe Technical Specifications will govern as though repeated verbatim herein, except as modified or superseded by these special provisions.

3. WORK DAY LIMITS

Construction will be limited to between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday.

4. CONTRACTOR FURNISHED STAKING

The CONTRACTOR shall be responsible for and provide all staking and furnish stakes, labor, and other materials as required for the proper staking out of the work; and in making measurements and surveys; and in establishing temporary or permanent reference marks in connection with said work. The stakes furnished for the staking of the work shall be of such type, size, and quality as to be acceptable to the ENGINEER.

All work performed under this contract shall be done to the lines, grade, and elevations shown on the plans.

Any work done without being properly located and established by base lines, off-set stakes, bench marks, or other basic reference points may be ordered removed and replaced at the CONTRACTOR'S expense.

The CONTRACTOR shall be responsible for all monuments, property corners, bench marks, reference points and stakes, and in case of willful or careless destruction of same, will be charged with the resulting expense of replacement, and he shall be responsible for any mistakes or loss of time that may be caused by their unnecessary loss or disturbance. In the event that the loss of stakes causes a delay in the work, the CONTRACTOR shall have no claim for damages or extensions of time. In the case of any permanent monuments, property corners, or benchmarks that have been moved or destroyed, the CONTRACTOR will be charged with the resulting expense of replacement.

5. WEATHER DAYS

A weather day is defined as a day where at least four (4) hours of work between the hours of 8:00 a.m. and 5:00 p.m. on normal working days can not be completed because of weather conditions beyond control of the Contractor.

In case of claims for extension of time because of weather days, such extension of time shall be granted only when such weather days prevented the execution of work as defined above on normal working days and exceeds the number of anticipated normal weather days. The following are considered reasonable anticipated days of normal weather days on a monthly basis and are included in the contract time:

January	6 days	July	3 days
February	4 days	August	3 days
March	5 days	September	3 days
April	5 days	October	4 days
May	4 days	November	4 days
June	3 days	December	5 days

Weather days beyond the total allotted for each month as indicated above will be considered abnormal weather days and will be allowed to extend contract time, only if approved by the ENGINEER and comply with Article 11 (Change of Contract Times) of the Standard General Conditions of the Construction Contract.

Monday thru Friday is considered to be normal workdays unless otherwise specified in the Contract Documents.

The number of normal weather days indicated above for each month will be prorated based on the total number of calendar days for each month. For example, in April each calendar day is equal to one sixth (1/6) of a normal weather day. So, in April for every six (6) calendar days there would be one (1) normal weather day.

6. CONSTRUCTION SCHEDULE

Upon award of the contract, the CONTRACTOR shall immediately prepare and submit for approval by the ENGINEER, a construction schedule that will ensure completion of the project within the contract time. The schedule shall include all major items of construction within each phase, including but not limited to the following:

Fiber Optic Interconnect Installation
Restoration

This schedule shall be submitted prior to issuance of the work order. No work on this contract shall begin until said schedule is approved. The City reserves the right to adjust the CONTRACTOR'S schedule to coordinate with other projects.

7. EXAMINATION OF SITE

Bidders shall visit the site and inform themselves of all conditions presently existing. Their failure to visit the site shall in no way relieve the successful Bidder from the necessity of furnishing all materials and performing all work necessary to complete the project in accordance with the Contract Documents.

8. PROTECTION OF EXISTING SURFACES

The CONTRACTOR shall protect all existing concrete curb and gutter, driveways, sidewalks, and pavement that are to remain in place, from damage during construction of this project. Any damage caused to these surfaces by the CONTRACTOR shall be repaired to its original condition and to the satisfaction of the Engineer by the CONTRACTOR at his expense.

9. PROTECTION OF EXISTING IMPROVEMENTS

The CONTRACTOR shall protect from damage or injury all existing improvements and structures whether they are private or publicly owned. Any such item damaged shall be repaired or replaced at the CONTRACTOR'S expense. If the CONTRACTOR needs to temporarily remove any existing improvements or structures in order to proceed with the work then the CONTRACTOR shall do so and then replace all of the existing improvements or structures to original location and condition equal to or better than existed prior to construction and to the satisfaction of the Engineer at the CONTRACTOR'S expense.

Coordination between all utilities and location of existing utilities is the responsibility of the CONTRACTOR. No extension of time to complete the project will be given due to any lack of coordination between the CONTRACTOR and the utility companies. All utilities located in the vicinity of the construction operation must be maintained and protected by the CONTRACTOR. Any damage caused by the CONTRACTOR will be repaired at the CONTRACTOR'S expense.

Photographic documentation shall be made of existing improvements and structures whether they are private or publicly owned in order to verify existing conditions, prior to construction. No extra payment will be allowed for the photographic documentation. One copy of the photographic documentation will be submitted to the city prior to issuance of the "Notice to Proceed". Photographic documentation shall be submitted on a USB flash drive.

10. PUBLIC SAFETY

The CONTRACTOR shall provide temporary walks, fencing, barricades, or other protection measures as necessary to ensure the safety of the public traversing the construction site. Equipment storage areas and material stockpiles shall be located on sites provided by the CONTRACTOR with due regard to location, appearance, and hazard potential to the traveling public.

11. REMOVAL OF CONSTRUCTION DEBRIS

The CONTRACTOR shall remove and dispose of all existing asphalt pavement, concrete pavement, concrete sidewalk, concrete curb & gutter, earth material, rock, and all other related

materials due to the construction of this project. Disposal of all materials shall be at sites provided by the CONTRACTOR at his cost.

12. EROSION AND WATER POLLUTION CONTROL

The CONTRACTOR shall be responsible for and provide all temporary erosion and water pollution control measures as described in the contract documents, approved Stormwater Pollution Prevention Plan (SWP2), or as ordered by the ENGINEER during the life of the contract to control water pollution and soil erosion. The CONTRACTOR shall inspect the project site to assure the designed erosion and sedimentation best management practices are in place prior to various phases of soil disturbing activities. The CONTRACTOR shall maintain all records required by the general permit authorized by KDHE. All records shall be kept on-site or in a readily available location identified in the Notice of Intent (NOI) until final stabilization has been completed. After final stabilization has been completed, records shall be turned over to the OWNER. Records which shall be maintained by the CONTRACTOR include, but are not limited to:

- The NOI authorized by KDHE used to apply for authorization under general permit;
- The Stormwater Pollution Prevention Plan (SWP2) for the site named in the authorized NOI, and any amendments to the SWP2;
- All site inspection records as required by KDHE under general permit;
- All CONTRACTOR'S certifications.

13. TRAFFIC CONTROL AND ROUTING

- A. The CONTRACTOR shall submit a traffic control plan to the ENGINEER for approval prior to beginning any work on the project. No work on this contract shall begin until said plan is approved. The City reserves the right to adjust the CONTRACTOR'S plan to coordinate with other projects.
- B. The design, placement and maintenance of traffic control devices shall conform to the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.
- C. The traffic control plan shall be developed by a work zone certified person (IMSA or ATTSA) for each phase of the project. The CONTRACTOR shall furnish as part of the "Traffic Control" bid item adequate signs, barricades, warning lights, and all other equipment necessary to direct and re-route traffic and shall furnish all flaggers and other personnel necessary to provide the required traffic control. Additions and/or reductions of signs, barricades, warning lights, flaggers and all other equipment necessary to direct and re-route traffic shall be subsidiary to the bid item "Traffic Control."
- D. Construction operations shall be coordinated to result in the least practicable delay to traffic. Traffic shall be carried through construction with a minimum of one lane open at all times unless otherwise approved by the City Engineer. Access to adjoining residences and businesses will be **maintained at all times**.
- E. All traffic control devices shall be installed at the inception of construction. The traffic control devices shall be as noted in the approved traffic control plan and be properly

maintained and/or operated during the time of construction and/or as special conditions exist on the project. If the traffic control and routing is not as noted in the approved traffic control plan, one (1) notice will be given to correct the problem. If the problem is not corrected within twenty-four (24) hours, the city will correct at the CONTRACTOR'S expense. If the traffic control plan is not maintained and returned to approved condition within four (4) hours of notification of a special condition (i.e. - windstorm, auto damage, vandalism...), the City will correct at the CONTRACTOR'S expense.

- F. In addition to all proper traffic control signs, barricades, and channelization devices, **arrow panels shall be used on all lane closures of multi-lane streets**. The arrow panels shall be placed at the beginning of the taper for the lane being closed. Arrow panels shall remain in place for the duration of the lane closure.
- G. The CONTRACTOR shall notify the City forty-eight (48) hours in advance of a street closing or lane reduction. Closure of an arterial roadway requires one (1) week notice. The City reserves the right to delay any street closing or lane reduction to assure that suitable arrangements have been made for notification, detours, parking and access to private property, etc.
- H. Traffic control devices on arterial roadways shall not be in-place prior to 8:30 a.m. or after 4:00 p.m. unless otherwise authorized by the ENGINEER.
- I. At any time at his discretion, the ENGINEER can require additional barricades and/or signage at designated areas along the street to provide the necessary traffic control.
- J. Barricades and/or signs shall not be removed from an overlaid street until the temperature of the street has cooled such that marks will not occur in the street surface. The ENGINEER or his representative in the field will make such determination.
- K. It is the CONTRACTOR'S responsibility to ensure that there are no parked vehicles within the construction area by erecting temporary "NO PARKING" signs, as per the latest version of the MUTCD, and delivering notices to adjacent properties 24 hours before the work is to begin.

14. DRIVEWAY ACCESS

Driveway access to adjoining property shall be maintained to the greatest extent possible. When driveways will be closed due to construction, the CONTRACTOR shall notify the affected owners a minimum of **48 hours prior** to the closure. Driveways shall be reopened as soon as possible.

15. ACCESS TO ADJOINING PROPERTY

The CONTRACTOR shall maintain vehicular access to adjoining properties in areas beyond the construction limits of the current workday and during non-working hours. In areas where it is necessary for vehicles to travel on the subgrade, the CONTRACTOR shall continually monitor the condition of the subgrade and maintain it in a condition that will allow for the safe travel of vehicles.

Where it is necessary for vehicles to travel from existing paved surfaces to the subgrade, the CONTRACTOR shall install and maintain a dirt or aggregate ramp to allow vehicles to make this grade change. The ramp shall be placed at a slope not to exceed 5:1, and shall be maintained in place until such time that the current days placement of the asphalt base required its removal.

16. PRESERVATION OF TREES

Clearing and Grubbing shall include removal and disposal of all trees, shrubs and other vegetation as necessary to perform the work within the limits of construction as indicated on the Contract Drawings. However, the Engineer reserves the right to preserve and protect any tree(s) within the limits of construction and will clearly identify such tree(s) to be preserved. The Contractor shall protect and preserve such tree(s) as identified by the Engineer. If the Contractor determines that a tree identified for preservation cannot be reasonably protected or preserved due to the construction operation, he shall immediately halt any activities that may jeopardize said tree and immediately notify the Engineer.

17. MATERIALS TEST REPORTS/MIX DESIGNS

Materials test reports/and or mix designs shall be submitted and approved by the Engineer prior to its use or placement. Reports and/or mix designs shall be submitted for all concrete, asphaltic concrete, aggregates, flyash, etc. All reports and/or mix designs shall be current within six (6) months of the Notice to Proceed issued for this project.

18. CONCRETE MIX DESIGN SUBMITTAL

Mix designs for all concrete shall be submitted and approved by the ENGINEER prior to placement of any concrete. This submittal shall include, but not be limited to, the following:

- A. Proposed concrete mix proportions, preferably based on field experience per A.C.I. 318-83.
- B. Chemical analysis of the cement to be used.
- C. Fine aggregate gradation.
- D. Coarse aggregate gradation.
- E. Certification for each admixture to be used in the concrete that it conforms to the appropriate A.S.T.M. specifications.
- F. Water to cement ratio and maximum slump.
- G. Air entrainment.
- H. Design strength (28-day).

All concrete construction shall be done in accordance with section 2000 of the current Olathe Technical Specifications except for the following:

All crushed stone used as coarse aggregate for concrete shall be entirely granite, quartzite, sandstone or trap rock conforming to the following requirements:

Soundness, minimum 0.98¹

Expansion (ASTM C 1260) 0.1%²

¹Soundness shall be determined through the use of the AASHTO T103 freeze-thaw test, Method A, 25 cycles.

²Expansion limit will be waived if the concrete mixture contains one of the following in sufficient amounts to reduce the expansion to less than 0.1%: calcined clay, class F fly ash, silica fume, or ground granulated blast-furnace slag. Note that expansion shall be determined on the combination of coarse and fine aggregates proportioned for the mix design submitted for review.

19. ASPHALT MIX DESIGN SUBMITTAL

Mix designs for all asphalt material to be used on this project, with a testing date current within six months of the date of the notice to proceed, shall be submitted and approved by the ENGINEER prior to placement of any asphalt. This submittal shall include, but not be limited to, information in Section 600, of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition, and Section 1300 of the Olathe Technical Specifications.

20. PRICE ADJUSTMENT FOR ASPHALT MATERIALS

The price included for Asphaltic Concrete Surface will be based on the computed monthly Asphalt Material Index for the month and year of the bid opening, however if not available the previous month price will be used, as listed at the following web site, <http://www.ksdot.org/burconsmain/ppreq/asphaltpriceindex.asp>. The bid unit price for Asphaltic Concrete Surface shall be adjusted in subsequent months based on specification number 15-01009-R01, Price Adjustment for Asphalt Materials, in the 2015 Edition of Kansas Department of Transportation Special Provisions for the Standard Specification.

21. OWNER'S CONTINGENCY ALLOWANCE

An amount specified by the OWNER shall be added to the CONTRACTOR's bid total as a line item described as "Owner's Contingency Allowance". The contract shall be executed as a total of the CONTRACTOR's bid amount plus the OWNER's contingency allowance.

This line item shall be a reasonable amount determined by the OWNER and shall be used to cover cost of necessary overages of quantities on existing line items, increases due to indexing of asphalt materials and other additional line items which may be added during construction. All requests for use of the line item must be submitted by the CONTRACTOR to the OWNER in writing and allocation of the funds will be at the discretion and approval of ENGINEER.

When additional quantities are added to any line item, bringing the total to more than the total amount bid for the line item, the overage amount will be deducted from the line item for "Owner's Contingency Allowance". All deductions shall be made as a Lump Sum amount for the associated quantities at the Contract Unit Prices agreed upon in the Schedule of Values or approved Unit Price for additional line items.

Any remaining amount for line item Owner's Contingency Allowance at the completion of the project shall be retained by the OWNER. Final Contract Amount will be reduced by this amount by a final change order.

22. COLD MILLING MACHINE AND EQUIPMENT

- A. The milling machine to be used in this contract shall be designed and built for cold milling work, shall be self-propelled, and shall have a means of planing or milling off the old pavement surface. The drum patterns shall permit a grooved or smooth surface finish as selected by the ENGINEER and the drum shall be totally enclosed to prevent discharge of any loosened material on adjacent work areas. A dust suppression system must be part of the equipment. Maximum width of the planing machine shall be 12'-6", drum widths shall be 4'-6" minimum to 9'-6" maximum. Smaller machines may be used for auxiliary purposes only.
- 1) The milling operation shall provide for a wind rowing of cuttings, pick up and elevation into dump trucks all in a single lane operation. Use of front-end loaders as the primary means of pick up will not be construed as a single lane operation nor will side loading of dump trucks be permitted.
 - 2) The cold milling machine shall have adequate power to force the cutting edge(s) of the drum teeth to the desired depth below the surface of the pavement without causing undue irregularities in the surface of the planed pavement.
 - 3) The miller shall be so designed and constructed that it is capable of cutting flush to all curbs, inlets, manholes or other similar obstructions within the paved area.
- B. Methods of Operation: The nature and condition of the cold milling equipment and the manner of performance of the work shall be such that the finished planed surface of the pavement is not torn, gouged, shoved, broken, oil-coated, or otherwise injured by the milling operation.
- 1) Edge Milling: This operation shall consist of two-inches (2") cut at the front lip of curb tapering to 0" cut towards the center. A minimum width of cut shall be six-feet (6').
 - 2) Milling: The full width milling operations shall consist of a full street width cut from edge of asphalt to edge of asphalt at a depth of two-inches (2").
 - 3) Header Strip: A twenty-foot (20') wide and two-inch (2") deep header strip shall be milled at the beginning and at the end of the specified working limits as shown on the Contract Drawings. THE CONTRACTOR SHALL PLACE COMPACTED MILLINGS AT EACH HEADER AND CROSS STREET LOCATION IN ORDER TO PROVIDE A SMOOTH TRANSITION FROM THE MILLED SURFACE TO THE UN-MILLED SURFACE. THE CITY PAVING CREWS WILL REMOVE

THE COMPACTED MILLINGS PRIOR TO PLACEMENT OF ASPHALT SURFACE.

- 4) Milling (Intersection): At intersections, sufficient passes or cuts shall be made to the depth required for street drainage. The CONTRACTOR shall check the grade by pulling a string line between two points located on the curb returns and measuring down to the planed surface a minimum of two-inches (2"). Where milling meets existing asphalt, a two-inch (2") header shall be placed. (At all intersections, the machine shall follow the curb line through the intersection. No milling will be necessary around to the curb returns of joining streets, unless indicated otherwise.)
- 5) Milling Operations: In all areas designated for edge milling or milling, sufficient passes or cuts shall be made at a depths and widths as specified and shown on the Contract Drawings. The milling operation shall provide a smooth profile and cross section as much as practical. The maximum tolerance for milling in a longitudinal direction shall be 1/2" under a 10-foot straight edge and shall be 3/8" under a 8-foot straight edge in a transverse direction, and to the satisfaction of the CITY ENGINEER
- 6) Limits of Work: The areas to be milled are as designed on the Contract Documents or as otherwise directed by the CITY ENGINEER. The areas outlined in the Contract Drawings do not, in all cases, include the entire area between limits given, but represent the estimated area within those limits that are to be planed and rehabilitated. In the event two (2) machines are used in one direction, they will be run in tandem so as to occupy only one lane. Milling work shall be limited to a 500 running feet maximum lane length operation. This running distance shall be from the milling machine to the last operated piece of equipment in said lane or when circumstances warrant. Operation distance may be increased with the approval of the CITY ENGINEER.
- 7) Clean Up: The CONTRACTOR shall remove all debris from the street by means of a self-propelled street sweeper with hopper after the street has been milled to the satisfaction of CIY ENGINEER. No material shall remain that would re-compact or leave an unsuitable surface for subsequent overlay operations. No city brooms or cleaning equipment will be used following the milling operations.
- 8) Dust Control: Adequate precautions shall be taken to ensure that excessive dust does not become airborne during construction. Additional water may be requested at any time by the ENGINEER to assure dust control. No separate payment will be made for performing dust control or for applying water for this purpose.

23. REMOVAL OF MILLINGS

All millings will remain property of the Contractor.

24. TRAFFIC DETECTOR LOOPS

All traffic detector loops shall be installed and operational prior to placement of the asphalt surface. The CONTRACTOR shall verify their operation with the City of Olathe Traffic Department prior to the asphalt surface being placed.

25. HEAVY DUTY PAVING REPAIR MEMBRANE

The Heavy Duty Paving Membrane shall be a three-layer composite material consisting of a high density water resistant asphalt mastic layer sandwiched between a nonwoven fabric and high modulus woven fabric. The paving membrane shall have the following minimum properties:

<u>PROPERTY</u>	<u>MIN. STANDARD</u>	<u>TEST METHOD</u>
Tensile Strength	2,380 lbs/in. ²	ASTM D-412
Elongation	100 %	ASTM D-412
Specific Gravity (mastic)	1.67	ASTM D-70-82
Density	80 lbs/ft. ³	ASTM E-12-70
Weight	0.9 lbs/ft ²	ASTM D-5261
Thickness	0.135 in.	ASTM D-1777
Water Absorption (mastic)	1 % maximum	ASTM D-517-92
Brittleness	Passes	ASTM D-517-92
Softening Point (mastic)	212°F	ASTM D-36-86
Cold Flex	No Separation	ASTM D-146-90
Polymeric Reinforcement	2,100,000 cycles to break (single fiber)	
Flammability	Passes	FMVSS 302
Heat Stability	Passes, No dripping or delamination after 2 hours at 190°F on a 2" x 5" sample suspended vertically in a mechanical convection oven.	
Membrane Width	20" minimum	

Before installing the heavy duty paving membrane, the pavement surface must be milled and the surface must be sufficiently dry to prevent moisture migration from within. The surface shall be free of dust, dirt, vegetation and any other foreign material. Cracks shall be thoroughly cleaned by an approved method to remove dust, dirt, moisture, vegetation, loose sealant and any other foreign material that will prevent bonding of the sealant. These areas shall be kept clean and dry until all sealing operations are completed. Cracks shall be filled with reinforced crack sealer material

The material for the reinforced crack sealer shall be a mixture of polyester fibers and AC-20 asphalt cement. The minimum percent of polyester fibers shall be 6 percent by weight of asphalt cement. The material shall be mixed and placed in accordance with the manufacturer's recommendations.

An asphalt cement tack coat shall be applied as per the manufacture recommendations before placement of the heavy duty paving membrane. The application width shall be 2" wider than the width of the paving membrane.

The heavy duty paving membrane shall be centered over the crack to be treated while the tack coat is still tacky. The heavy duty paving membrane shall cover the entire crack area being repaired. Hand brooming or pneumatic rolling to smooth the membrane and ensure good adhesion with the pavement surface is required.

The CONTRACTOR is responsible for protecting the paving membrane until the asphalt surface overlay is placed. If there is sufficient wear to the paving membrane prior to the placement of the asphalt surface overlay that would affect the performance of the membrane, the CONTRACTOR shall remove and replace the membrane at his expense.

26. SURFACE PREPARATION FOR PORTLAND CEMENT CONCRETE PAVEMENT

When the pavement markings are to be applied to Portland Cement Concrete Pavement, grind an inset for the pavement marking into the surface of the PCCP. The depth of the inset shall be 0.03 +/- 0.01 inches and the width and length shall be no more than one inch greater than the dimensions of the pavement marking.

27. EXCAVATION

All excavation shall be considered unclassified excavation and the CONTRACTOR shall satisfactorily remove and dispose of all material encountered regardless of its nature. This work shall be performed in conformance with the lines, grades, thickness and typical cross sections shown on the plans. No extra payment will be made for any variation in the type of subgrade or the excavation of the subgrade material. This shall apply to all phases of construction including but not limited to street grading, slope grading, storm and sanitary sewer trenching, waterline trenching, conduit trenching, and so forth.

28. AGGREGATE BASE MODIFIED AB-3

General

Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition, Section 1104 shall govern except as otherwise modified herein.

Paragraph 1104.02(a) composition. The AB-3 Overland Park modified shall consist of 100% limestone or dolomite produced by mechanical crushing.

Table 1104-1-Gradation and Plasticity of Aggregates for Aggregate Base Construction

The AB-3 Overland Park modified shall have the gradation shown on line AB-3; however, the P.I. shall be between 0 and 5 and the liquid limit shall be 25 maximum.

The material shall be mixed with water in a stationary plant, before delivery to the project site, to obtain the moisture content as directed by the City Engineer.

Certification of the Material

The CONTRACTOR shall submit with the delivery of the material to the project, a certificate indicating the gradation, plasticity index, and the moisture-density relationships of the material using ASTM D698.

29. AGGREGATE BASE COURSE – OP SPECIAL DRAINABLE BASE

This work shall consist of furnishing and placing aggregate base course in accordance with the following specifications and as shown on the plans.

A. Reference

- 1.) KDOT Standard Specifications Section 1105 Aggregates for Aggregate Base Construction.
- 2.) KDOT Standard Specifications Section 1117 Methods of Test for Section 1100 Aggregates.
- 3.) ASTM C 117 Test Method for Material Finer Than 75- μ m (No. 200) Sieve in Mineral Aggregates by Washing.
- 4.) ASTM C 136 Test Method for Sieve Analysis of Fine and Coarse Aggregates.
- 5.) ASTM D 75 Practice for Sampling Aggregates.
- 6.) ASTM D 2487 Practice for Classification of Soils for Engineering Purposes.
- 7.) ASTM D 2922 Test Methods for Density of Soil and Soil-Aggregates in Place by Nuclear Methods.
- 8.) ASTM D 3017 Test Methods for Water Content of Soil and Rock in Place by Nuclear Methods. (Shallow Depth.)
- 9.) ASTM D 4318 Test for Liquid Limit, Plastic Limit, and Plasticity Index of Soils.
- 10.) ASTM E 11 Specification for Wire Cloth Sieves for Testing Purposes.

B. Submittals

1.) Samples

a. Samples for material gradation, liquid limit, and plastic limit tests shall be taken in conformance with ASTM D 75.

2.) Test Reports

a. Initial Test. One of each of the following tests shall be performed on the proposed material, prior to commencing construction for each source (geological unit) of material: Sieve analysis, wear test, soundness, absorption, specific gravity, liquid limit and plasticity index, and moisture-density relationships. Certified test results shall be submitted to the City Engineer prior to commencing construction.

b. Sieve Analyses. Sieve analyses shall be made in conformance with ASTM C 117 and C 136. Sieves shall conform to ASTM E 11.

c. Liquid Limit and Plasticity Index. Liquid Limit and plasticity index shall be determined in accordance with ASTM D 4318.

d. When the source of materials is changed, the initial analysis shall be repeated and certified test results submitted to the City Engineer prior to placement of material from the new source.

e. Density. The City Engineer may perform check density test as specified herein at random times.

f. Soundness, Wear, Absorption, and Specific Gravity Test shall conform to the requirements of Subsection 1105 of the KDOT standard specifications. The above test shall be performed in accordance with test methods stated in subsection 1117 of the KDOT standard specifications.

C. Quality Assurance

1.) Compaction Testing and Proof Rolling

a. The existing subgrade must successfully pass compaction testing by proof rolling with a loaded tandem dump truck carrying a minimum load of 16 tons. If as a result of the testing/proof roll, the city engineer determines there are locations of sub-grade failure, the city engineer will determine and field locate locations to mark for sub-grade repair. The aggregate base course shall be placed within 5 days of passing a proof roll. If it should rain after a proof roll but prior to installation of the aggregate base course, engineer may require a new proof roll be passed prior to installation of the aggregate base course.

b. The Aggregate Base Course must successfully pass compaction testing by a nuclear density/moisture measuring device and proof rolling with a loaded tandem dump truck carrying a minimum load of 16 tons. If as a result of the testing/proof roll, the city engineer determines that further compaction is required the contractor shall revise his methods or procedures as necessary to obtain density and stability. The asphalt concrete base course shall be placed within 15 days of passing a proof roll. The engineer at his discretion may require additional proof roll at any time prior to asphalt placement.

D. Materials

1.) Aggregates. Aggregates shall consist of clean, sound, durable particles of crushed limestone stone. The Contractor shall obtain materials that meet the specification and can be used to meet the grade and smoothness requirements specified herein, after all compaction operations have been completed. The aggregates shall be free of silt and clay as defined by ASTM D 2487, vegetable matter, and other objectionable materials or coatings. The portion retained on the 4.75 mm (No. 4) sieve shall be known as coarse aggregate; that portion passing the 4.75 mm (No. 4) sieve shall be known as fine aggregate.

2.) Coarse Aggregates. Coarse aggregates shall be angular particles of uniform density. The percentage of flat and/or elongated particles shall not exceed 20 in the fraction retained on the 12.5 mm (1/2 inch) sieve and in the fraction passing the 12.5 mm (1/2 inch) sieve. A flat particle is one having a ratio of width to thickness greater than 3; an elongated particle is one

having a ratio of length to width greater than 3. When the coarse aggregate is supplied from more than one source, aggregate from each source shall meet the requirements set forth herein.

3.) Fine Aggregate. Fine aggregate shall be natural sand or angular particles produced by crushing stone or gravel that meets the requirements for wear and soundness specified for coarse aggregate.

4.) Gradation Requirements. Gradation requirements specified herein shall apply to the completed compacted base course. The aggregates shall have a maximum size of 50 mm (2 inch) and be graded continuously well within the limits specified in Table I. Sieves shall conform to ASTM E 11.

TABLE I. GRADATION OF AGGREGATES	
Percentage by Weight Passing Square-Mesh Sieve:	
Sieve Designation	Percent Passing
50 mm (2 inches)	100
37.5 mm (1 ½ inches)	70-100
25 mm (1 inch)	45-80
12.5 mm (1/2 inch)	30-60
4.75 mm (No. 4)	10-35
2.36 mm (No. 8)	5-25
425 um (No. 40)	4-18
75 um (No. 200)	0-10

5.) Liquid limit and plasticity index requirements stated herein shall apply to any aggregate component that is blended to meet the required gradation and also to the aggregate in the completed base course. The portion of the aggregate passing the 425 um (No. 40) sieve shall be either non-plastic or have a liquid limit not greater than 25 and a plasticity index not greater than 5.

E. Preparation

1.) Preparation of Subgrade Surface. Section 1200 of the Olathe Technical Specifications shall apply to subgrade preparation. Immediately prior to placing aggregate base course, the compacted subgrade surface shall be cleaned of all foreign substances; if the surface of the underlying material has been damaged after placement or has inadequate compaction or other deviations from this contract specification requirements, such defects shall be repaired immediately prior to placement of this course.

2.) Stockpiling Material. Prior to stockpiling of material, storage sites shall be cleared and leveled by the Contractor. Aggregates shall be stockpiled on the cleared and leveled areas designated by the Engineer so as to prevent segregation. Materials obtained from different sources shall be stockpiled separately.

3.) Grade Control. During construction, the lines and grades including crown and cross slope indicated for the base course shall be maintained by means of line and grade stakes placed by the Contractor.

4.) Weather Limitation. Base courses shall be placed when the atmospheric temperature is above 2 degrees C (36° F). Areas of completed base course that is damaged by freezing, rainfall, or other weather conditions shall be corrected to meet specified requirement.

5.) Mixing of Materials. The coarse and fine aggregates shall be mixed in a stationary plant. Water shall also be added to the aggregate prior to placement at a stationary mixing plant. The amount of water added shall be considerably above optimum moisture. The Contractor shall make such adjustments in mixing procedures or in equipment as may be directed to obtain true grades, to minimize segregation or degradation, to obtain the required water content, and to insure a satisfactory base course meeting all requirements of this specification.

F. Construction

1.) Placing. The mixed material shall be placed on the compacted sub-grade in layers of uniform thickness. Tracked equipment operated on base course material shall have street tracks. When a compacted layer 150 mm (6 inches) or less in thickness is required, the material shall be placed in a single layer. When a compacted layer in excess of 150 mm (6 inches) is required, the material shall be placed in layers of equal thickness. No layer shall exceed 150 mm (6 inches) or be less than 75 mm (3 inches) when compacted. The layers shall be so placed that when compacted they will be true to the grades or levels required with the least possible surface disturbance. Where the base course is placed in more than one layer, the previously constructed layers shall be cleaned of loose and foreign matter by sweeping with power sweepers, power brooms, or hand brooms, as directed. Such adjustments in placing procedures or equipment shall be made as may be directed to obtain true grades, to minimize segregation and degradation, to adjust the water content, content, and to insure an acceptable base course. Mixed material shall not be placed on or above frozen material.

2.) Compaction Equipment. A dual or single smooth drum roller with vibratory capability and static weight not less than 26.8 kg/cm (150 lbs/in) width of drum.

3.) Within 15 days after completion of the aggregate base course it shall be covered with asphaltic concrete base course. The aggregate base course shall not be used as a haul road except for curb construction.

4.) Compaction. Compaction shall be accomplished using rollers meeting the requirements of this special condition paragraph F-2, "Compaction Equipment," and operating at a rolling speed of no greater than 1.5 miles per hour. If the required field dry density is not obtained, the number of roller passes shall be adjusted to meet field dry density. Excessive rolling resulting in crushing of aggregate particles shall be avoided. In all places not accessible to the rollers, the material shall be compacted with mechanical hand operated tampers.

5.) Finishing. The surface of top layer of base course shall be finished after final compaction, by cutting any overbuild to grade and rolling with a steel-wheeled roller. In no case will thin layers of material be added to the top layer of base course to meet grade. If the elevation of top layer of base course is 12.5-mm (1/2 inch) or more below the grade, the top layer of base shall be scarified to a depth of at least 75-mm, new material shall be added, and the layer shall be blended and recompact to bring to grade. Adjustments in rolling and finishing procedures shall be made as may be directed to obtain grades, to minimize segregation and degradation of

base course material, to adjust the water content, and to insure an acceptable base course. Material found unacceptable shall be removed and replaced, as directed, with acceptable material. As stated here in before the gradation applies to the completed compacted base.

6.) Thickness Control. The elevation of the subgrade will be checked and approved by the engineer before the placement of the aggregate base course. The completed aggregate base will be checked with a string line to ensure the material has been brought to the required elevation, deviations greater than one half inch (1/2") will be corrected.

G. Finishing

1.) Smoothness Test. The surface of the top layer shall not deviate more than 12.5 mm (1/2 inch) when tested with a 3.05 m (10 feet) straightedge applied parallel with and at right angles to the centerline of the area to be paved. Deviations exceeding 12.5 mm (1/2 inch) shall be corrected as directed. Measurements taken at right angles to the centerline shall be taken at a minimum of 15.24 m (50 feet) intervals.

30. SUB-GRADE REPAIR

A. Acceptable methods of sub-grade repair prior to aggregate base placement shall be as follows:

- 1) Over-excavate for sub-grade repair and replace with aggregate base material as specified in aggregate base course special condition. Final aggregate base course must pass proof roll.

OR

- 2) Press in shot rock material at least 6" in diameter on one side and having angular cuts into marked soft sub-grade as needed. An additional proof roll is required after placing shot rock put prior to placing aggregate base course to verify the sub-grade is stable.

31. CLASS C FLY ASH MODIFIED SUBGRADE

All work, materials, and equipment necessary for the proper modification of the subgrade with class c fly ash shall conform to Section 310 and all related sections and sub-sections of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition, except:

- a. Automatically controlled trimming equipment will not be required.
- b. Measurement and payment shall be as stated in these contract documents.
- c. Test results for all class c fly ash to be used on this project with a testing date current within (6) months of the Notice to Proceed shall be submitted and approved by the ENGINEER prior to the application of any fly ash. Testing shall be in

accordance with the above referenced sections of the KDOT Standard Specifications.

32. AGGREGATE DRAINAGE MATERIAL

Aggregate material used as a permeable backfill shall be of the type indicated on the contract drawings and shall conform to Sub-section 1108 and 1710 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition.

33. REMOVAL OF EXISTING STORM SEWER PIPE

CONTRACTOR shall remove and dispose of all existing storm sewer pipe as indicated on the Contract Drawings. Where existing pipe will need to be cut, the cut shall be made square to the pipe so that connection to the existing pipe with new pipe with appropriated connection bands will produce a tight joint. The resulting void created by removal of the pipe shall be filled with job excavated material free from large rock and debris. Compaction of the trench shall be as required in the Olathe Technical Specifications, latest edition. Existing storm sewer pipe material to be disposed of shall be at sites provided by the CONTRACTOR at his cost.

34. STORM TRENCH BACKFILL & EMBEDMENT

Section 6000 of the Olathe Technical Specifications shall apply to all excavation, trenching and backfilling for storm sewer installation. Additionally for all trenching outside of the right-of-way storm pipe bedding minimum 6" and initial backfill to a minimum 2/3 the height of the pipe shall be clean graded gravel type CA-5.

35. MONUMENT BOX INSTALLATION

Survey monument boxes shall be installed where indicated on the plans. Installation and materials shall be in accordance with the Olathe Technical Specifications. The placement of the survey corner marker shall be set by a Kansas Licensed Land Surveyor in accordance with state laws. All costs associated with setting the survey corner shall be included in the cost for Install Monument Box.

36. SANITARY SEWER MANHOLE ADJUSTMENT

All sanitary sewer manholes within the limits of the asphalt overlay and indicated on the Contract Drawings to be adjusted shall be adjusted so that the top of the cover and ring are flush with finished asphalt surface or finished grade when not in road surface.

37. WATER METER ADJUSTMENT

All water meters indicated on the Contract Drawings to be adjusted shall be adjusted so that the meter pit cover is flush with the finished grade.

38. WATER VALVE ADJUSTMENT

All water valves within the limits of the asphalt overlay and indicated on the Contract Drawings to be adjusted shall be adjusted so that the top of the cover and ring are flush with finished asphalt surface or flush with the finished grade when not in road surface.

39. RELOCATING TREES

Trees to be relocated shall be done so by the use of a mechanical tree spade. The location to receive the tree shall be properly excavated and prepared prior to removing the tree from the existing location. In no case will it be acceptable to remove the existing tree prior to the receiving hole being ready.

40. MAILBOX RELOCATION

CONTRACTOR shall relocate the existing mailboxes as designated on the Contract Drawings. The relocated mailboxes shall be placed in the correct numerical order as required by the United States Postal Service.

CONTRACTOR shall notify the ENGINEER one week prior to the relocation of the existing mailboxes and shall submit a list of the proposed numerical order of the relocated mailboxes with the existing mailboxes for approval by the U.S. Postal Service.

Mail Boxes shall be maintained in service throughout the construction period in a location accessible to the U.S. Post Office Department

41. DOWEL PLACEMENT

- A. Holes shall be drilled into the face of the existing concrete slab at the specified diameter. The diameters of the holes shall be only slightly larger than the dowels to provide proper alignment. They shall be located at mid-depth of the slab and spaced as indicated on the details. Dowels should be carefully aligned (within 1/4-inch) with the direction of the pavement and parallel to the plane of the surface in order to provide free movement.
- B. A quick setting, non-shrinking mortar or a high-viscosity epoxy shall be used to permanently anchor the dowel in the hole. The holes shall be completely filled around the dowels to ensure that they are permanently fastened to the existing concrete. The dowels should be dipped in the epoxy or grout and worked back into the holes for complete coverage around the dowel so that it will be securely fixed into place. The end of the dowel bar that extends into the patch area shall be greased to provide free movement.

42. GABION CONSTRUCTION

Construction of the gabions shall conform to Section 836 and all related subsections of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition.

43. GABION BASKETS

The gabion baskets shall be fabricated in accordance to Section 1711 and all related subsections of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition. The steel wire mesh constituting the body of the gabion shall be galvanized to conform to ASTM A641 Class 3 and polyvinylchloride (PVC) shall be extruded onto all wires prior to weaving.

44. GABION ROCK

Rock used to fill the gabions shall be free from earth, soapstone, shale, shale-like or other easily disintegrated material that will tend to decrease the durability of the material after placement. The rock shall have a maximum dimension of eight (8) inches and a minimum dimension of four (4) inches. The majority of the stone shall be in the five (5) to six (6) inch range and cubical or rounded in shape. A tolerance of 5% shall be allowed on the upper and lower dimensions of the rock.

45. GEOTEXTILE FABRIC

Geotextile fabric shall be placed where indicated on the contract drawings. Geotextile Fabric shall conform to and meet the requirements of Section 1710 and all related subsections of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, latest edition.

46. CHAIN LINK FENCE

Existing chain link fence shall be removed as necessary to allow for construction of this project. All fence fabric, posts, rails, etc. shall be neatly stored on site during construction. All fence fabric, posts, rails, etc. removed shall be reinstalled when construction is complete. All posts shall be reset with a new concrete footing. All fences shall be installed to a condition equal to or better than that existed prior to construction.

Where a permanent fence has been removed, the CONTRACTOR shall place and maintain a temporary fence at the construction limits of that property for the duration of the project. All cost incurred are at the CONTRACTOR'S expense. All temporary fencing shall be installed to give the same adequate protection as intended with the existing fencing in place.

47. STORM PIPE END SECTIONS

All storm pipe end sections shall be flush with the slope of the embankment.

48. STONE RIP RAP

Stone rip rap shall be placed at the locations as indicated on the contract drawings in accordance with the specified requirements.

Rip rap shall be placed in a double layer overlapping to leave no exposed subgrade soil. The areas to receive the rip rap shall be excavated to the required depth so the finish surface of the rip rap conforms to the lines, grades, elevation, and section given. Where no finish lines,

grades, elevations, or sections are given, the areas to receive the rip rap shall be excavated to the required depth so the finish surface of the rip rap presents a surface consistent with the existing slope prior to construction.

Stone used for rip rap shall consist of broken angular durable field or quarry stones. All stones shall be free from earth, soapstone, shale, shale-like or other easily disintegrated material that will tend to decrease the durability of the material after placement. All stones shall be consistent in color and quality.

Rip Rap size to be used is specific to location of placement. See plan locations for minimum weight of stones to be placed.

If existing material to be excavated for rip rap placement is stone, Engineer is to be contacted for review of requirement of rip rap for specific locations.

49. GROUTED STONE RIP RAP

Grouted stone rip rap shall be placed at the locations as indicated on the contract drawings in accordance with the specified requirements.

Rip rap shall be placed in a single layer having a minimum thickness of 15 inches. The areas to receive the rip rap shall be excavated to the required depth so the finish surface of the rip rap presents an even surface conforming to the lines, grades, elevation, and section given. Where no finish lines, grades, elevations, or sections are given, the areas to receive the rip rap shall be excavated to the required depth so the finish surface of the rip rap presents an even surface consistent with the existing slope prior to construction. The rip rap shall be placed with ends and sides abutting and with the joints staggered between rows.

Stone used for rip rap shall consist of durable field or quarry stones. All stones shall be free from earth, soapstone, shale, shale-like or other easily disintegrated material that will tend to decrease the durability of the material after placement. All stones shall be consistent in color and quality.

Stone used for rip rap shall have a minimum surface area of 2 square feet with the minimum dimension in any one direction of 12 inches. All stones shall be a minimum of 15 inches thick.

The spaces between the stones shall be filled with grout consisting of one (1) part Portland Cement and three (3) parts fine aggregate with sufficient water to form a plastic mix. The grout shall be poured and thoroughly broomed into the spaces between stones until they are completely filled. No grout shall be left on the exposed face of the stone rip rap. When complete, the final appearance shall be that of the natural stone with grout between the stones.

Completely covering the stones with grout will not be accepted

50. UNDERDRAINS

Underdrains shall be constructed where indicated on the contract drawings and in accordance with Section 818 of the Kansas Department of Transportation Standard Specifications for State

Road and Bridge Construction, latest edition, and at the locations and elevations as shown on the contract drawings.

51. MEDIAN TOPSOIL

All topsoil and soil used for median backfill shall be soil consisting of the top 6 inches of field or pasture loam, which contains a good supply of humus and a high degree of fertility. The soil shall be a loose, friable soil. Soils from ditch bottoms, drained ponds or eroded areas are not acceptable. Topsoil, which is too wet and soggy, will not be accepted. Topsoil supporting undesirable weed growth will not be accepted. The CONTRACTOR shall supply to the Engineer for approval the location from which the topsoil will come from. Topsoil will be accepted based on visual inspection by the Engineer.

Prior to placing the topsoil within the medians, the CONTRACTOR shall scarify the existing soils in the medians to a depth of 2 inches.

52. SEEDING

All grass areas disturbed during construction and not designated as being restored with sod or staked sod shall be seeded. Section 7200 of the Olathe Technical Specifications shall govern all items related to seeding.

All seed shall be applied by using the Hydro-Mulching method.

53. SOD

The CONTRACTOR shall install sod at all locations where the construction activities have disturbed the existing grass covered areas unless specifically noted to seed the area

Sod shall be either Kentucky Bluegrass, turf-type tall Fescue, or of the variety that will match the existing sod with regards to color and blade size. Determination of the sod variety and the placement of the sod shall be by a qualified sod laying Contractor.

Prior to the delivery and placement of the sod, the sod-bed shall be thoroughly prepared in accordance with the technical specifications. The contractor must have the prepared sod-bed inspected and approved by the City prior to any sod being placed. Any sod placed prior to the sod-bed being inspected and approved by the City is subject to being removed, the deficiencies corrected, and the sod replaced at the contractors expense.

The contractor will be required to guarantee all sod installed on this project for twenty-one (21) days from the date of installation. After the twenty-one day period, the City will inspect all sod. Any sod that is dead at the end of the twenty-one day period shall be replaced by the contractor at his expense and is subject to an additional twenty-one day warranty period. All healthy sod at the end of the twenty-one day period will be accepted by the City and turned over to the property owner for maintenance, except that Contractor's responsibilities under **GP15 Clean Up** (including but not limited to mowing and final clean-up) shall continue as to the sodded area until final acceptance following project completion, if final acceptance of the project occurs after the twenty-one (21) day period provided in this section. The contractor is not required to guarantee any healthy sod accepted by the City after the twenty-one day period.

Section 7200 of the Olathe technical specifications shall govern all other items related to seeding and sodding.

54. EROSION CONTROL MATTING

Installation of Erosion Control Matting shall be done in accordance to the manufacturer's specifications. The Erosion Control Matting shall be installed in locations as indicated on the contract drawings.

55. TURF REINFORCEMENT MATTING

The turf reinforcement matting shall be a flexible three-dimensional matrix in order to provide erosion control and provide a permanent structure for turf root reinforcement. The turf reinforcement matting must be composed of durable synthetic materials stabilized against ultraviolet degradation and inert to chemicals normally encountered in soils. Installation of Turf Reinforcement Matting shall be done in accordance to the manufacturer's specifications. The following turf reinforcement matting will be acceptable:

Any approved equals must be submitted in writing and approved by the Engineer no later than 5 working days prior to the bid opening.

56. SUBSTANTIAL COMPLETION

It shall be determined by the Engineer that the CONTRACTOR has the project substantially complete when all work outside of restoration is in place and completed.

57. MULTI-LAYER POLYMER CONCRETE OVERLAY

See Section 729 of the KDOT Standard Specifications, 2015 Edition specification for complete information. Apply the polymer overlay to the limits shown in the plans.

58. CRACK SEALANT (Concrete Pavement Only)

- A. Preparation: Prior to the application of the sealant, joints shall be thoroughly cleaned by an approved method to remove dust, dirt, moisture, vegetation, loose sealant and any other foreign material that will prevent bonding of the sealant. These areas shall be kept clean and dry until all sealing operations are completed.
- B. Installation: Backer rod material shall be installed immediately after cleaning the joint and immediately before placing the sealant. The backer rod must be compatible with the sealant. The backer rod must be installed at the depth required in the plans, with no gaps between the backer rod and the joint wall. The sealant shall be placed in the joint with an applicator nozzle, which will completely fill the joint in a neat workmanlike manner from flush to 3/16 in. below the adjacent pavement surface. The CONTRACTOR shall barricade the streets or portions of the streets during the placement of the sealant until such time tracking or pickup does not occur.

- C. Before beginning the work, the CONTRACTOR will be required to demonstrate, to the satisfaction of the Engineer his competence in applying the sealant in accordance with the manufacturer's specifications. Operations and procedures, which are considered by the Engineer as detrimental to the effectiveness of the sealant, shall not be permitted.
- D. The sealant material shall comply with ASTM D 1190 (Standard Specification for Concrete Joint Sealer, Hot-Poured Elastic Type).

59. PAINING OF CONCRETE FLOOR

The work will consist of painting the concrete floor as indicated on the drawings, including surface preparation.

The CONTRACTOR shall prepare the surface of the concrete floor to be painted by removing efflorescence, chalk, dust, dirt, grease, oils and by roughening as required to remove glaze. Concrete floor surface scheduled to be painted shall be bead blasted and then cleaned with a commercial solution or muriatic acid, or other etching cleaner. Flush floor with clean water to neutralize the acid and allow to dry before painting.

Apply paint in accordance with manufacturer's directions. The paint material will be supplied by others. The concrete floor shall receive two coats of Polyamide Epoxy paint over prepared and cleaned concrete floor (One prime coat and one finish coat).

60. FLOWABLE FILL

Contractor shall place the flowable fill material in such a manner that the filled pipe will be free of any voids.

The following materials shall be used in the flowable fill:

- Portland Cement, Type I/II
- Class "C" Fly Ash
- Fine Aggregate-Sand
- Water
- Entrained Air
- Water Reducer Admixture

The flowable fill shall have the following properties:

- The unconfined compressive strength shall be in the range of 120 psi to 200 psi.
- The flowable fill material shall not settle after hardening.
- Density shall be in the range of 115 lb/ft³ to 145 lb/ft³.
- Slump – Flowable
- The flowable fill material shall go from the plastic state to a hardened state with sufficient strength to support the weight of a person within five- (5) hours.

Mix designs for the flowable fill material shall be submitted and approved by the ENGINEER prior to placement. This submittal shall include, but not be limited to, the following:

- A. Proposed mix proportions.
- B. Water to cement ratio, lb/lb
- C. Slump, Inches
- D. Air entrainment, percent.
- E. Unit Weight (lbs/ft³)
- F. Design strength

61. KDOT RIGHT OF WAY PERMIT

Permit for work within KDOT Right of Way has been obtained by City. Contractor must have permit on site during work and follow KDOT guidelines per permit. Permit has been attached as additional information.

Per permit requirements, Contractor shall provide GPS documentation for all installed and modified devices with this project that are within KDOT Right of Way including pull boxes, splice vaults, junction boxes, conduit runs, and cable runs. GPS coordinates shall be recorded as latitude and longitude in decimal degrees to a minimum of six decimal places. GPS data shall be collected using equipment capable of submeter accuracy, with GPS readings accurate to within 3 feet.

The Contractor shall document all GPS locations using an Excel spreadsheet and provide GPS-enabled photographs of all structures. Submit the completed package to KDOT including the spreadsheet in Excel format and a PDF copy.

For conduit runs, GPS coordinates shall be collected at intervals not exceeding 100 feet for trenched or plowed conduit and 20 feet for bored conduit. At a minimum, documentation for each GPS point shall include the latitude and longitude; associated structure or facility and its size, depth below ground level; and elevation relative to the applicable datum.

62. KDOT BRIDGE PERMIT

Permit for work on KDOT Bridge has been obtained by City. Contractor must have permit on site during work and follow KDOT guidelines per permit. Permit has been attached as additional information.

63. KDOT WORK COORDINATION

KDOT utility work in association with KDOT I-35 project will tentatively be performed between November 2026 and February 2027. Contractor is to coordinate with City and KDOT to schedule work as to not impact KDOT utility and project work. Contractor and KDOT Utility and Project Contractor will not be allowed to work in the same area at the same time. Area of conflict would include Rogers Road from south limit to 129th Street.

MEASUREMENT AND PAYMENT

GENERAL

It is the intention of this section of the specifications to set forth the method of measurement and payment for that part of the work on the Contract Documents that will be directly paid for at the price bid per unit of measure.

All the work to be performed under this contract will be paid for at the lump sum or unit prices stated in the proposal of the accepted BIDDER. Unit price payments will be based upon the measurement of installed items and lump sum shall constitute full compensation for all labor, materials, tools, equipment and incidentals required to complete the work, as described in accordance with the Contract Documents. Any material, equipment or operation not specifically mentioned, however, required for proper completion of the work shall be considered to be incidental to the unit price pay item to which it pertains.

Quantities listed in the bid are not guaranteed and are indicated only for convenience in comparing bids. Payment will be made for actual quantities constructed or installed, be they more or less than those listed unless otherwise indicated; said quantities being measured and determined as follows.

City Project No. 3-C-025-18 – I-35 & Santa Fe Street – Fiber Optic Interconnect

1. MOBILIZATION

- A. “Mobilization” shall be lump sum for the project and shall include the preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all office, buildings and other facilities necessary for work on the project, and for all other work and operations which must be performed or costs incurred prior to beginning work on the various items on the project site.
- B. Payment for “Mobilization” shall be made at the contract price bid as shown in the proposal for “Mobilization”. Payment shall be full compensation for furnishing all materials, labor, equipment, tools, supplies, traffic control, mobilization and incidental related items necessary for mobilization (including, but not limited to, all contractor pre-construction documentation and meetings, preparing schedules, submittals, submitting pre-construction video/photos, etc.).

2. CONTRACTOR CONSTRUCTION STAKING

- A. “Contractor Construction Staking” shall be measured as a lump sum for all construction staking provided. The CONTRACTOR shall, by his own forces and instruments, make whatever measurements and surveys that are necessary to enable him to construct each element of the project in the correct location and elevation required.

- B. Payment shall be made at the contract unit price as shown in the proposal for "Contractor Construction Staking." Payment shall be full compensation for furnishing all labor, materials, and instruments needed to perform the work.

3. TRAFFIC CONTROL

- A. "Traffic Control" shall be measured as a lump sum for all CONTRACTOR furnished traffic control. The CONTRACTOR shall furnish and maintain barricades, signs and lights as required to provide a detour route for the safe and effective movement of traffic through and around the work area. Additional barricades and signs shall be provided and installed as directed by the CITY ENGINEER. All traffic control devices shall conform to the Manual on Uniform Traffic Control Devices.
- B. Payment shall be made at the contract unit price as shown in the proposal for "Traffic Control." Payment shall be full compensation for the furnishing and installing of materials, labor, equipment and appurtenant work.

4. FIBER OPTIC INTERCONNECT INSTALLATION

- A. "Fiber Optic Interconnect Installation" shall be measured as a lump sum for all acceptable fiber optic equipment and operating including, junction boxes, splice enclosures, wiring, splicing, conduit, boring, excavation, and backfilling to provide a finished product as intended by the Contract Documents. All areas disturbed by conduit installation (either by trenching or boring) shall be replaced to match existing conditions. This may include (but not limited to) the repair to sidewalk, roadway sections, irrigation, or re-sodding of green space.
- B. Payment shall be made at the contract unit price bid as shown in the proposal for "Fiber Optic Interconnect Installation." Payment shall be full compensation for furnishing (other than City furnished items noted in the contract documents) and installing all materials and appurtenant work.

CITY OF OLATHE INSURANCE REQUIREMENTS

A. Insurance. Contractor agrees to secure and maintain throughout the duration of this Agreement insurance of such types and in at least such amounts as set forth below from a Kansas authorized insurance company which carries a Best's Policyholder rating of "A-" or better and carries at least a Class "VII" financial rating or better, unless otherwise agreed to by City:

1. Commercial General Liability: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any commercial general liability policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

Limits: Per Occurrence, including Personal & Advertising Injury and Products/Completed Operations: \$1,000,000; General Aggregate: \$2,000,000.

2. Business Automobile Insurance: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any automobile policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

Limits: Any Auto; OR All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000

Notwithstanding the foregoing, if Contractor does not own any automobiles, then Contractor must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Contractor against all claims under applicable state Worker's Compensation laws at the statutory limits, and employer's liability with the following limits.

Limits: \$500,000 Each Accident/\$500,000 Policy Limit/\$500,000 Each Employee

4. Professional Liability: Contractor must maintain throughout the duration of this Agreement and for a period of three (3) years after the termination of this Agreement, Professional Liability Insurance.

Limits: Each Claim: \$1,000,000; General Aggregate: \$1,000,000

5. Cyber Insurance: If Contractor will have access to the City's network or City's data, Contractor must maintain throughout the duration of this Agreement and for a period of three (3) years after the termination of this Agreement. Coverage must

include: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

Limits: Per claim, each insuring agreement: \$1,000,000; Aggregate: \$1,000,000

B. Exposure Limits. The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of Contractor or has City assessed the risk that may be applicable to Consultant. Contractor must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Consultant's insurance must be primary, and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Consultant.

C. Costs. The cost of insurance will be included in the Consultant's bid or proposal and must be at Consultant's expense. Any and all deductibles or self-insurance in the above-described coverages will be the responsibility and at the sole risk of the Consultant.

D. Verification of Coverage

1. Contractor must provide a certificate of insurance on ISO form or equivalent, listing the City as the certificate holder, and additional insured endorsements for the requested coverages.
2. Any self-insurance must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claim's office must be noted on the certificate or attached in a separate document.
3. When any of the insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
4. For cyber insurance, the certificate of insurance confirming the required protection must confirm the required coverages in the "Additional Comments" section or provide a copy of the declarations page confirming the details of the cyber insurance policy.

E. Cancellation. No required coverage may be suspended, voided, or canceled, except after Contractor has provided thirty (30) days' advance written notice to the City.

F. Subconsultant's Insurance: If a part of this Agreement is to be sublet, Contractor must either cover all subconsultants under its insurance policies; OR require each subcontractor not so covered to meet the standards stated herein.



Authorization for ACH Payment

The City of Olathe offers an ACH program, allowing vendors to receive payments for invoices directly into a designated bank account. The City is pleased to offer this payment option to vendors and provide the opportunity to receive payments electronically and more efficiently.

To authorize payment of invoices via ACH, complete the authorization below. The person responsible for signing checks is required to sign this form.

Completed forms and questions may be directed to:

City of Olathe
Erin Sease, Accounts Payable Clerk
PO Box 768, Olathe, KS 66051
eisease@olatheks.org
(913) 971-8610

Authorization

Name of Business _____

Contact Person _____ Telephone _____

E-Mail Address _____

Name of Bank _____ Account Type _____
(checking or savings)

Routing Number _____ Account Number _____

Authorized Person (printed) _____

Authorized Signature* _____ Date _____

* Must be an authorized check signer on the account.