

**BOROUGH OF MILLTOWN
MIDDLESEX COUNTY, NEW JERSEY**

**Contract Documents
and Specifications for the**

“IMPROVEMENTS TO TRACEY DRIVE”

MAY 2020

TRINA MEHR, MAYOR

BOROUGH COUNCIL

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PETER VIGNUOLO, ESQ.....	BOROUGH ATTORNEY
MICHAEL J. MCCLELLAND, PE.....	BOROUGH ENGINEER
JOHN ECKERT.....	DIRECTOR OF UTILITIES
RALPH JASIONOWSKI.....	SUPERVISOR OF PUBLIC WORKS

PREPARED BY:

Michael J. McClelland

MICHAEL J. McCLELLAND
Professional Engineer
New Jersey License No. 32468

Our File: PMI00628.01



CONSULTING AND MUNICIPAL ENGINEERS



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Notice to Bidders

Generally

N.J.S.A. 40A:11-23

Competitive Contracting Solid Waste

N.J.S.A. 40A:11-4.5a

N.J.S.A. 40A:11-23a

BOROUGH OF MILLTOWN NOTICE TO BIDDERS

Notice is hereby given that separate sealed bids will be received by the Borough Council of the Borough of Milltown, Middlesex County, New Jersey for the **IMPROVEMENTS TO TRACEY DRIVE** as more particularly described in the Bid Specifications and Bid Proposal Forms. Due to the current situation, the Borough is closed to the public, but is still accepting mail deliveries through USPS, UPS and FedEx. All submissions must be submitted through a mail carrier, Drop-Offs will not be accepted. All bids shall be mailed in to the Borough Clerk, 39 Washington Ave. Milltown, NJ 08850. The Municipal Building in Milltown is closed to the Public until further notice. As such, the opening of the RFPs will be broadcast. A link to the broadcast will be available on the Borough website at <https://milltownnj.org/269/Bids-and-Requests-for-Proposals> Bids will be opened on Wednesday July 1, 2020 at 2:00 pm. No bids will be received after the specified time and date.

Specifications and Proposal Sheets may be viewed and obtained by download on the Borough website at <https://www.milltownnj.org/FormCenter/Clerks-Office-Forms-5> until 48 hours prior to the time set for the opening of bids. Paper copies of the bid documents will not be provided.

Bids must be made on the standard proposal form(s) in the manner designated therein and required by the Specifications and must be enclosed in a sealed envelope bearing the name and address of the bidder and clearly labeled **"BID for IMPROVEMENTS TO TRACEY DRIVE"** on the outside of the envelope. Please include one original and one digital copy of the bid. All envelopes shall be addressed to the Borough Clerk of the Borough of Milltown. Each bid must be accompanied by a certified check, cashier's check or bid bond in the amount of 10% (ten percent) of the amount of the bid and must be accompanied by a Certificate of Surety and a copy of a valid Business Registration Certificate. Electronic versions CANNOT be e-mailed to the Municipal Clerk.

The Borough Council of the Borough of Milltown reserves the right to waive any informality in bidding and the right to reject any or all bids if deemed to be in the best interest of the Borough to do so, and reserves the right to hold the bids and proposal guarantees of the 3 (three) lowest regular bidders for 60 (sixty) days before making an award of contract and each bidder agrees that he will not withdraw the bid for that period of time.

Bidder is required to comply with all applicable Laws and Regulations including P.L. 1975, C.127 (Affirmative Action), P.L. 1999, C.238 (Public Works Contractor Registration) and P.L. 1963, C. 150 (Prevailing Wages), if applicable.

Bidder is required to comply with the requirements of N.J.S.A. 10:5-31 et seq and N.J.A.C. 17:27. Bidder is advised of the responsibility to comply with the provisions of N.J.S.A. 19:44a-

20.13. Bidder is required to submit with its bid a valid Business Registration Certificate issued by the State of New Jersey. (N.J.S.A. 52:32-44)

Gabriella Siboni, RMC
Municipal Clerk

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SECTION B. INSTRUCTION TO BIDDERS

PART 1 - PRELIMINARY MATTERS

B 1.1 DESCRIPTION OF THE WORK

The Owner proposes the construction of improvements and all appurtenant work necessary at locations detailed on the Contract Plans.

B 1.2 ORGANIZATION OF THE SPECIFICATIONS

ARRANGEMENT- The specifications consist of five major parts, the Instructions to Bidders, the General Conditions, Supplementary Conditions, Division 1 - General Requirements, and the Specifications - Sections 150 through 1011, as applicable of the N.J. Department of Transportation Specifications for Road and Bridge Construction of 2019 in CME Associates' format, including all amendments and addenda thereto. In addition there will be found the Proposal, Itemized Proposal, the Consent of Surety, forms of Bonds, Contract Agreement, and Contract Drawings. Pages are numbered consecutively. Bidders shall verify completeness of Contract Documents and shall immediately notify the Engineer of any missing pages or plan sheets.

CONFLICTS - In case of conflicts between either the Instructions for Bidders, Supplementary Conditions, Division 1-General Requirements, or the Specifications, and the General Conditions, the former four shall always govern.

In case of conflicts between statements in the specifications which are found in parts thereof having the same apparent merit, then the problem will be resolved by considering the Contract and its intent as a whole, and not by merely giving preference to one specific part.

In all cases of conflict the Engineer shall be sole judge and shall give the final decision.

B 1.3 SPECIAL ITEMS OF INTEREST TO BIDDERS

The following outline of special items of interest is listed below with reference to the complete specifications:

B 1.3.1 BID SECURITY

TYPE: Certified Check, Cashier's Check, or Bid Bond from an acceptable Surety.

AMOUNT: See Article B 2.7.

B 1.3.2 CONSENT OF SURETY IS AN ABSOLUTE REQUIREMENT and must be included with the Bid. See B 2.8.

B 1.3.3 QUALIFICATION OF BIDDERS AN ABSOLUTE REQUIREMENT. All Bidders must complete the qualification questionnaire included with the Proposal and submit same with his bid. See Article B 2.9 for Bidder's Qualifications Requirements

B 1.3.4 EQUAL EMPLOYMENT OPPORTUNITY (AFFIRMATIVE ACTION) acceptable to the State Treasurer in accordance with State Statute - P.L. 1975, c.127 is and absolute requirement and is included in the Contract Agreement provisions.

B 1.3.5 NON-COLLUSION AFFIDAVIT IS AN ABSOLUTE REQUIREMENT, and must be completed and accompany the Bid.

B 1.3.6 SECURITY FOR FAITHFUL PERFORMANCE incident to the work of the Contract - amount not less than 100% of the accepted bid price as awarded.

B 1.3.7 SECURITY FOR PAYMENT OF ALL LABOR, MATERIAL AND EQUIPMENT - IF REQUIRED BY THE TERMS OF THE PROPOSAL incident to the work of the contract - amount not less than 100% of the accepted bid price as awarded.

B 1.3.8 STOCKHOLDER/PARTNERSHIP DISCLOSURE FORM must be completed and submitted prior to or with the Bid Proposal, as an absolute requirement per New Jersey P.L. 1977, c.33.

B 1.3.9 RESOLUTION OF AUTHORIZATION if Bidder is a corporation, or partnership, must be completed and accompany the Bid Proposal.

B 1.4 INSURANCE

Amounts of Insurance required shall be as enumerated in the Supplementary Conditions Article G 5.3. Certificates will be required to document the following:

B 1.4.1 Workmen's Compensation

B 1.4.2 Comprehensive General Liability

B 1.4.3 Auto and/or Truck Liability

B 1.4.4.1 Owner's Protective Policy - if required by the Proposal, original policy required:

B 1.4.4.2 Co-Insured - if the Owner's Protective Policy is not required in the proposal, the Owner and Engineer are to be named as co-insured principals on the contractors comprehensive general Liability and automotive liability policies.

B 1.5 TIME OF COMPLETION:

Number of calendar or working days from date of notice to proceed stipulated in the proposal.

B 1.6 LIQUIDATED DAMAGES:

Amount/Calendar day stipulated in the proposal and contract agreement.

B 1.7 PROGRESS AND FINAL PAYMENTS

Review carefully the provisions of General Conditions F 14 and related articles.

B 1.8 DISPUTED WORK

Note carefully the required procedure as to filing of any claims, Article F9.11 and G9.11.1.

B 1.9 MINIMUM WAGE RATES

Not less than prevailing rates promulgated by New Jersey Department of Labor and Industry, and, if project partially or totally financed with Federal Funds, prevailing Federal Wage Rates, which ever is greater.

B 1.10 VERBAL STATEMENTS NOT BINDING

The written terms and provisions of these documents supersede all prior verbal statements of the Engineer or other representatives of the Owner, and such statements shall not be effective or be constructed as entering into or forming a part of, or altering in any way whatsoever, the written agreement.

B 1.11 LAYOUT SURVEY WORK BY CONTRACTOR

These specifications provide for the furnishing of Primary Reference Points by the Owner. Horizontal and/or Vertical Control reference points are to be protected and maintained. Replacement of disturbed or destroyed reference points shall be by the Owner at the Contractor's expense.

Construction layout controls shall be established from the primary reference points, set by the Owner, by the Contractor's Surveyor as a cost included in the respective bid prices.

B 1.12 WATER AND/OR POWER SUPPLY

Note carefully the project site(s) conditions and provisions of the specifications with regard to supply of potable water and/or power to the site(s).

B 1.13 PHOTOGRAPHS - UNLESS WAIVED BY THE TERMS OF THE PROPOSAL,

Pre-Construction, Progress, and Final Construction Photographs are required and the cost of same considered included in the respective bid prices.

B 1.14 JOB PROCEDURES

Note particularly the required Job Procedures.

B 1.15 MOBILIZATION TO SEVERAL WORK SITES

The work of this Contract may incorporate improvements at separate locations throughout the Municipality. All mobilization and demobilization costs, including the moving of men, materials and equipment from one improvement site to another improvement site, are considered included in the respective bid prices and no separate payment will be made for same.

B 1.16 NO PAYMENT FOR "DOWNTIME"

If in the course of the work of this project, significant "Changed Conditions" are encountered to the extent work must be temporarily halted, particularly due to unanticipated conflict with existing utilities, no payment will be considered for idle time of men or equipment. In such instance, if same should occur, the affected work element shall be halted and the Engineer, and affected utility, immediately notified. The Engineer shall have a reasonable time to inspect the site and determine the required course of action. It is the contractor's responsibility to coordinate all utility relocation work with the affected utility company, the Owner, and the Engineer. Accordingly, the utility company shall have reasonable time to relocate an affected utility line. In such a situation, the Contractor shall be entitled to an appropriate extension of time and possibly additional compensation for additional work, if any. In all cases, the Engineer shall determine if there is a "Changed Condition" and his decision shall be binding upon the Contractor and the Owner.

SECTION B. INSTRUCTION TO BIDDERS

PART 2 - PREPARATION OF BID PROPOSALS

B 2.1 DOCUMENTS INTACT

Bids shall be prepared using the proposal sheets in Section C of these Contract Documents. THE PROPOSAL SHALL NOT BE REMOVED FROM THE BOOK AND PRESENTED BY ITSELF. These contract documents together with the Consent of Surety and the bid security shall be delivered in a sealed envelope bearing the title of the work, the Contract number and the name of the bidder at or before the time specified for receipt of bids.

B 2.2 BIDDERS RESPONSIBILITY

Before submitting his Bid, each bidder must (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself with the local conditions that may in any manner affect performance of the Work, (c) review the information relied upon by the Engineer in preparing the Drawings and Specifications and/or obtain any additional information deemed necessary to determine his bid price(s) for performance of the work, (d) familiarize himself with laws, and regulations affecting performance of the Work; and (e) carefully correlate his observations with the requirements of the Contract Documents.

B 2.2.1 EXAMINATION OF CONTRACT DOCUMENTS

Bidders shall examine the Plans, Specifications and other Contract Documents and shall exercise their own judgment as to the nature and amount of the whole of the work to be done, and for the bid prices must assume all risk of variance, by whomsoever made, in any computation or statement of amounts or quantities necessary to complete the work in strict compliance with the Contract Documents.

B 2.2.2 SITE EXAMINATION

Before submitting a proposal, bidders shall carefully examine the site, and fully inform themselves as to all existing conditions and limitations. Bidders shall make all necessary investigations to determine the various means of approach and access to the site, to determine the facilities and means for delivery, placing, and operating the necessary construction equipment and for delivering and handling materials at the site, and to inform themselves thoroughly as to all difficulties involved in the completion of all work under this contract in accordance with its requirements.

B 2.2.3 REFERENCE MATERIALS AND INVESTIGATIONS

Reference is made to the General Requirements (Division 1) of the Specifications for the identification of those surveys and investigations reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by the Engineer in preparing the Drawings and Specifications. Owner will make copies of such surveys and reports available to any bidder requesting them. Before submitting his proposal each bidder will, at his own expense, make such additional surveys and investigations as he may deem necessary to determine his Bid price for performance of the Work within the terms of the Contract Documents.

B 2.2.4 FAMILIARITY WITH LAWS

Before submitting his proposal, each bidder shall fully familiarize himself with any and all Federal and State Laws and/or local Municipal Ordinances and Regulations affecting the performance of the Work and necessary to determine his bid price(s).

B 2.2.5 NO PLEA OF IGNORANCE

No plea of ignorance of conditions that exist or that may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the work under this contract, as a result of failure to make the necessary examinations and investigations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill, in every detail, all of the requirements of the Contract Documents, or will be accepted as a basis for any claim whatsoever for extra compensation or for an extension of time.

Each bid submitted shall implicitly represent on the part of the bidder that he is the only person or persons interested in said bid; that it is made without any connection with any person submitting another bid for the same contract; that the bid is in all respects fair and without collusion, fraud or mental reservation; that no official of the Owner, or any person in the employ of the said Owner is directly or indirectly interested in said bid or in the supplies or work to which it relates, or in any portion of the profits thereof.

B 2.2.6 FEDERAL TAX AND STATE SALES TAX

The bidder is advised that no Federal Excise Taxes, State or local sales taxes shall be included in any bid prices or invoices. Exemption Certificates will be furnished upon request by the Owner.

B 2.3 ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the Contract Drawings, Specifications or other Contract Documents made to any bidder orally are binding in any way. Every request for such interpretation should be in writing, addressed to the Engineer, at the address included in the advertisement and to be given consideration should be received no later than three days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the specifications which, if issued, will be furnished to all perspective bidders (at the respective addresses furnished for such purposes) not later than seven business days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve the bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract.

B 2.4 QUANTITIES APPROXIMATE

The Engineer's Estimate of quantities contained in the proposal is approximate only and bids must be submitted upon the following express conditions, which shall apply to and become a part of every bid received. Bidders must satisfy themselves by personal examination of the location of the proposed work and surroundings thereof, and by such other means as they may prefer, as to the accuracy of the estimate and shall not at any time after submission of their bids, dispute such estimate of the Engineer, nor assert that there was any misunderstanding in regard to the quantity or kind of materials to be furnished, or work to be done.

B 2.5 PROPOSAL FORMS

Proposal Forms must be completed legibly in ink or by typewriter. The Bid Price of each item on the form must be stated in words (when and if required on the proposal form(s)) and numerals. In case of a conflict, words will take precedence over numbers, and unit prices shall take precedence over total price extensions, and the sum of individual items, including unit prices multiplied by estimated quantities, and/or individual lump sum and/or allowance amounts will take precedence over the Total Bid or Alternate Bid price.

Any bid which fails to name a price written both in words (when and if required on the proposal form(s)) and figures, per unit of measurement, for each of the items for which quantities are given may be held to be irregular and may be rejected. All blank spaces in said proposal must be filled in and no change shall be made in the phraseology or in the items as contained therein.

Proposals that contain any omissions, alterations, additions or items not called for in the itemized proposal, or that are unbalanced, conditional, incomplete or contain irregularities of any kind, may be rejected as irregular.

All names must be typed or legibly printed in ink below the signature(s).

B 2.5.1 CORPORATIONS

Proposals submitted by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer) and accompanied by evidence of authority of the individual to sign and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation should be shown.

B 2.5.2 PARTNERSHIPS

Proposals submitted by partnerships must be executed in the partnership name and signed by a partner, his name and title must appear under his signature and the official address of the partnership must be shown below the signature.

B 2.6 RECEIPT OF ADDENDA ACKNOWLEDGED

The proposal shall contain an acknowledgment of receipt of any and all Addenda (the numbers of which shall be filled in on the Proposal Form and noted on the outside of the bid envelope).

B 2.7 BID SECURITY

Each proposal shall be accompanied by a bid security or proposal guarantee in the form of a certified check, cashier's check or surety bid bond of the bidders, payable to the Owner. The amount of the bid security shall be 10% of the total bid, but not more than \$20,000. If the bid security is in the form of a surety bid bond, said surety shall be licensed to conduct business in the State of New Jersey and named, if applicable,

in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U. S. Treasury Department. The Bid Security of the successful bidder will be retained until he has executed the Agreement and furnished the required Contract Security, whereupon it will be returned.

Proposal guarantees in the form of certified or cashier's checks will be returned to all except the three apparent lowest bidders within ten working days after the opening of bids, and to the three lowest bidders within three working days after the accepted bidder has executed the contract and furnished the required bonds and certificates of insurance. If no contract has been executed within one hundred twenty (120) days after the opening of bids, the amount of his proposal guarantee will be returned upon the demand of any bidder, provided that he has not been notified of the acceptance of his bid.

Anytime after the opening of bids, the second or third apparent low bidder may file a bond with the Owner in the form prescribed by the Owner's Attorney and in an amount equal at least to the amount of his original certified or cashier's check. This bond shall have sufficient and proper sureties, shall be subject to the approval of the Owner, and shall state that if the concerned bidder is awarded the contract, he will execute the required contract and will furnish such bonds and certificates or policies of insurance as are required under the terms of the contract documents. After receipt, approval, and acceptance of the properly executed bond, the Owner will then return to the concerned Bidder his original certified check or cashier's check.

In the event the successful bidder fails or refuses to execute and deliver the contract and required bonds and policies or certificates of insurance within fifteen days after he has received notice of the acceptance of his bid, the Owner may direct that the bid security deposited by such bidder be forfeited as liquidated damages for such failure or refusal, and may annul the initial Notice of Award, and thereafter award to the next apparent lowest bidder, or otherwise dispose of the Contract as permitted by law and best serving the Owner's interest.

B 2.8 CONSENT OF SURETY

A Consent of Surety in the form included in these specifications must be signed and witnessed. This Consent of Surety must be a separate legal instrument. Each proposal must be accompanied by a "Consent of Surety" from a surety company qualified to act as surety in the State of New Jersey, agreeing in the event of the award of the Contract to the bidder, to furnish a Performance Bond of a face value of not less than 100% of the amount of the bid.

In addition, and if required by the terms of the Proposal and Agreement, said "Consent of Surety" shall also agree to provide a labor and material payment bond in an amount not less than 100% of the total amount bid, and in a form acceptable to the Owner's Attorney.

B 2.9 QUALIFICATIONS OF BIDDERS

The Owner may make such investigations as it deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish all such information and data for this purpose as may be requested. The Owner reserves the right to reject any bid if the evidence submitted or the investigation of such bidder fails to satisfy the Owner that such a bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein within the allotted Contract Time.

To demonstrate his qualifications for the project the bidder is required to furnish, among other items, the following information with his bid:

- a. A detailed list of the plant and equipment which the bidder proposes to use, indicating which portions he already possesses, and, if requested in the Proposal, a detailed description of the method and program of work he proposes to follow. The information contained in these papers is for the guidance of the Owner in awarding the Contract.
- b. If the bidder is a corporation, a statement of the names and residences of its officers and directors, a certified copy of its certificate of incorporation, and proof of its authority to do business in the State of New Jersey. If a partnership, a statement of the names and residences of its members indicating, which are general and which are special partners. If an individual, a statement of his residence.
- c. A sworn statement giving a detailed list of contract work of the nature specified that he has been engaged upon in the past ten years with information as to location, exact nature and extent of the work, cost of the projects, under whose jurisdiction the work was performed and references with whom to correspond.
- d. If requested in the Proposal, furnish a list of technically experienced employees in the various branches of the work bid upon, with a brief summary of their experience and qualifications and also the name of the proposed field superintendent.

- e. If requested in the Proposal, furnish a certified financial statement showing his current assets and liabilities as of a date not more than ninety (90) days prior to the date of submission. All information will be used merely for the purpose of determining the qualifications of a low bidder.

B 2.10 NON COLLUSION AFFIDAVIT

All bidders must execute the Non-Collusion Affidavit and furnish same with their bid proposal on the form provided.

B 2.11 DISQUALIFICATION UPON REFUSAL TO WAIVE IMMUNITY

It is understood and agreed by the Contractor that upon the refusal of the Contractor, or if the Contractor is a partnership or corporation, upon the refusal of a member, partner, director or officer of such partnership or corporation, when called before a grand jury to testify concerning any transaction or contract had with the State, any political subdivision thereof, a public authority, or any public department agency, or official of the State, or of any political subdivision thereof, or of a public authority, to sign an waiver of immunity against any future criminal prosecution or to answer any relevant question concerning such transaction or contract:

- a. such person, and any firm, partnership or corporation of which he is a member, partner, director or officer, may be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contract with the Owner, or any public department or official thereof, for goods, work or service, for a period of five (5) years after such refusal to sign a waiver of immunity; and
- b. any and all contracts made with the Owner of any public department, agency or official thereof, since July 1, 1959 by such person and any firm, partnership or corporation of which he is a member, partner, director or officer, may be canceled or terminated by the Owner, without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing pursuant to said transaction or contract prior to the cancellation and termination, shall be paid.

B 2.12 AFFIRMATIVE ACTION - EQUAL EMPLOYMENT OPPORTUNITY

ARTICLE 1. Unless this Contract is subject to a Federally approved or sanctioned affirmative action program, the successful bidder shall, no later than three (3) days after signing the Contract, submit to the Public Agency Compliance Officer and the Affirmative Action Office in the New Jersey Department of the Treasury an initial project manning table consisting of forms provided by the Affirmative Action Office and completed by the successful bidder in accordance with N.J.A.C. 17:27-7.

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, up-grading, 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 Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex;

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-

31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor

does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

(1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided

the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(ii) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

(iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27:7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

B 2.13 CORPORATE STOCKHOLDER/PARTNERSHIP DISCLOSURE

All bidders who are corporations or partnerships must conform to the State of New Jersey P.L. 1977, c.33. Such bidders must execute the "Stockholder or Partnership Disclosure" form included in the Proposal and submit same with their bid.

B 2.14 CORPORATE RESOLUTION

All bidders who are corporations must execute the Corporate resolution included in the Proposal, or the equivalent, identifying and providing authority for the individual signing the Proposal to submit the bid on behalf of the Corporation and, if awarded the Contract, to execute the Contract Agreement on behalf of said corporation.

B 2.15 SUBCONTRACT WORK

If the bidder intends to subcontract any portion of the work of the project to any subcontractor, he shall first satisfy himself that any proposed subcontractor is competent to perform such work and not barred from public contract work pursuant to State of New Jersey N.J.S.A.34:11-56.37 and N.J.S.A.34:11-56.38.

In his bid proposal, when a form is provided, the bidder shall indicate the item (or items) he intends to subcontract and the aggregate value of any and all intended subcontract work, which aggregate value shall be less than 50% of the Total Price Bid. If awarded the Contract, subcontractors, if any, shall be subject to the approval of the Owner and shall be bound to the contractor by all applicable provisions of the contract documents as provided in Section G - Supplementary Conditions. In projects involving building construction as required by the N.J. Local Public Contracts Law C. 40A:11-16, the bidder shall set forth in the bid the name or names of all subcontractors required on the project on the form provided, including the percentage of the total project anticipated to be performed by each.

B 2.16 SUBMISSION OF BIDS

Bids shall be submitted at or before the time and at the place indicated in the Advertisement and Notice to Bidders and shall be included in an opaque sealed envelope, marked with the Project title and name and address of the Bidder and accompanied by the Bid Security and other required documents.

If addenda have been issued by the Owner prior to the time for opening of bids, bidder shall clearly and acknowledge receipt of any addenda in the appropriate place provided in the Proposal.

B 2.17 MODIFICATION AND WITHDRAWAL OF BIDS PRIOR TO OPENING

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

SECTION B. INSTRUCTION TO BIDDERS

PART 3 - OPENING OF BIDS, COMPARISON,
AWARD AND EXECUTION OF CONTRACT

B 3.1 OPENING OF BIDS

Bids will be publicly opened and read aloud at the local prevailing time and place identified in the Advertisement and Notice to Bidders, or at such postponed local prevailing time and place identified in any formal addenda issued by the Owner prior to the time set for such opening.

B 3.2 BIDS TO REMAIN OPEN - NO WITHDRAWAL PERIOD

Unless rejected, all bids shall remain open until the Contract is awarded, or for 60 calendar days, whichever is less; and for an additional 60 calendar days or three (3) days after full execution and submission of the Contract Agreement, Performance Guarantee Bond, Labor and Material Payment Bond if required, and required insurance certificates and/or policies by the successful bidder, whichever is less. The Owner may, at his sole discretion, release any bid and return the bid security of a bidder prior to the date hereinabove established.

B 3.3 EVALUATION AND COMPARISON OF PROPOSALS

Proposals will be compared on the basis of a total computed price arrived at by taking the sum of the estimated quantities of each item multiplied by the corresponding unit prices, and including any lump sum prices or allowances on individual items, in accordance with the estimate of quantities set forth in the proposal form, and including the correction of any conflicts or discrepancies as provided in Article B 2.5.

In evaluating bids, Owner shall consider the qualifications of the bidders, whether or not the Proposals comply with the prescribed requirements, and alternates and supplemental unit prices if requested in the bid forms. He may conduct such investigations as he deems necessary to establish the responsibility, qualifications and financial ability of the bidders to do the work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

After the opening of bids, and prior to award of the Contract, or rejection of all bids, the Owner may request, and the apparent low bidder shall provide, such information as Owner deems necessary regarding the identity, qualifications and current work commitments of proposed subcontractor(s) and/or proposed suppliers of principal materials or items of

equipment which may have significant bearing upon the bidder's qualifications to complete the project work in full accordance with the terms and conditions of the Contract Documents and within the allotted Contract Time.

B 3.4 BASIS OF AWARD

The Contract will be awarded, if at all, to the lowest responsible bidder, as determined by the Owner and by the terms and conditions of the Contract Documents.

The determination of the low bid shall be made based on the total base bid. Where deletion items are necessary to reduce the contract price to be within the project budget, the low bid shall be the total base bid and the least amount of deletion items in the order specified necessary to stay within the project budget.

The right is also reserved to increase or decrease the quantities specified in the manner designated in the specifications, and to award any or all of the items specified and listed in the Proposal.

B 3.5 REJECTION OF BIDS

Any or all proposals may be rejected (a) if competition has obviously been suppressed; (b) if the prices are obviously unbalanced; (c) if received from bidders who have previously performed work of a like nature in an unsatisfactory manner; (d) if the bid exceeds the owner's cost estimate and/or budget; (e) the governing body abandons the project; (f) a substantial revision to the specification is to be made; and/or (g) if it is deemed advisable to do so in the best interest of the Owner. The Owner expressly reserves the right to reject any and all bids and to re-advertise for new bids, or abandon the project as may best serve Owner's interest.

B 3.6 INFORMALITIES AND/OR IRREGULARITIES

The Owner may consider informal, or irregular, any bid not prepared and submitted in accordance with the provisions stipulated. The Owner reserves the right to waive any informalities in the bids, and the right to disregard any and all non-conforming or conditional bids or counter proposals.

B 3.7 AWARD OF CONTRACT

If the Contract is awarded, after comparison of the amounts of the various bids and evaluation of the experience competence, responsibility

and availability of the bidders, it will be awarded to the lowest responsible bidder whose evaluation by the Owner indicates acceptance of said bid will best serve Owner's interest, and formalized by public resolution of the Owner within 60 calendar days of the date of receipt of bids.

Bidders are advised that where separate contracts are bid, each project will be awarded to the lowest bidder for each separate contract, which low bid shall be determined in accordance with the above.

B 3.8 NOTICE OF AWARD

After formal action by the Owner to award the Contract, the Engineer will furnish the successful bidder with six (6) sets of the Contract Documents and an official "Notice of Award" for timely execution of the Contract Agreement by said successful bidder (all six copies) and return of same, together with required original bonds and insurance policies and/or certificates within 10 calendar days of said notice, ready for endorsement by appropriate officials of the Owner and review by Owner's Attorney.

B 3.9 CONSTRUCTION DRAWINGS ISSUED BY OWNER

After the award and prior to signing of the contract, the Owner will furnish the successful bidder with a complete set of drawings designated "For Construction". These drawings will incorporate revisions made by addendum during the bidding period, dimensional changes and any other changes and additions needed to clarify or correct the drawings used for bidding purposes. The successful bidder shall review these revised drawings and if he takes exception to any of the changes made, he shall notify the Owner in writing accordingly prior to the signing of the contract.

B 3.10 FORM OF CONTRACT AND BOND(S)

The form of Contract Agreement and bond(s) to be used in connection with the contract and to become a part of the Contract Documents may be found in Section E of these Contract Documents.

At the time of the execution of the contract, the bidder to whom the contract has been awarded shall furnish and deliver a properly executed Performance Bond in an amount at least equal to 100% of the total price of the Contract as awarded and as security for faithful performance of the contract. The surety on the bond must be a corporate surety and must meet the requirements stated under "Bid Security" - Article B 2.7.

If required by the terms of the Proposal, the successful bidder shall also furnish a "Labor and Material Payment Bond" in the form included in Section E, in an amount not less than 100% of the total price of the Contract as awarded by the Owner, and issued by an acceptable surety meeting the requirements of Article B 2.7 "Bid Security".

B 3.11 INSURANCE

Insurance policies and/or certificates of insurance providing not less than the required types and amounts of coverage as required by the Supplementary Conditions - Section G of the Contract Documents, and issued by an acceptable insurance company licensed to provide such insurance in the State of New Jersey, shall be furnished with the aforementioned Contract Documents, including fully executed Contract Agreement, and required bond(s), and within the time stipulated in the "Notice of Award".

All such certificates or policies of insurance must provide for not less than 30 days advance notice to the Owner and Engineer of any pending termination of the coverage provided.

B 3.12 NO REFUND OF FEES PAID FOR CONTRACT DOCUMENTS

Fees, if any, required to be paid and paid as required by the Advertisement and Notice to Bidders for copies of the Contract Documents are non-refundable and will not be returned under any circumstances.

The Owner and Engineer in making copies of the Contract Documents available to prospective bidders do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

B 3.13 CLASSIFICATION OF BIDDERS AS REQUISITE TO BIDDING - BOARD OF EDUCATION PROJECTS ONLY

All bidders proposing to submit bids for projects to be performed for a Board of Education, the entire cost whereof will exceed \$20,000.00 shall first be classified in accordance with Chapter 18A:18A-27 Article 6 of the Public Schools Contracts Law. "Notice of Classification" to perform work on Department of Education projects should be attached to the bid.

B 3.14 COMPLIANCE WITH THE PUBLIC WORKS CONTRACTOR REGISTRATION ACT

Effective April 11, 2000, all bidders proposing to submit bids for "Public Works" must comply to the provisions of "THE PUBLIC WORKS CONTRACTOR REGISTRATION ACT" (P.L. 1999, C.238; N.J.S.A. 34:11-56.48 et seq.) and the rules promulgated thereunder, as amended.

It is important to note that, although not required to register, contractors who perform covered work on public projects not included in this definition of "public works" must still comply with the provisions of the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.) as regards the payment of prevailing wage rates and the keeping/submitting of certified payroll records.

B 3.15 BUSINESS REGISTRATION OF PUBLIC CONTRACTORS

A Business Registration Certificate serves two purposes:

- **For public contracting, as proof of valid business registration with the New Jersey Division of Revenue.** All contractors and subcontractors must provide this documentation when seeking to do business with the State of New Jersey, and other public agencies in this state. Proof of registration is also required for licensure with the Casino Control Commission.
- **To comply with Chapter 85, P.L. 2006, defined under N.J.S.A. 54A:7-1.2.** You must use the Business Registration Certificate if you are an unincorporated construction contractor performing work in NJ or you are a registered unincorporated contractor requesting proof of certification.

If you are a registered vendor but have not received the Business Registration Certificate in the mail, you may obtain a certificate online. Please note that this certificate is not required by all businesses in New Jersey, but only those doing business with the public sector and with the casino service industry.

You may check the online registration inquiry to determine if the business is already registered. If you have not registered but are required to have this certificate, you will need to complete Form NJ-REG. Representatives of the Division's Client Registration activity are available to assist in the registration process by calling 609.292.9292.

Filing Form NJ-REG

In most cases, you may submit Form NJ-REG online. Exceptions and additional requirements include:

- Any business including an out-of-state business with a presence or nexus in New Jersey, operating as a **corporation, limited partnership, limited liability company or limited liability partnership** must first obtain legal authority to operate in this State prior to submitting Form NJ-REG. Generally, this is accomplished by filing a Certificate

of Incorporation or Formation with the Division. You may wish to review information concerning getting registered to assist with this process.

- **Out-of-state businesses** that believe they do not have state tax nexus will file a paper form NJ-REG in order to obtain a Business Registration Certificate. Business entities that file form NJ-REG only will be subject to a nexus review, initiated and conducted by the Division of Taxation.
- **Individuals or Unincorporated Construction Contractors** with no business tax or employer obligations may register using Form Reg-A instead of Form NJ-REG in order to obtain the Business Registration Certificate. Individuals who have created and are operating as a business entity (e.g. LLC) may not use Form REG-A.
- **Non-profit organizations** although required to register for tax purposes are not subject to the proof of registration requirement when contracting with public agencies in this state.

Public Contracts

When seeking a public contract, an affirmative action report (Form AA-302) will also be required. The Certificate of Registration may not be used as evidence of compliance with the affirmative action requirements and submitted in lieu of Form AA-302. Both forms will be required. The Division of Contract Compliance and Equal Employment Opportunity in Public Contracts provides guidelines for awarded public contracts. In addition, answers to frequently asked questions are provided by the Division of Local Government. While designed for local government contracting, the FAQ page contains guidance that it is applicable to most New Jersey government procurement activities.

- Registering for Tax Purposes
- Instructions for Contracting with Local Government, Colleges and Universities, County Colleges and Boards of Education
- Guidelines and Regulations for Awarded Public Contracts
- Affirmative Action Employee Information Report (Form AA-302)
- Local Finance Notices for Registering and Obtaining Proof of Registration

Information taken from State of New Jersey, Department of Treasury, Division of Revenue and Enterprise Services
<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

B 3.16 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Effective July 30, 2012, and pursuant to PL2012 c25 (C52:32-55) all business organizations (including contractors and subcontractors) that do business with a local contracting agency are required to disclose if the bidder is providing goods or services and/or extending credit to another person or entity to provide goods or services in the energy sector of Iran.

B 3.17 DISCLOSURE OF CONTRIBUTIONS TO ELEC

Starting in January 2007, all business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

SECTION BB SUPPLEMENTARY
INSTRUCTIONS TO BIDDERS

BB.1 AUTHORIZATION OF CONTRACT

The contract for this project is authorized by the provisions of local public contracts law, NJSA 40A:11-1 et seq.

SPECIFICATIONS TO BE USED

The 2019 Standard Specifications for Road and Bridge Construction, of the New Jersey Department of Transportation and as amended herein, shall govern the construction of this project.

BB.2 WAGE RATES

The contractor shall pay the minimum wage rates determined by the New Jersey Department of Labor.

State wage rates may be obtained from the New Jersey Department of Labor (Telephone: 609-292-2259), or by accessing the Department of Labor's website at http://lwd.dol.state.nj.us/labor/wagehour/wagehour_index.html. The State wage rates in effect at the time of award will be made a part of this Contract, pursuant to Chapter 150, Laws of 1963 (NJSA 34:11-56.25 et seq.).

In the event it is found that any employee of the contractor or any subcontractor covered by the contract, has been paid a rate of wages less than the minimum wage required to be paid by the contract, the contracting agency may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work, as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable to the contracting agency for any excess costs occasioned thereby.

BB.3 GENERAL

All awards shall be made subject to the approval of the New Jersey Department of Transportation. No construction shall start before approval of said award by the New Jersey Department of Transportation. Prior to the start of construction the contractor must submit a Materials Questionnaire (SA-11) listing all sources of materials. Any materials used on the project from a non-approved New Jersey Department of Transportation source will be considered non-participating. The contractor is also notified that the District Office, Division of Local Aid and Economic Development must be notified of the construction commencement date at least three (3) calendar days prior to the start of construction.

Award of contract and subletting will not be permitted to, materials will not be permitted from, and use of equipment will not be permitted that is owned and/or operated by, firms and individuals included in the report of suspensions, debarments and disqualifications of firms and individuals as maintained by the Department of the Treasury, General Services Administration, CN-039, Trenton NJ 08625 (609-292-5400).

Payment for a pay item in the proposal includes all the compensation that will be made for the work of that item as described in the contract documents unless the "measurement and payment" clause provides that certain work essential to that item will be paid for under another pay item.

Whenever any section, subsection, subpart or subheading is amended by such terms as changed to, deleted or added it is construed to mean that it amends that section, subsection, subpart or subheading of the 2019 Standard Specifications unless otherwise noted.

Whenever reference to page number is made, it is construed to refer to the 2019 Standard Specifications unless otherwise noted.

Henceforth in this supplementary specification whenever reference to the State, Department, ME, RE or Inspector is made, it is construed to mean the particular municipality or county executing this contract.

Whenever reference to Title 27 is made, it is construed to mean Title 40.

Materials or assemblies as specified will be accepted on the basis of certificates of compliance stating that such materials or assemblies fully comply with the requirements of the contract.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and, if found not to be in conformity with the contract requirements, will be subject to rejection whether in place or not. The contractor shall require the manufacturer or supplier to furnish three copies of certificates of compliance with each delivery of materials, components and manufactured items that are acceptable by certification. One copy shall be furnished to the Engineer, one copy shall be furnished to the District Office Bureau of Local Aid (if the project has received funding through the "1984 Trust Fund Authority Act") and one copy shall be retained by the Contractor.

Certificates of compliance shall contain the following information:

1. Project and location to which the material is consigned.
2. Name of the contractor to which the material is supplied.
3. Kind of material supplied.
4. Quantity of material represented by the certificate.
5. Means of identifying the consignment, such as label marking, seal number, etc.
6. Date and method of shipment.
7. Statement that the material has been tested and found in conformity with the pertinent contract requirements stated in the certificate.
8. Signature of a person having legal authority to bind the supplier.
9. Signature attested to by a notary public or other properly authorized person.

Payments relative to materials specified to be accepted on the basis of certificates of compliance shall not be made until the Engineer has in his possession an acceptable certificate of compliance.

FOREIGN MATERIALS

The attention of the contractor is directed to all existing federal and State statutes and regulations which prohibit on any public work the use, by the contractor or subcontractor, of materials produced or manufactured outside the United States of America. Exceptions to this prohibition, upon the findings of the engineer, are allowed only where its enforcement would be inconsistent with the public interest or where the material is not produced or manufactured in the United States in commercial quantities and of a sufficient quality.

If the engineer finds that in the performance of the contract there has been a failure to comply with the provisions relative to foreign materials, he shall make public his findings and no other contract for the construction of any public work by this contracting agent shall be awarded to such contractor, or to any partnership, association or corporation with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

Where the use of foreign material is allowed, such material shall be furnished in accordance with the following requirements:

1. Materials manufactured or produced outside the United States shall be delivered to a location, approved by the engineer, where they shall be retained until examination can be completed.
2. The contractor shall arrange, at his expense, any testing which the engineer feel necessary to ascertain the acceptability of the material.
3. Each lot of foreign material shall be accompanied by a certificate of compliance. In addition, certified mill test reports shall be attached to the certificate of compliance for those materials for which mill test reports are required and shall clearly identify the lot to which they apply. Certificates of compliance shall contain the following information:
 - A. Project to which the material is consigned.
 - B. Name of the contractor to which the material is supplied.
 - C. Kind of material supplied.
 - D. Quantity of material represented by the certificate.
 - E. Means of identifying the consignment, such as label marking, seal number, etc.
 - F. Date and method of shipment.
 - G. Statement that the material has been tested and found in conformity with the pertinent contract requirements stated in the certificate.
 - H. Signature of a person having legal authority to bind the supplier.
 - I. Signature attested to by a notary public or other properly authorized person.

On projects utilizing federal funds, the contractor's particular attention is directed to the federal statutes and regulations which establish the "Buy American" requirements applicable to the project. The contractor must comply with these requirements in addition to those provided under applicable state law.

BIDDERS PROPOSAL

PROJECT IDENTIFICATION:

IMPROVEMENTS TO TRACEY DRIVE

THIS BID IS SUBMITTED TO:

BOROUGH OF MILLTOWN
 MUNICIPAL BUILDING
 39 WASHINGTON AVENUE
 MILLTOWN, NJ 08850

 BIDDER'S NAME

- C 1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
- C 2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within ten days after the date of OWNER'S Notice of Award.
- C 3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
- a. BIDDER has examined copies of all the Bidding Documents and of all Addenda (receipt of all which is acknowledged herein):
 - b. BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
 - c. BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph G 4.2 of the Supplementary Conditions of the

extent of the technical data contained in such reports and drawings upon which BIDDER is entitled to rely.

- d. BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in [c] above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by BIDDER for such purposes.
- e. BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.
- f. BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- g. BIDDER has given ENGINEER written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER.
- h. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself

any advantages over any other Bidder or over OWNER.

- i. BIDDER has evaluated the requirements of the following items and included all costs and other factors related to same in his Bid:

ITEM	REQUIRED	NOT REQUIRED
Contractor's Field Office is		X
Engineer's Field Office is		X
Project Photographs are		X
An Owner's Protective Insurance Policy is	X	
Owner's and Engineer's named as Co-Insured parties on Contractor's Liability Insurance Policies is		X
A separate Labor & Material payment Bond in the amount of 100% of the Contract Amount is	X	
The Project is partially funded with Federal Grant funds and compliance with applicable minimum Federal Wage rates, and other grant related applicable regulations is		X
A project sign is	X	

- j. If awarded the Contract, the undersigned BIDDER agrees to fully comply with the requirements of P.L. 1975, c.127.
- k. If awarded the Contract, the undersigned BIDDER agrees to comply with "The Prevailing Wage Act", P.L. 1963, c.150.



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Requirements for Bid Submission

As is mandated by these technical and general specifications, attached hereto and included herewith are the following

1. Bid Proposal Form
2. Consent of Surety. A certificate of a surety company licensed to do business in New Jersey that it will become surety for the bidder as provided in these specifications, or a letter from a commercial bank certifying that it will issue an Irrevocable Commercial Domestic Letter of Credit to the Borough in the amount required if the contract is awarded to the bidder.
3. Stockholder Disclosure Certification
4. Price and Technical Specifications
5. Affirmative Action Affidavit or Certificate of Employee Information Report or Evidence of Affirmative Action Compliance
6. General Requirements
7. Acknowledgement of Receipt of Changes to Bid Documents
8. Affidavit of Non Collusion
9. Completed Checklist
10. All other documents required in the bid specifications
11. The Business Registration Certificate issued by the State of New Jersey, Department of Treasury/ Division of Revenue.
 - a. **Note: if subcontractors shall be used in connection with the performance of the contract, the Business Registration Certificates of all subcontractors must accompany the bid at the time of the bid submission**
12. A certified check, Cashier's Check or Bid Bond in the amount of 10% (ten percent) of the amount required performance bond. Such bond or check shall be made payable to the Borough of Milltown. The bonds or checks of unsuccessful bidders shall be returned upon the awarding of the contract. The bond and check of the successful bidder shall be returned upon the execution of the contract and the posting of the required performance bond by the successful bidder. In the event of the successful bidder's failure to execute the contract or post sufficient bond on form approved by the Borough of Milltown, the award of the contract shall be, at the option of the Borough Council, a nullity and said bond, cash or check shall not be returned to the bidder but shall be retained and used by the Borough of Milltown to defray its expenses in the awarding of the contract.

RESERVATION OF RIGHT TO REJECT BIDS

The Borough Council reserves the right to reject any and all bids if deemed in the best interest of the Borough to do so and to hold all bids and proposal guarantees for 60(sixty) days before making an award of contract and the bidder agrees that he/she will not withdraw the bid for that period of time



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Bid Document Checklist

Construction Projects N.J.S.A. 52:34-15
 Goods and Services Not required by law

Submission Requirement	Initial Each Required Entry and submit the item
<input checked="" type="checkbox"/> Bid Proposal Form (Including price and technical specifications)	JU
<input checked="" type="checkbox"/> Bid Guarantee (With Power of Attorney for full amount of Bid Bond)	JU
<input checked="" type="checkbox"/> Consent of Surety (With Power of Attorney for full amount go Bid Price)	JU
<input checked="" type="checkbox"/> Stockholder Disclosure Certification	JU
<input checked="" type="checkbox"/> Acknowledgement of Receipt of Addenda	JU
<input checked="" type="checkbox"/> Public Works Contractor Registration Certificate	JU
<input checked="" type="checkbox"/> Non-Collusion Affidavit	JU
<input checked="" type="checkbox"/> Disclosure of Investment Activities in Iran	JU
<input checked="" type="checkbox"/> Prevailing Wage	JU
<input checked="" type="checkbox"/> Equipment Certification	JU
<input checked="" type="checkbox"/> Proof of Business Registration	JU
<input checked="" type="checkbox"/> Mandatory Affirmative Action Language	JU
<input checked="" type="checkbox"/> Americans with Disabilities Act of 1990 Language	JU
<input checked="" type="checkbox"/> Status of Present Contracts	JU
<input checked="" type="checkbox"/> References	JU
<input checked="" type="checkbox"/> All documents set forth in the Bid Specifications	JU
<input checked="" type="checkbox"/> Completed Checklist	JU

Acknowledged for:

Company Name of Bidder: LANDTEK CONSTRUCTION LLC DBA UNITED TERRAINS GROUP

By: JUAN UREO

Name of Authorized Agent: PRESIDENT

Title of Authorized Agent: [Signature]

Signature of Authorized Agent: [Signature]

Date: 6-30-2020



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Acknowledgement of Receipt of Addenda

N.J.S.A. 40A:11-23c. 1), 2), & 3)

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

<u>Addendum Number</u>	<u>Dated</u>	<u>Acknowledge Receipt (Initial)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



No Addenda were Received

Acknowledged for:

Company Name of Bidder: LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN Group

By:

Name of Authorized Agent JUAN UENO

Title of Authorized Agent PRESIDENT

Signature of Authorized Agent 

Date 6-30-2020



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Bid Guarantee

N.J.S.A. 40A:11-21

A Certified Check or Cashier's Check or Bid Bond in the amount of ten (10%) percent of the amount of the required performance bond must be submitted. Such bond or check shall be made payable to the Borough of Milltown. The bonds or checks of unsuccessful bidders shall be returned upon the awarding of the contract.

The bond and check of the successful bidder shall be returned upon the execution of the contract and the posting of the required performance bond by the successful bidder.

In the event of the successful bidder's failure to execute the contract or post sufficient bond in a form approved by the Borough of Milltown, the award of the contract shall be, at the option of the Borough Council, a nullity and said bond, cash or check shall not be returned to the bidder, but shall be retained and used by the Borough of Milltown to defray its expenses in the awarding of the contract.

To: Borough of Milltown

Re: LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN Group
Contractor

Project: IMPROVEMENTS TO TRACEY DRIVE

Bid Guarantee in the Form of:

<input type="checkbox"/>	Certified Check	Check #	_____	Amount	_____
<input type="checkbox"/>	Cashier's Check	Check #	_____	Amount	_____
<input checked="" type="checkbox"/>	Bid Bond	Bid Bond #	_____	Amount	<u>10 % NTE</u> <u>\$20,000.00</u>



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Consent of Surety

N.J.S.A. 40A:11-22

ATTACHED

A performance bond will be required from the successful contractor on this project, and consequently, all bidders shall submit, with their bid, consent of surety in substantially in the following form:

To: Borough of Milltown

Re: _____
Contractor

Project: IMPROVEMENTS TO TRACEY DRIVE

This is to certify that that _____
Surety Company

will provide to the Borough of Milltown a performance bond in the full amount of awarded contract in the event that said contractor is awarded a contract for the above project

Contractor _____

Authorized Agent of Surety Company _____

Date _____

CONSENT OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT OR REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.



Borough of Milltown
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Stockholder Disclosure Certification

N.J.S.A. 52:25-24.2 (P.L. 1977, c.33)

Name of Business

I certify that the list below contains the names and home addresses of all stockholders holding 10% (ten percent) or more of the issued and outstanding stock of the undersigned

OR

I certify that no one stockholder owns 10% (ten percent) or more of the issued and outstanding stock of the undersigned.

Check the Box that represents the type of business organization:

- Partnership
- Sole Proprietorship
- Limited Liability Corporation
- Subchapter S Corporation
- Corporation
- Limited Partnership
- Limited Liability Partnership

Sign and Notarize the form below, and, if necessary, complete the stockholder list below.

Stockholders

Name	Street Address	Town	State	Zip code
JUAN URAO 100%	875 RIVER RD.	PISCATAWAY	NJ	08854

Sworn and subscribed before me this

30
day of June, 2020

William A. Dennis Jr.
Notary Public

[Signature]
Affiant

JUAN URAO PRESIDENT
Print name and Title of Affiant

My Commission Expires: 10/1/2023

Corporate Seal

WILLIAM A. DENNIS JR.
NOTARY PUBLIC OF NEW JERSEY
Comm. # 50090475
My Commission Expires 10/1/2023



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Affidavit of Non-Collusion

N.J.S.A. 52:34-15

State of New Jersey
County of Middlesex

Owner: Borough of Milltown

Work: Improvements to Tracey Drive

The undersigned, of full age, being duly sworn according to law on my oath depose and say: that I am of the firm making the Bid, that I executed the Bid with full authority to do so; that Bidder has not, 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 Work; and that all statements contained in the Bid and in this affidavit are true and correct and made with full knowledge that Owner relies upon the truth of the statements contained in the Bid and in the statements contained in this affidavit in an award of a contract of the Work.

I further warrant that no person or selling agency has been employed or retained to solicit or secure a contract upon an agreement or understanding for a commission, percentage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by Bidder in accordance with N.J.S.A. 52:34-15.

Company Name of Bidder: LANDTEC CONSTRUCTION LLC DBA UNITED TERRAIN Group

By:
Name of Authorized Agent JUAN YENO

Title of Authorized Agent PRESIDENT

Signature of Authorized Agent [Handwritten Signature]

Date 6-30-2020



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Certificate of Experience

JUAN UERO hereby

certify that LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN GROUP

have performed the following work within the last five (5) years:

Year	Type of Work	Contract Amount	Name and Address of Owner
	(See Attached)		

LANDTEK CONSTRUCTION LLC DBA
UNITED TERRAIN GROUP

BIDDER

JUAN UERO 

BY

PRESIDENT

TITLE



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
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**Affirmative Action Compliance
Notice
N.J.S.A. 10:5-31 and N.J.A.C. 17:27
Goods and Services Contracts
(Including Professional Services)**

This form is a summary of the successful bidder's requirement to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

The successful bidder shall submit to the public agency, after notification of award but prior to execution of this contract, one of the following three documents as forms of evidence:

- (a) A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);
OR
- (b) A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;
OR
- (c) A photocopy of an Employee Information Report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The successful vendor may obtain the Affirmative Action Employee Information Report (AA302) from the contracting unit during normal business hours.

The successful vendor(s) must submit the copies of the AA302 Report to the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division). The Public Agency copy is submitted to the public agency, and the vendor copy is retained by the vendor.

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.1 et seq. and agrees to furnish the required forms of evidence.

The undersigned vendor further understands that his/her bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

Company Name of Bidder: LANOTEC CONSTRUCTION LLC DBA UNITED TERRAIN GROUP

By: Name of Authorized Agent JUAN UENO

Title of Authorized Agent President

Signature of Authorized Agent [Signature]

Date 6-30-2020



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Mandatory Affirmative Action Language for Construction Contracts Exhibit B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C. 17:27

CONSTRUCTION CONTRACTS

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, 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 Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A.

10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

(B) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
- (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
- (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- (5) If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;
- (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
 - (ii) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.
 - (iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall

inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27)**.

Company Name of Bidder: LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN Group

By: Name of Authorized Agent JUAN UENO

Title of Authorized Agent PRESIDENT

Signature of Authorized Agent [Handwritten Signature]

Date 6-30-2020



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Mandatory Language Americans with Disabilities Act of 1990

Title II of the Americans with Disabilities Act of 1990 (42
U.S.C. S121 01 et seq.)

APPENDIX A AMERICANS WITH DISABILITIES ACT OF 1990 Equal Opportunity for Individuals with Disability

The contractor and the **Borough of Milltown** (hereafter "owner") do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. S121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the *owner shall* expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Company Name of Bidder: LAVATEX CONSTRUCTION LLC DBA UNITED TERRAIN GROUP

By: JUAN URAO
Name of Authorized Agent

Title of Authorized Agent President

Signature of Authorized Agent [Signature]

Date 6-30-2020



Borough of Milltown
39 Washington Ave.
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**Resolution of Authorization
if Bidder is a Corporation**

NOT A CORP / N/A

RESOLVED that _____
be authorized to sign and submit the bid or proposal of this corporation for this project, and to include in such bid or proposal the certificate as to non-collusion as the act and deed of such corporation, and for any inaccuracies or misstatements in such certificate this corporate bidder shall be liable under the penalties of perjury. If awarded the contract(s), said individual is also authorized to sign and execute the Contract Agreement as the act and deed of such corporation.

The foregoing is a true and correct copy of the resolution

adopted by _____

at a meeting of its Board of Directors held on the _____

day of _____, 20_____.

SEAL OF CORPORATION

Secretary



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Public Works Contractor Registration

N.J.S.A. 34:11-56.48

NONE N/A

- All named contractors in a bid proposal (including out of state contractors) must be registered with the Department of Labor's Division of Wage and Hour Compliance at the time Proposals are received by the public entity.
- Certificates for all contractors must be accompany the bid at the time of bid submission.
- All named sub-contractors must be registered with the Department of Labor pursuant to the PWCRA at the time the proposal is received, or the proposal will be determined to be non-responsive
- Any non-listed sub-contractor must be registered with the Department of Labor prior to physically starting work.

List of Contractors and Subcontractors; A CERTIFICATE MUST BE PROVIDED FOR THOSE LISTED

1. Plumbing, Gas Fitting Kindred Work

Company Name _____

Contracted for: _____

Address of Company

_____ Address _____ PO Box _____

_____ Town _____ State _____ Zip _____

Phone Number _____

E-mail _____

2. Steam Power Plants, Steam & Hot water heating & ventilating & refrigeration apparatus

Company Name _____

Contracted for: _____

Address of Company

_____ Address _____ PO Box _____

_____ Town _____ State _____ Zip _____

Phone Number _____

E-mail _____

3. Electrical Work (electrical power plants, tele-data, fire alarm and security system)

Company Name _____

Contracted for: _____

Address of Company

_____ Address _____ PO Box _____

_____ Town _____ State _____ Zip _____

Phone Number _____

E-mail _____

4. Structural Steel and Ornamental Iron Work

Company Name _____

Contracted for: _____

Address of Company

_____ Address _____ PO Box _____

_____ Town _____ State _____ Zip _____

Phone Number _____

E-mail _____



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Disclosure of Investment Activities in Iran

Public Law 2012, c. 25

Pursuant to Public law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that the person or entity, or one of the person or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the Department of the Treasury as a person or entity engaging in investment activities in Iran. If the Director finds a person or entity to be in violation of the principles which are the subject of the law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the person or entity.

I certify, pursuant to Public Law 2012, c.25, that the person or entity listed below for which I am authorized to bid/ renew:

- Is not providing goods or services of \$20,000,000 or more in the energy sector of Iran, including a person or entity that provides oil or liquefied natural gas tankers or products used to construct or maintain pipe lines used to transport oil or liquefied natural gas, for the energy sector of Iran
- AND**
- Is not a financial institution that extends \$20,000,000 or more in credit to another person or entity, for 45 days or more, if that person or entity will use the credit to provide goods or services in the energy sector in Iran.

In the event that a person or entity is unable to make the above certification because it or one of its parents, subsidiaries, or affiliates has engaged in the above-referenced activities, a detailed, accurate and precise description of the activities must be provided in part 2 below to the Division of Purchase under penalty of perjury. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN.
You must provide, accurate and precise description of the activities of the bidding person/ entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

Name _____	Relationship to Bidder/ Offeror	_____
Description of Activities	_____	
Duration of Engagement	_____	Anticipated Cessation Date _____
Bidder/ Offeror Contact Name	_____	Contact Phone Number _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above referenced person or entity. I acknowledge that Milltown Borough is relying on the information contained herein and hereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Borough to notify the Borough in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with Milltown Borough, Middlesex County, New Jersey and that the Borough at its option may declare any contract(s) resulting from this certification void and unenforceable.

Acknowledged for:

Company Name of Bidder:

LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN GROUP

By:

Name of Authorized Agent

JUAN UERO

Title of Authorized Agent

PRESIDENT

Signature of Authorized Agent

[Handwritten Signature]

Date

6-30-2020



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Request for Prevailing Wage Determination

N.J.S.A. 34:11-56.25 et seq

To: Borough of Milltown

Project: IMPROVEMENTS TO TRACEY DRIVE

Prevailing Wage Request Information

Date May 15, 2020

Confirmation Number 74649

The term "public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under a contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. This also includes off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project. [N.J.S.A. 34:11-56.26(5)]

"Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on **any** property or premises, whether or not the work is paid for from public funds, if, at the time of the entering of the contract:

- **Not less than 55% of the property or premises is leased by a public body or is subject to an agreement to be subsequently leased by the public body; and**
- The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet. [N.J.S.A. 34:11-56.26(5)(a)(b)]

Public Law 2004, Chapter 101 took effect on July 14, 2004. This law, N.J.S.A. 34:11-56.26(5), adds to existing prevailing wage requirements off-site workers who custom fabricate plumbing, heating, cooling, ventilation, or exhaust duct systems and mechanical insulation as part of a public works project.

SCOPE OF ALLOWANCE FOR WORK NOT SPECIFIED ITEM

The contractor shall make an allowance in his bid for any modifications or additions associated with construction of the project including any material, services or appurtenances not specifically described in the specifications but as required to satisfactorily complete the project. All work must be ordered by the Engineer to qualify for payment. This item is intended to be utilized to compensate the contractor for any unknown areas of the work.

The contractor will be paid from the allowance based on a mutually agreeable price between the contractor and the Engineer prior to commencing work not specified as ordered by the Engineer in writing.

The contractor shall allow \$10,000.00 for this item to cover the work. Nothing herein shall constitute a guarantee that the contractor is entitled to payment of the full allowance. If no work is done under this item, the full amount of \$10,000.00 shall not be paid by the Owner to the contractor. To qualify for payment, work must be ordered by the engineer in writing.

IMPROVEMENTS TO TRACEY DRIVE

BOROUGH OF MILLTOWN

C4. THE BIDDER WILL SATISFACTORILY COMPLETE THE WORK ON THIS CONTRACT FOR THE FOLLOWING PRICES

ITEM NO.	DESCRIPTION	APPROXIMATE QUANTITY	UNIT PRICE		EXTENDED PRICE	
			DOLLARS	CENTS	DOLLARS	CENTS
1	Mobilization	LUMP SUM	18150.00		18,150.00	
2	Breakaway barricade	2 UN ±		.01		.02
3	Drum	16 UN ±		.01		.16
4	Traffic cone	36 UN ±		.01		.36
5	Construction signs	36 SF ±	14.00		504.00	
6	Traffic director, municipal police allowance	ALLOWANCE	\$10,000.00		\$10,000.00	
7	Allowance for asphalt price adjustment	DOLLAR	\$5,000.00		\$5,000.00	
8	Allowance for fuel price adjustment	DOLLAR	\$5,000.00		\$5,000.00	
9	Clearing site	LUMP SUM	\$15,000.00		\$15,000.00	
10	Remove existing curb or curb and gutter (including sawcutting)	1991 LF ±	3.00		5973.00	
11	Remove existing sidewalks	6000 SF ±	2.00		12,000.00	
12	Remove and reset existing brick walk/pavers (If and where ordered)	20 SF ±	20.00		400.00	
13	Remove and replace roadway base (If and where ordered)	655 SY ±	60.00		39,300.00	
14	Excavation, unclassified (If and where ordered)	20 CY ±	45.00		900.00	
15	Driveway excavation, unclassified	77 CY ±	.01		.77	

IMPROVEMENTS TO TRACEY DRIVE

BOROUGH OF MILLTOWN

C4. THE BIDDER WILL SATISFACTORILY COMPLETE THE WORK ON THIS CONTRACT FOR THE FOLLOWING PRICES

ITEM NO.	DESCRIPTION	APPROXIMATE QUANTITY	UNIT PRICE		EXTENDED PRICE	
			DOLLARS	CENTS	DOLLARS	CENTS
16	Excavation unclassified, test pit (If and where ordered)	29 CY ±		.01		.29
17	Dense graded aggregate base course (If and where ordered)	10 CY ±	30.00			300.00
18	HMA milling, 3" or less	2884 SY ±	6.00			17064.00
19	Hot mix asphalt 9.5M64 surface course	339 TON ±	110.00			37,290.00
20	Hot mix asphalt 19M64 base course (If and where ordered)	20 TON ±	150.00			3000.00
21	Polymerized joint adhesive	3319 LF ±	4.50			14935.00
22	6" dia. smooth wall interior, corrugated, perforated polyethylene tubing (PPT) underdrains with filter fabric, stone backfill for subsurface drains, bedding and backfill	1903 LF ±	32.00			60896.00
23	Connect leader or sump drains to proposed 6" dia. PPT underdrain including fittings, cleanout and brass cap	28 UN ±	500.00			14000.00
24	Handhole with casting	13 UN ±	450.00			5850.00
25	Reset existing casting	7 UN ±	350.00			2450.00
26	Bicycle safe grate	7 UN ±	325.00			2275.00
27	Curb piece type N-ECO	6 UN ±	300.00			1800.00

IMPROVEMENTS TO TRACEY DRIVE

BOROUGH OF MILLTOWN

C4. THE BIDDER WILL SATISFACTORILY COMPLETE THE WORK ON THIS CONTRACT FOR THE FOLLOWING PRICES

ITEM NO.	DESCRIPTION	APPROXIMATE QUANTITY	UNIT PRICE		EXTENDED PRICE	
			DOLLARS	CENTS	DOLLARS	CENTS
28	Reset manhole casting using new casting and cover	3 UN ±	750.00		2250.00	
29	Concrete sidewalk, 4" thick	6099 SF ±	8.00		48792.00	
30	Concrete driveways and aprons, reinforced, 6" thick (including bedding)	2495 SF ±	10.00		24950.00	
31	Hot mix asphalt driveway, 2" thick (If and where ordered)	60 SY ±	30.00		1800.00	
32	Detectable warning surface	5 SY ±	250.00		1250.00	
33	Concrete curb and gutter	1991 LF ±	45.00		89595.00	
34	Traffic stripes, long life, "thermoplastic", 4" wide with glass beads	110 LF ±	2.30		253.00	
35	Traffic stripes, long life, "thermoplastic", 8" wide with glass beads	99 LF ±	4.60		455.40	
36	Traffic stripes, long life, "thermoplastic", 24" wide with glass beads	17 LF ±	13.80		234.60	
37	Regulatory and warning signs	10 SF ±	40.00		400.00	
38	Roadway trench repair	447 SY ±	50.00		22350.00	
39	Reset water valve box	10 UN ±	45.00		450.00	
40	Reset gas valve box	4 UN ±	45.00		180.00	

IMPROVEMENTS TO TRACEY DRIVE

BOROUGH OF MILLTOWN

C4. THE BIDDER WILL SATISFACTORILY COMPLETE THE WORK ON THIS CONTRACT FOR THE FOLLOWING PRICES

ITEM NO.	DESCRIPTION	APPROXIMATE QUANTITY	UNIT PRICE		EXTENDED PRICE	
			DOLLARS	CENTS	DOLLARS	CENTS
41	Miscellaneous concrete, Class B (If and where ordered)	20 CY ±	.01		.20	
42	Remove additional trees over 8" up to and including 16" caliper (If and where ordered)	3 UN ±	700.00		2100.00	
43	Remove additional trees over 16" caliper (If and where ordered)	4 UN ±	1650.00		6600.00	
44	Topsoiling, 4" thick (including fine grading)	850 SY ±	9.00		7650.00	
45	Fertilizing	850 SY ±	1.00		850.00	
46	Sodding	850 SY ±	9.00		7650.00	
47	Replacement Tree, Crape Myrtle, various species, 8' to 10' High (If and where ordered)	11 UN ±	1200.00		13200.00	
48	Replacement Tree, White Pine trees (Pinus Strobus), 5' to 6' high, B&B (If and where ordered)	11 UN ±	515.00		5665.00	
49	Replacement Shrub, Winter gem boxwood (Buxus microphylla japonica 'Winter Gem') 24"-30" high (If and where ordered)	5 UN ±	176.00		880.00	
50	Allowance for work not specified	ALLOWANCE		\$10,000.00		\$10,000.00
51	R.R. tie 6"x6" retaining wall (If and where ordered)	12 SF ±	40.00		480.00	



Borough of Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Bid Proposal Form

Improvements to Tracey Dr.

Contract Title and Bid Number (if Applicable)

CONCRETE CURBING, ASPHALT PAVING, LANDSCAPING.

Description of Goods/ Services Being Bid

The undersigned proposes to furnish and deliver the above goods/ services pursuant to the bid specification and made part hereof.

Company Name of Bidder: LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN GROUP

Name of Authorized Agent: JUAN URAO

Title of Authorized Agent: PRESIDENT

Signature of Authorized Agent

386 Hwy 79

Address

PO Box

Address of Bidder

MOLGANVILLE

Town

NJ

State

07751

Zip

Phone Number 732.970.7980

Fax Number 732.970.7981

E-mail Address: JUAN@UNITEDTERRAIN.COM

Federal I.D. or Social Security Number 45-3707773

Amount of Bid (Numeric) 520,124.30

Amount of Bid (Alphabetic) FIVE HUNDRED TWENTY THOUSAND ONE HUNDRED TWENTY FOUR DOLLARS THIRTY CENTS

IMPROVEMENTS TO TRACEY DRIVE

C-29

BOROUGH OF MILLTOWN

DELETION ITEMS

All Bidders are advised that the Borough of Milltown has a limited budget for the construction of this Project. In order to minimize time delays in the commencement of the contract and the inconvenience to all bidders that normally occurs when bids for projects exceed their respective budgets, the Owner has also included a deletion item which may be utilized by the Owner based upon the funds available.

The bidder shall utilize the same unit prices bid for the deletion items as utilized for the respective base bid items. If there is any inconsistency between bid price and deletion price, the Engineer shall utilize the base bid unit price for any possible determination.

The determination of which Bidder's response to the request for bids offers the lowest price shall be made on the basis of the price of the base specification plus the price of any selected deletion and/or alternate items in accordance with N.J.S.A. 40A:11-23.1(d).

BASE BID ITEM NO.	DELETION ITEM NO.	DESCRIPTION	APPROXIMATE QUANTITY	UNIT PRICE		EXTENDED PRICE	
				DOLLARS	CENTS	DOLLARS	CENTS
19	Del 1	Hot mix asphalt 9.5M64 surface course	77 TON	110.00		8470.00	
TOTAL DELETION ITEM "1"						\$	<u>8470.00</u>

Time for completion of this Contract is 120 calendar days.

Quantities are not guaranteed. Final payment will be based on actual quantities.

C 4. BIDDER agrees that the Work will be substantially complete within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment within 120 calendar days after the date when the Contract Time commences to run.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

C 5. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

SUBMITTED on JUNE 30th, 20 20.

NOTICE OF AWARD

Dated _____, 20

TO:

(Bidder)

ADDRESS:

OWNER'S PROJECT NO. PMI00628.01

PROJECT: IMPROVEMENTS TO TRACEY DRIVE

OWNER'S CONTRACT NO. _____

CONTRACT FOR _____

(Indicate total Work, alternates or section of Work awarded)

You are notified that your Bid dated _____ for the above Contract has been considered. You are the apparent successful bidder and have been awarded a contract for _____

The Contract Price of your contract is _____

Six copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Six sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by _____.

1. You must deliver to the OWNER six fully executed counterparts of the Agreement including all the Contract Documents. This includes the six sets of Drawings. Each of the Contract Documents must bear your signature on the cover page.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders (paragraph B3.10) General Conditions (paragraph F5.01) and Supplementary Conditions (paragraph G5.01).

STANDARD FORM OF AGREEMENT
 BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED SUM

IMPROVEMENTS TO TRACEY DRIVE

BOROUGH OF MILLTOWN, MIDDLESEX COUNTY
 NEW JERSEY

THIS AGREEMENT made as of the ____ day of _____

in the year 20__ by and between:

The Borough of Milltown, 39 Washington Avenue, Milltown, NJ 08850
 (hereinafter called OWNER)

 (hereinafter called CONTRACTOR)

WITNESSETH THAT OWNER AND CONTRACTOR in consideration of the mutual covenants hereafter set forth, agree as follows:

D 1. WORK. The CONTRACTORS shall perform all Work as specified or indicated in the Contract Documents for the completion of the Project generally described as follows:

The project generally consists of milling and resurfacing Tracey Drive from Fisher Drive to Albert Avenue as well as removal and replacement of the curb and sidewalk and other related work.

D 2. ENGINEER. The Project has been designed by:

MICHAEL J. McCLELLAND, P.E.
 BOROUGH ENGINEER
 CME ASSOCIATES
 3141 Bordentown Avenue
 Parlin, New Jersey 08859

who will act as ENGINEER in connection with completion of the Project in accordance with the Contract Documents.

D 3. CONTRACT TIME. The Work will be substantially completed within 90 days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions or modified in the Supplementary Conditions.

D 4. CONTRACT PRICE. OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows:

SEE PROPOSAL BID FORM

D 5. APPLICATIONS FOR PAYMENT. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be reviewed by ENGINEER as provided in the General Conditions.

D.6 PROGRESS AND FINAL PAYMENTS. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as approved by ENGINEER, on or about the third Monday of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in Paragraph 14.01 of the General Conditions and Supplemental General Conditions Section G.14.02.

D 6.1. Prior to Substantial Completion progress payment will be in an amount equal to:

90% of the Work completed on Contracts less than \$100,000.
98% of the Work completed on Contracts of \$100,000 or more.

D 6.2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 98% of the Contract Price, less retainages as ENGINEER shall determine in accordance with Paragraph 14.02 of the General Conditions and/or retainage indicated under Supplementary Conditions.

D 6.3. Upon final completion of the work and settlement of all claims, OWNER shall pay the remainder of the Contract Price less retainage under Supplementary Conditions.

D 7. CONTRACT DOCUMENTS. The Contract Documents which comprise the contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:

- D 7.1. This Agreement,
- D 7.2. Exhibits to this Agreement (if any),
- D 7.3. CONTRACTOR'S Bid and Bonds,
- D 7.4. Notice of Award,
- D 7.5. Instructions to Bidders,
- D 7.6. General Conditions,
- D 7.7. Supplementary Conditions,

- D 7.8. Specifications - Divisions 1 and 2
- D 7.9. Drawings as listed in Section "H" of the Contract Documents,
- D 7.10. Addenda numbers _____ to _____, inclusive, and
- D 7.11. Any modifications, including Change Orders, duly delivered after execution of this Agreement.

D 8. MISCELLANEOUS.

D 8.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

D 8.2. Neither OWNER nor CONTRACTOR shall, without prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents; and specifically, CONTRACTOR shall not assign any moneys due or to become due without the prior written consent of OWNER.

D 8.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents.

D 8.4. The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a duly executed written instrument.

D 9. OTHER PROVISIONS.

D 9.1. Contract drawings. The Contract Drawings which accompany these specifications and form a part of the Contract Documents are entitled as indicated in Section H - Contract Drawings.

D 9.2. Agreement to Do All Work and to Accept all Conditions. The Contractor agrees to furnish all material, to fully and faithfully construct, perform, and execute all work in accordance with the Contract Drawings and Specifications, and to furnish all labor, tools, implements, machinery, forms and transportation necessary and proper for the completion of the job at the prices named by him in the itemized proposal.

D 9.3. Modification of Contract. The Contractor in entering into this contract understands that the Owner reserves the right to modify to the extent herein provided, the location, character, grade or size of the work or appurtenances, whenever in his opinion he shall deem it necessary or advisable to do so. The Contractor shall and will accept such modifications when ordered in writing by the Owner through the Engineer, and the same shall not violate or void this Contract. Any such modifications so made, shall not, however, subject the Contractor to increased expense without equitable compensation, which shall be determined by the Engineer, subject to the approval of the Owner. If such modifications, if any there be, result in a decrease in the cost of work involved, an equitable deduction from the Contract price shall be made, as determined by the Engineer. The Engineer's determination of any such additional compensation or of any deduction shall be based upon the bids submitted and accepted. In no event shall any modifications in the work shown on the Contract Drawings and in the Specifications be made unless the nature and extent thereof has first been certified by the Engineer in writing and sent to the Contractor.

D 9.4. Increase or Decrease of Quantities Elimination of Items. In entering into this Contract, the Contractor agrees that the quantities of work as stated in said proposal are only approximate, and that during the progress of the work, the Owner may find it advisable and shall have the right to omit portions of the work and to increase or decrease the quantities and the Owner reserves the right to add to or take from the amount of the work as may be necessary to complete the work in a manner satisfactory to the Owner.

The Contractor shall and will at no time make claim for anticipated profit or loss of profits, because of any difference between the quantities of the various classes of work actually done, or of the materials actually furnished, and the said estimated quantities.

D 9.5. Equal Employment Opportunity/Affirmative Action. Mandatory language, Alternate #2:

"The parties to this contract agree to incorporate into this contract the mandatory language of subsection 3.4(a) of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of said subsection 3.4(a) provided that said subsection shall be applied subject to the terms of subsection 3.4(d) of said regulations."

"The parties to this contract agree to incorporate into this contract the mandatory language of subsections 7.4(a) and (b) of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of subsections 7.4(a) and (b)."

D 9.6. State Grant Funds. This project is partially funded by a state grant from the "1984 Transportation Trust Fund Authority Act". CONTRACTOR agrees to furnish materials and/or install and construct improvements in strict compliance with the Contract Documents and agrees to the assessment of any penalties, and/or to complete required corrective WORK based upon inspection and sampling tests results determined in accordance with the Contract Documents which disclose defective or substandard WORK.

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

This Agreement will be effective on _____, 20____.

OWNER: _____ CONTRACTOR: _____

BY _____ BY _____
(NAME) (NAME)

_____ MAYOR _____
(TITLE) (TITLE)

_____ (SIGNATURE) _____ (SIGNATURE)

ATTEST _____ ATTEST _____
BOROUGH CLERK CORPORATE SECRETARY

ATTEST _____ ATTEST _____

Address for giving notices: Address for giving notices:

Attn:

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

License No. _____

Agent for service of process: _____

attach evidence of authority to sign.) (If CONTRACTOR is a corporation,

OWNER'S SEAL

CONTRACTOR'S SEAL

SECTION E

NEW JERSEY STATUTORY FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned

_____ as Principal and

_____ as Sureties, are hereby held and firmly bound unto _____ in the penal sum of Dollars, for the payment of which will and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this _____ day of _____ 20

The Condition of the above obligation is such that whereas the above named principal did on the _____ day of 20____, enter into a contract with _____ which said contract is made a part of this bond the same as though set forth herein:

NOW, if the said _____ shall well and faithfully do and perform the things agreed by

to be done and performed according to the terms of said Contract, and shall pay all lawful claims of subcontractors, materialmen, laborers, persons, firms or corporations for labor performed or materials, provisions, provender or other supplies or teams, fuels, oils, implements or machinery furnished, used or consumed in the carrying forward, performing or completing of said Contract, we agreeing and assenting that this undertaking shall be for the benefit of any subcontractor, materialman, laborer, person, firm or corporation having a just claim, as well as for the obligation herein; then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of said Contract or in or to the plans and specifications therefore shall in any way affect the obligations of said surety on its bond.

Principal

Surety

(seal)
(acknowledgments)

NOTICE TO PROCEED

Dated _____, 20__

TO: _____
(Contractor)

ADDRESS: _____

OWNER'S PROJECT NO. _____

PROJECT _____

OWNER'S CONTRACT NO. _____

CONTRACT FOR _____

(Indicate name of Contract as it appears in the Bidding Documents)

You are notified that the Contract Time under the above contract will commence to run on _____, 20__ . By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion and Final Completion are _____, 20__ and _____, 20__ , respectively.

Before you may start any Work at the site, paragraph 2.7 of the General Conditions provides that you and Owner must each deliver to the other (with copies to ENGINEER) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also before you may start any Work at the site, you must
(add other requirements)

(Owner)

BY _____
(Authorized Signature)

Copy to ENGINEER
(Use Certified Mail,
Return Receipt Requested)

(Title)

SECTION F

STANDARD GENERAL CONDITIONS OF THE CONTRACT

The enclosed "Standard Conditions of the Construction Contract", totaling 68 pages, as prepared by the Engineers Joint Contract Documents Committee, and this cover page constitutes Section F of this Contract Document.

All provisions not amended or supplemented by the Supplementary Conditions, Section G of this Contract Document, are in full force and effect.

The following provisions are amended or supplemented by the Supplementary Conditions:

F Section Article

G Section Article

F 1.01	G1.01
F 2.03	G2.03
F 2.05	G2.05
F 3.01	G3.01
F 5.01	G5.01
F5.03	G5.03
F5.04	G5.04
F6.01	G6.01
F 6.02	G6.02
F6.06	G6.06
F6.13	G6.13
F6.18	G6.18
F6.20	G6.20
F9.04	G9.04
F12.02	G12.02
F12.03	G12.03
F14.02	G14.02
F14.07	G14.07
-	G14.10
-	G14.11
-	G14.12
-	G17.07
-	G17.08
-	G17.09

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 and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 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. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *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.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. *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.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such

construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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

1.02 *Terminology*

- A. The words and terms discussed in Paragraph 1.02.B through F 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 Paragraph 9.09 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 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

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

- 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. 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 Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

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

Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *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 the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
 - 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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *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 2.05.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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. 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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. 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.
- 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.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- 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 the Work is to be performed 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.

4.02 *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 contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their 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.

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments:*

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

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data 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 such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

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

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- 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.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their 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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. 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 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is

responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent 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 each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall 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 requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly

licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

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

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, 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;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full 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 interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

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

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

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds

and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. 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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- 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.

6.02 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *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.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of 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.

6.04 *Progress Schedule*

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

6.05 *Substitutes and "Or-Equals"*

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

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

- a. in the exercise of reasonable judgment Engineer determines that:
 - 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; and
 - 3) it has a proven record of performance and availability of responsive service.
- 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.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. 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:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;

- 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) 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
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- 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.

6.08 *Permits*

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

6.09 *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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- 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.

6.11 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full

responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner 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 claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, 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 all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- 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 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or 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 for protection of the Work 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *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.

6.16 *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.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
 - 1. *Shop Drawings:*
 - a. Submit number of copies specified in the General Requirements.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures:

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - 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 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 and approval of that 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 both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval 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 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

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

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner 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 representation of 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 or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner 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 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.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.

6.21 *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 law.

- 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, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to 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 6.21, 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 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

7.03 *Legal Relationships*

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

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *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.

8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

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

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

10.02 *Unauthorized Changes in the Work*

- 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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

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

10.04 *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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, 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, 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 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of 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 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

- 1. Payroll costs and other compensation of 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's 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 Paragraphs 11.01.A.

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

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

11.02 *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:*
1. Contractor agrees that:
 - a. 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
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
1. 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.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 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; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by 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 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.

- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, 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.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

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

13.04 *Uncovering Work*

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

parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

13.07 *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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 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 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. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- 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 13.07, 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 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times 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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

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

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established 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 or other

arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations 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 9.07, 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 Documents; 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 moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

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

- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
 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 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive

certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. 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 tentative list.

14.05 *Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner 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.

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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for

Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. 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
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or

remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven 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;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

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

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

- 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

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

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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SECTION G. SUPPLEMENTARY CONDITIONS

INTRODUCTION

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 edition), herein incorporated as Section F of the Contract Document) All provisions which are not so amended or supplemented remain in full force and effect.

G 1.01 DEFINITIONS

Definitions contained in the General Conditions Article F.1.01 are supplemented with the following additional definitions.

SURETY - The corporate body which is bound with and for the Contractor and which engages to be responsible for the faithful performance of the contract, and to indemnify the Owner against all claims for damages.

INSPECTOR - The representative of the Engineer designated to observe the work for which these specifications are intended.

TESTING LABORATORY - A laboratory selected by the Owner for the inspection and testing of materials.

MANUFACTURER - Shall be the manufacturer of the equipment specified.

STANDARD SPECIFICATIONS - The New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, dated 2019, and the NJDOT supplementary specifications for State Aid Projects 2019 as supplemented, superseded and/or clarified by the Contract Documents.

SOIL EROSION STANDARDS - The "Standards for Soil Erosion and Sediment Control in New Jersey" adopted September 9, 1974 by the New Jersey State Soil Conservation Committee, as amended and supplemented to date.

G 2.03 NOTICE TO BEGIN WORK

Article F 2.03 of the General Conditions is supplemented as follows.

- B. The Contractor shall start work on or before the date specified herein or as documented in the Notice to Proceed, or if no date is so specified, within ten (10) days of the mailing of the notice by the Engineer to the Contractor directing him to proceed with work. The Contract time shall commence in accordance with the effective date of the Notice to Proceed.

G 2.05 BREAKDOWN COSTS OF LUMP SUM ITEMS – Article F2.05A is supplemented as follows:

4. Before the preparation of the first estimate, the Contractor shall submit for the Engineer's approval a schedule of breakdown costs of all lump sum bid items into a series of minor subdivisions in the manner to be directed by the Engineer and for the sole purpose of determining the estimates of work done for partial payments. Revisions to the schedule, if required, shall be furnished acceptable to the Engineer prior to consideration for partial payment.

G 3.01 CONTRACT DOCUMENTS - Article F3.01 is supplemented as follows:

DIMENSIONS

WORK REQUIRED BY THE CONTRACT DOCUMENTS

- D. Figured dimensions on the Contract Drawings shall be given preference over scaled dimensions, but shall be checked by the Contractor before starting construction. Any errors,

omissions or discrepancies shall be brought immediately to the attention of the Engineer, and his decisions thereon shall be final.

- E. The Contract Documents require the furnishing of all labor, superintendence, materials, plant, power, light, heat, fuel, water, tools, appliances, equipment, supplies and other means of construction necessary or proper for performing and completing the work. In general the completed work shall consist of the improvements and appurtenances completely installed, successfully tested and in "ready to operate" condition.

The Contractor shall perform and complete the work in the manner best calculated to promote rapid construction consistent with safety of life and property, and to the satisfaction of the Engineer, and in strict accordance with the Contract Documents. The Contractor shall clean up the work and maintain it during and after construction, until accepted, and shall do all work and pay all costs incidental thereto. He shall repair or restore all structures and property that may be damaged or disturbed during performance of the work.

Detailed specifications for materials, equipment, workmanship and all items pertaining to a particular part of the work may be found under those parts of the Contract describing the work to be done and the methods of measurement and payment for the various Bid Items.

All work called for in the Specifications applicable to this Contract, but not shown on the plans in their present form, or vice versa, shall be of the like effect as if shown or mentioned in both. Work not specified in either the Plans or in the Specifications, but involved in carrying out their intent or in the complete and proper execution of the work, is required and shall be performed by the Contractor as though it were specifically delineated or described.

The apparent silence of the Specifications as to any detail, or the apparent omission from them of a detailed description concerning any work to be done and materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only material and workmanship of the best quality is to be used, and interpretation of these Specifications shall be made upon that basis.

G 5.01 PERFORMANCE, PAYMENT AND OTHER BONDS: Article F5.01 is supplemented as follows:

- D. If required by the PROPOSAL, Contractor shall submit an executed Bond, in an amount at least equal to the Contract price covering all payments for labor, equipment and materials obligations arising from performance of the Contract.
- E. The Contractor shall submit an executed Maintenance Bond with the amount and term as required by the Contract Documents. The Maintenance Bond shall serve as security for the Owner relative to the obligations of the Contractor during the maintenance Period.
- F. These bonds must be prepared in a satisfactory form and having as surety thereon such surety company or companies as are acceptable and approved by the Owner, and as are authorized to transact business in this State. Copies of the bonds shall be sent to the Engineer at the time of submission to the Owner.

G5.03 CERTIFICATES OF INSURANCE- Article F5.03 is supplemented as follows:

- F. The contractor shall file with the Owner and Engineer before commencing work under this contract, Certificates of Insurance, or policies where required, which certificates shall bear the following information:

1. Name and address of the insured.
2. Title and Location of the operations to which the insurance applies
3. The number of the policy and the type or types of insurance in force thereunder on the date borne by such Certificate.
4. The expiration date of policy and the limit or limits of liability thereunder on the date borne by such certificate.
5. A statement that the insurance of the type afforded by the policy applies to all of the operation on and at the site of the project which are undertaken by the insured during the performance of his contract or subcontract.
6. Indication of Insured, additional insured and Co-insured Parties.
7. A statement as to the exclusions of the policy, if any.
8. A statement showing the method of cancellations provided for by the policy. If cancellations may be affected by the giving of notice to the insured by the insurer, the policy shall provide for the lapse of such number of days following the giving of such notice that in the ordinary course of transmission the insured will have actually received such notice at least thirty (30) days before the cancellation becomes effective. Notice of cancellation shall also be delivered to Owner and Engineer not less than thirty (30) days prior to such lapse or termination.

G 5.04 CONTRACTOR'S INSURANCE – Article 5.04 is supplemented as follows:

- C. If, at any time, any of the said policies shall be or become unsatisfactory to the Owner, as to form or substance, or if a company issuing any such policy become unsatisfactory, the contractor shall promptly obtain a new policy, and submit the same to the Owner for approval and/or submit certificate thereof as required. Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this Contract may, at the election of the Owner, be forthwith declared suspended, discontinued or terminated. Failure of the Contractor to take out and/or maintain or the taking out and/or maintenance of any required insurance shall not relieve the Contractor from any liability under the Contract nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

All required insurance must be in effect and continued so during the life of the Contract in not less than the amounts stated hereinafter.

It is understood that the term "Owner" shall be deemed to include all authorities, boards, bureaus, commissions, divisions, districts, departments and offices of the Owner and the individual members thereof in their official capacities.

The insurance payable under these policies shall be applied by the Company first, to the protection of the Owner and the remainder, if any, to the other named insureds.

In the event that claims in excess of these amounts are filed by reason of any operations under the Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims as may be determined by the Owner.

Amounts of Insurance required shall not be less than the amounts shown below and certificates, or full copies of policies must be furnished as noted below.

The Contractor shall obtain an Owner's Protective Policy as described below or, if such Policy is not required by the Proposal, the Owner and Engineer shall be named as co-insured parties on the insurance policies to be obtained by the Contractor herein.

➤ WORKMEN'S COMPENSATION

- Coverage A - New Jersey Statutory
- Coverage B - Unlimited

➤ COMPREHENSIVE GENERAL LIABILITY LIMITS -including explosion, collapse, underground utilities, contractual, independent contractors, and completed operations coverage.

- PROPERTY DAMAGE

for any one accident	\$ 500,000
for all accidents	\$1,000,000
- PUBLIC LIABILITY

for any one person	\$2,000,000
for any one accident	\$5,000,000

➤ AUTO AND/OR TRUCK LIABILITY

- PROPERTY DAMAGE

for any one accident	\$ 500,000
for all accidents	\$1,000,000
- BODILY INJURY LIABILITY

for any one person	\$2,000,000
for any one accident	\$5,000,000

➤ OWNER'S PROTECTIVE POLICY - ORIGINAL POLICY REQUIRED

An Owner's Protective Policy shall be required unless the terms of the proposal indicate otherwise

- NAMED INSURED - Owner, as identified in the Proposal and Agreement
- CO-INSURED - Engineer, as identified in the Proposal and Agreement

- PROPERTY DAMAGE

one accident	\$ 500,000
all accidents	\$1,000,000
- PUBLIC LIABILITY

one accident	\$2,000,000
All accidents	\$5,000,000
- AUTOMOBILE AND/OR TRUCK PROPERTY DAMAGE LIABILITY

for any one accident	\$ 500,000
for all accidents	\$1,000,000
- AUTOMOBILE AND/OR TRUCK BODILY INJURY LIABILITY

for any one person	\$2,000,000
for any accident	\$5,000,000

➤ COMPLETED OPERATIONS COVERAGE for a minimum period of two years after Final Payment

➤ SPECIAL INSURANCE REQUIREMENTS (where applicable)

- Marine Work -Longshoremen's & harbor -Workers Endorsement, or - Maritime Endorsement
- Builder's Risk -One Hundred (100%) Percent of the Structure's Value
- Railroad Protective -Insurance Requirements Equal to that required by the Railroad

G 6.01 CONTRACTOR'S REPRESENTATIVE ALWAYS PRESENT - Article F6.01 is supplemented as follows:

- C. The Contractor shall give his personal supervision to the faithful prosecution of the work, and in case of his absence, shall have a competent, experienced and reliable foreman or superintendent, acceptable to the Owner, on the site, who shall follow without delay all instructions of the Owner or the Engineer or their assistants in the prosecution and completion of the work and every part thereof, with full authority to supply men, material, and equipment immediately. Incompetent, inexperienced, unreliable, unruly, uncooperative and/or otherwise unacceptable superintendents or foremen shall be promptly removed and acceptably replaced as ordered by the Engineer.

G 6.02 OVERTIME WORK - Article F6.02 is supplemented as follows:

- C. Unless otherwise especially permitted, or specifically required by the Contract Documents, no work shall be done between the hours of 6:00 P.M. and 7:00 A.M., nor on Saturdays, Sundays, or any legal holiday, except as necessary for the proper care and protection of work already performed. If it shall become absolutely necessary to perform overtime work, the Engineer shall be informed a reasonable time in advance of the beginning of performance of such work. Only such work shall be done at night as can be done satisfactorily and in a first- class manner. Good lighting and all other necessary facilities for carrying out and inspecting the work shall be provided and maintained at all points where such work is being done. Except for emergencies, no work requiring inspections shall be completed before 8 A.M. or after 4:30 P.M. without prior approval of the Engineer.

G 6.06 SUBCONTRACTING Article F6.06 is supplemented as follows:

- H. The Contractor shall not subcontract any part of the work included under this Contract without the previous written consent of the Owner. In making application for subcontracting the portion of the work, the Contractor shall state in writing, the portion of the work which each sub-contractor is to do or the material he is to furnish, his place of business, and such other information which may be required in order to ascertain whether such sub- contractor is responsible, reliable, and able to perform the work or to furnish the materials as called for in the Specifications. THE CONTRACTOR SHALL DO NOT LESS THAN FIFTY (50) PERCENT OF THE TOTAL WORK UNDER THIS CONTRACT WITH HIS OWN FORCES. Sub-contracting if permitted, shall not relieve the Contractor of any of his obligations under this Contract. Supervision by an expert from a manufacturer does not require approval by the Owner.

The Contractor is required to furnish and the sub-contractor shall be required to read the entire specifications and examine every Contract plan before entering into any agreement. Neither the Contractor nor a sub-contractor shall file any claims or the Owner accept such claims based upon any misunderstandings of what work he shall do, what materials he must furnish, or how he shall perform the work.

Nothing contained in this Contract shall create any contractual relations between any sub-contractor and the Owner.

Within thirty (30) days, and prior to additional payments by the Owner, after any Contractor receives payment for the work performed under this Contract, he shall pay each sub-contractor the amount allowed the Contractor for and on account of the work performed by the sub-contractor to the extent of the sub-contractor's interest therein.

G 6.13 NOTICE FOR WORK NEAR UNDERGROUND OR OVERHEAD UTILITIES: Article F6.13 is supplemented as follows:

- G. The Contractor is required to notify utility companies and municipal owners when construction or blasting or drilling is to be done near underground or overhead utilities. For any construction activity near pipelines conveying combustible materials, the Contractor shall also give ample notice to all private, corporate or municipal owners before work is to be done near any such utility or facility.

G 6.18 RATE OF PROGRESS - Article F6.18 is supplemented as follows:

- B. If in the opinion of the Engineer, the rate of progress appears at any time to be insufficient to enable the work to be completed within the time specified, he may order the Contractor to speed the prosecution of his work by supplying additional men, materials, and equipment, by following different methods of construction, or otherwise. Failure of the Engineer to so order the Contractor shall not relieve the Contractor from his obligation to complete the work within the time specified, nor shall compliance with the order subject the Owner to claim for extra compensation.

G 6.20 RISKS AND INDEMNIFICATIONS ASSUMED BY CONTRACTOR - Article F6.20 is supplemented as follows:

- D. The Contractor shall be the insurer of the Owner, its officers, agents and employees, against the following distinct and several risks, whether they arise from acts or omissions of the Contractor, of the Owner, of the Engineer, or of third persons, excepting only risks which result solely from affirmative, willful acts of the Owner, subsequent to the acceptance of his proposal:
1. The risk of loss or damage to the work prior to final payment. In the event of such loss or damage, the Contractor shall forthwith repair, replace and make good the work without cost to the Owner.
 2. The risk of injuries or damages, direct or consequential, to the Owner, its officers, agents and employees, and to its or their property, arising out of or in connection with the performance of the work, whether sustained before or after final payment. The Contractor shall indemnify the Owner, its officers, agents and employees for all such injuries and damages and for all loss suffered by reason thereof.
 3. The risk of claims and demands, just or unjust, by third persons against the Owner, its officers, agents and employees, arising or alleged to arise out of the performance of the work as well as for the use of patents, patented articles, equipment or process, or a combination of any and all of the aforesaid, whether made before or after final payment. The present undertaking of the Contractor shall be construed to extend to and to include claims and demands made or threatened to be made by third persons against the Owner or any of its employees or agents. The Contractor shall indemnify the Owner, its officers, agents and employees, against and from all such claims and demands and for all loss and expense incurred by it and them in the defense, settlement or satisfaction thereof.

Neither the acceptance of the completed work nor payment therefore shall release the Contractor from his obligation under this Article, provided, however, that the risks and indemnifications assumed by the Contractor shall not insure directly or indirectly to the benefit of any insurer under policies of insurance issued in compliance with this Contract.

G 9.04 DRAWINGS MAY BE SUPPLEMENTED - Article F9.04 is supplemented as follows:

- B. The Contract Drawings may be supplemented from time to time by the Engineer and/or as the work progresses, by the Contractor, subject to approval by the Engineer, and as may be required to illustrate the work.

Supplementary drawings when issued by the Engineer will be furnished to the Contractor or Contractors affected by such drawings.

Supplementary drawings when issued by the Contractor shall, after approval by the Engineer, be furnished in sufficient quantity to those other Contractors, if any there be, who in the opinion of the Engineer are affected by such drawings at no additional cost to the Owner.

G 12.02 CHANGE OF CONTRACT TIMES - Article F12.02 is Supplemented as follows:

TIME OF ESSENCE
TIME EXTENSIONS

- C. Inasmuch as the provision of this contract relating to the time for performance and completion of the work are for the purpose of enabling the Owner to proceed with the construction of a public improvement in accordance with a predetermined program, such provisions are of the essence in the contract.
- D. The Engineer reserves the right to suspend the work wholly or in part for such a period or periods as he may deem necessary, when in his opinion weather or other circumstances or conditions are unsuitable for the proper prosecution of the work.

In addition, the Contractor may, of his own volition, request the right to suspend work for reasons of a long period of inclement weather, for delays beyond his control in obtaining key material and equipment or otherwise. The Engineer may permit such suspension subject to the approval of the Owner or may reject the Contractor's application and direct him to proceed with the work.

If, due to a continuation of unsatisfactory weather or other conditions, it becomes necessary to close the work, the Contractor shall at his own sole cost and expense perform such incidental work as may be required to protect the work already completed and to provide means for the full and safe use of the area involved in his operations.

An extension of time of completion may be considered provided that in the opinion of the Engineer, work of other Contractors in adjacent areas or work of public utility corporations and other public or private parties or other valid causes have ACTUALLY DELAYED or will delay completion and further provided that the Contractor has diligently complied with those sections of the Contract Documents governing the progress of the work and cooperation with other Contractors. No allowance will be recommended for ordinary delays incident to work of this character. No claims for extension of time will be considered unless the Contractor shall have filed either a written claim or a written notice of intent to make such claim within thirty (30) calendar days after the start of the condition or cause upon which said claim is based.

The Owner will be the final judge of the validity of claims for time extensions, and the time granted, if any, will be that period that the Owner considers as an actual delay sufficient to cause the postponement of the completion of this Contract. The time extension granted may not coincide with the number of days requested by the Contractor for that particular item because there may be other items of work under construction at the same time on which claims merit similar consideration. In other words, concurrent delays will not be allowed in full by the Owner.

Time extensions when and if allowed by the Owner will be in lieu of money damages, and if accepted by the Contractor, automatically gives the Owner and Engineer due notice of the intent of waiving all claims for money damages.

G 12.03 ENGINEERING CHARGES – Article F12.03 is supplemented as follows:

- F. When the work embraced in the Contract is not completed within the contract time, engineering and inspection expenses incurred by the Owner upon the work from the completion date originally fixed in the Contract after taking into consideration any approved time extensions, to the final date of completion of the work and or overtime expenses for inspection after or before established work hours, may be charged to the Contractor and be deducted from the final moneys due the Contractor. Extra work or supplemental contract work added to the original contract, as well as extenuating circumstances beyond the control of the Contractor, will be given due consideration of the Owner before assessing engineering and inspection charges against the Contractor. Such deduction may be in addition to deductions for Liquidated Damages.

G 14.02 PROGRESS PAYMENTS - Article F14.02 is supplemented as follows:

- E. The Contractor may, from time to time as the work progresses but not more often than once a month, on such days as the Owner may fix, make an approximate estimate in writing to the Engineer such as in the opinion shall be just and fair, of the amount and value of the work done and materials incorporated into the work since the commencement of the contract by the Contractor in his performance of the same. At the option of the Engineer allowances may be included in such estimates for material delivered and properly stored on the site preparatory to use in the work. Allowances for such material shall not exceed ninety (90) percent of the cost of the material but such percentage up to this limit shall be at the sole discretion of the Engineer. The Engineer shall and will review the Contractor's estimate, and when verified to be just and fair shall approve same for payment by the Owner.

The amount of any estimate, based upon the unit prices contained in the proposal and including any allowance for approved extra work less a fixed percentage retained and less the total sum previously paid on former estimates shall constitute the payment due and to be made to the Contractor within a reasonable time after the date of such estimate (except in case of Final Estimate). On all estimates except the final, the fixed percentage retained shall be ten (10) percent, such retained amounts being held until the final estimates except as hereafter provided.

Per N.J.S.A. 40A:11, the New Jersey Local Public Contracts Law, and particularly N.J.S.A. 40A:11-16.1 and 40A:11-16.3, when the total price of the Contract exceeds \$100,000.00, maximum of two percent (2%) withheld from the amount due on partial (progress) payments pending completion of the contract or agreement.

All estimates, including the final, will be made for actual quantities of work performed and materials in place as determined by the measurements of the Engineer, and this determination as to the quantities involved in the contract shall be accepted as final, conclusive, and binding upon the Contractor. However, the contractor may check such measurements if he so desires.

An increase or decrease in quantity for any unit price item of the proposal shall not be regarded as a sufficient ground for an increase or decrease in the unit price, nor in the time allowed for the completion of the work.

For computation of the quantities to be paid for under the various items of this contract, it is agreed that the planimeter shall be considered an instrument of precision and quantities computed from areas obtained by its use shall be accepted by all parties hereto as accurate.

Any estimate shall be subject to correction in any succeeding estimate.

As applicable under NJSA 40A:11, the Owner shall, within thirty days of presentations to him of an approved application of payment, pay the contractor the amount approved by the Engineer, subject to reductions under the Contract. .

G14.07 FINAL PAYMENT - Article F14.07A is supplemented as follows:

4. The final estimate will be prepared after the work has been tested and approved by the Engineer as required elsewhere herein and after acceptance has been given by the Owner. The fixed percentage retained on the final estimate for the guarantee periods shall be five (5) percent of the total value of the work done and materials incorporated therein including any agreed compensation for any authorized extra work, except as herein after provided.
5. As applicable under NJSA 40A:11 for those projects where the total price of the Contract exceeds \$100,000.00, the Contractor may, in lieu of the one year five percent (5%) cash maintenance bond described above, elect to provide a Maintenance Bond in the amount and term required by the Instructions to Bidders, and commencing the date of final project acceptance by the Owner and issued by a surety acceptable to the Owner and conforming with the requirements of General Conditions. If the Proposal does not specify the term and amount of the Maintenance Bond, it shall be provided for a one year period, commencing upon Acceptance by the Owner, and be in an amount equal to at least 15% of the Final Contract amount.

G14.10 PAYMENTS TO CONTRACTOR AND COMPLETION – Article F14 is supplemented as follows:

ACCEPTANCE OF WORK BY OWNER NOT A WAIVER OF CONTRACT
CONTRACTOR'S OBLIGATION TO COMPLETE WORK
SUPPLEMENTAL FINAL ACCEPTANCE REQUIREMENTS

- 14.10. Neither the acceptance of the work or any part thereof, nor any payment therefore, nor any order or certificate of the Engineer, or any officer, agent or employee of the Owner, nor any extension of time, nor any possession taken by the Owner, nor any permission or direction to continue with the performance or work, nor any performance by the Owner of any of the Contractor's duties or obligations, nor any other thing done or omitted to be done by the Owner, its officers, agents or employees, shall be deemed to be a waiver of any provision of this Contract or of any rights or remedies to which the Owner may be entitled because of any breach thereof, EXCEPTING ONLY A RESOLUTION BY THE OWNER PROVIDING EXPRESSLY FOR SUCH WAIVER. No cancellation, revision, or annulment hereof in whole or as to any part of the work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Owner may be entitled because of such breach. Moreover no waiver by the Owner of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.
- 14.11 The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. Neither recommendation of any progress or final payment by the Engineer, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract, nor any use or occupancy of the Work or part thereof by the Owner, nor any act of acceptance by Owner nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by the Engineer, nor any correction of defective work by the Owner will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the work in accordance with the Contract Documents, except as provided for under Article F14.09.
- 14.12 Prior to Acceptance of the work, the Contractor shall, in addition to requirements herein, have completed the following:
 - Completed all deficiency items

- Provided all administrative documentation for the project
- Provided as-built information for record purposes
- Provided proper and complete training to Owner personnel
- Provided all Warranties, Operation and Maintenance manuals and other necessary equipment documentation
- Submit the following executed closeout documentation:
 - Conditional Waiver and release Upon Final Payment
 - Consent of Surety to Final Payment
 - Contractors Affidavit of Payment of Debts and Claims
 - Contractors Affidavit of Release of Liens
 - Guarantee for Correction of Work After Substantial Completion or Final Payment

G 17 MISCELLANEOUS - Article F17 is supplemented as follows:

17.07 JERSEY STATUTE P.L. 1975, C.127 - AFFIRMATIVE ACTION

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, 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 Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor

or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) electronically provided to the public agency by the Division, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27)**.

G 17.08 MINIMUM WAGE RATES

The Contractor and all Sub-contractors shall pay to all laborers, mechanics, operators, and etc. employed for the construction covered by this Contract not less than the minimum prevailing rates of pay and benefits as determined by the New Jersey Department of Labor and Industry. A copy of these rates are on file at the office of the Engineer for review by all bidders. The Contractor is responsible to comply with the regulations of the Department of Labor and Industry and shall provide that Department with the information required. Upon award of the Contract, the Contractor shall request from the Engineer a copy of the prevailing wage rates which is to be posted in a prominent and easily accessible place at the site of the work or at such places as are used to pay workmen their wages.

In addition, and ONLY IF THE PROJECT IS PARTIALLY OR TOTALLY FUNDED WITH FEDERAL FUNDS, the Contractor and all sub-contractors, agree to pay all laborers, and etc. employed for the work of this contract not less than the minimum prevailing rates of pay and benefits as determined by the Federal Government applicable to the general location of the project.

Prevailing minimum wage rates applicable to this project at the time of award will be incorporated in these documents on the following pages and form a part of the Contract Agreement.

G 17.09 CERTIFIED PAYROLL RECORDS

The Contractor and all Subcontractors shall comply with all provisions of N.J.A.C. 12:60-1 et seq. and specifically, the public work employers (Contractors and Subcontractors) shall submit to the Owner certified payroll records each payroll period within 10 days of the payment of wages. A certified payroll record is defined as "a payroll record which is attested to by the employer, or the Owner of the company doing business as the employer, or a corporate officer of such company, or an authorized agent of the employer."

The Owner shall then receive, file, and store in a depository of their choice, said certified payroll records and shall make said records available for inspection during normal business hours.

A copy of the certified payroll form for submission of the payroll records may be obtained by contacting the Department of Labor, Division of Workplace Standards at (609) 292-2283.

SECTION HENUMERATION OF PLANS AND SPECIFICATIONS

The following are plans (also called drawings) which form part of this contract:

GENERAL TITLE

BOROUGH OF MILLTOWN
MIDDLESEX COUNTY, NEW JERSEY
IMPROVEMENTS TO TRACEY DRIVE

FILE NUMBER

PMI00628.01

SHEET NUMBERSPECIFIC TITLE

1	Title Sheet
2	Estimate-Distribution of Quantities
3	Typical Sections
4	Location Plan, NJDOT Standard Legend and Construction Notes
5	Construction and Soil Erosion & Sediment Control Plan
6	Profile - Tracey Drive
7	Curb Ramp Details
8	Soil Erosion & Sediment Control Notes and Details
9	Construction Staging Plan
10	Construction Details (1 of 2)
11	Construction Details (2 of 2)
12-17	NJDOT Construction Details

STANDARD DETAILS

TECHNICAL SPECIFICATIONS CONSIST OF DIVISION

1 - General Requirements
2 - Site Work
A - Appendix

- Prevailing Wage Rate Determination
- Special Provisions for State Aid Projects

BOROUGH OF MILLTOWN
MIDDLESEX COUNTY, NEW JERSEY
IMPROVEMENTS TO TRACEY DRIVE

SPECIAL PROVISIONS

1. Existing Utilities

The contractor shall coordinate all work with the utility companies in the areas of construction. The contractor shall stake out all proposed curb locations in the vicinity of the relocation work at the on-sight of the project. Information regarding existing utilities has been collected from various sources and the contractor is advised that underground object locations, elevations, or types are not warranted to be approximately correct, nor can they be assumed to be the only subsurface objects, proposed or existing, which may be encountered during the excavation of the work. The contractor shall make all necessary investigations prior to bidding to satisfy himself as to the existing conditions.

The contractor is advised that if any relocation work is required for gas facilities, there is a 12-week waiting period once conflicts are physically identified/confirmed in the field.

According to the *Underground Facility Protection Act* (NJSA 48:2-73/NJAC 14:2-1.1), contractor must give notice of impending construction not less than three or more than ten full business days prior to the start of excavation. This is accomplished by calling the New Jersey "One-Call" system at 1-800-272-1000. This procedure must be done so that all underground facilities can be marked out in the field. Any excavation within 24 inches of a gas facility mark out *must be done by hand*. Any damage done to gas facilities, however minor, must be reported to NJNG immediately by calling 1-800-GAS-LEAK.

2. Notice of Construction

The contractor shall provide a minimum of 72 hours notice to the Borough, the affected residents and the Engineer prior to the start of construction at each street. Contractor shall provide a written notice, a minimum of 24 hours in advance during each phase of construction that may limit access to their property. NO NOTICES SHALL BE DISTRIBUTED THAT HAVE NOT BEEN REVIEWED BY THE ENGINEER.

3. Contractor's Progress Schedule and Construction Scheduling

The contractor shall submit a proposed program of operation for the project prior to commencement of construction which clearly indicates how he proposes to conduct the work to bring about the completion of the project, including the phasing of the street and the proposed coordination of the utility relocation work and roadway construction related items.

4. Construction Contingencies

The contractor's attention is specifically directed to the fact that various items and extra quantities have been included in the bid form for contingency purposes due to the nature of the work to be performed in conjunction with this project.

Accordingly, the contractor is hereby advised prior to submitting his bid that he shall take into account the fact that contingencies have been included in the items and that portions of certain items or entire items may not be utilized by the Owner, depending upon the conditions encountered during the work.

To that end, the initial contract award amount may be significantly higher than the final contract amount, depending upon the actual conditions encountered.

The contractor must satisfy himself by personal examination of location of the proposed work and surroundings thereof, and by such other means that he prefers, and shall not at any time after submission of the bid, dispute the original estimate of the work, nor assert that there was any misunderstanding in regard to the contingencies included in the quantities.

5. Traffic Coordination

One lane of traffic is to be maintained at all times unless otherwise approved by the Engineer. The contractor shall coordinate the proposed construction with residents, businesses, the Borough and the engineer. All driveways and all roadway excavation limits shall be ramped at the end of each working day. All work shall be in accordance with the Manual on Uniform Traffic Control Devices.

6. Access to private properties

The contractor shall not impede access to residential nor commercial driveways without a minimum 48-hour notice to the affected property owner and the Engineer.

7. Protection of Property

The contractor shall take reasonable care and caution to preserve and protect all existing pavements, curbs, grass areas, sidewalks, private and public property along and adjacent to the lines of work. Any destruction of any of the above, beyond the limits of work, caused by careless construction procedures, shall be replaced at the contractor's own expense.

8. Permits

The Contractor shall be responsible for obtaining all permits necessary for construction in accordance with Local, County or State regulations or any other agencies having jurisdiction in these matters.

The Contractor is advised that they are responsible to pay for, acquire, and comply with any road opening permits if required in conjunction with the proposed improvements.

Soil Erosion and Sediment Control Plan Certification:

The contractor is advised that a permit from the Freehold Soil Conservation District is pending and accordingly, the same shall be verified prior to any ground disturbance at the site.

The contractor shall provide a minimum of 72 hours notice to the Freehold Soil Conservation District at Tel. (732)683-8500, prior to the start of ground disturbance. This notice shall be immediately followed by a written notice to the Freehold Soil Conservation District.

9. Clearing Site Bid Requirements

Clearing site shall include the cleaning of existing inlets, manholes and storm sewers within the project limits to provide positive flow from the proposed storm sewer discharge into the existing storm sewer system.

Payment for clearing site shall be made based upon the lump sum price indicated in the bid form. The bidder is advised that

modification of the lump sum price indicated will not be permitted. Payment for any and all items associated with clearing site in excess of the lump sum price indicated shall be included in the prices bid for all items requiring same.

The owner may consider informal or irregular, any proposal that does not comply with these requirements and may reject the proposal under article B.3.5 of the specifications.

10. Sweeping

The contractor is directed that at a minimum all roadways under construction or that have been subject to construction activities shall be swept at a minimum of once a week.

If in the opinion of the Engineer or Borough, disturbances due to construction activities are such that additional sweeping is necessary the contractor shall be notified and required to comply within 24 hours.

The Contractor shall not store material or place excavated material on the existing roadway. Excavated material shall be removed from the site or stored at a designated location.

11. Basic utility services to the residents

The contractor is advised that water and fire service must be maintained at all times for the residents along and in the vicinity of the proposed construction.

There will be no separate payment for temporary water line and temporary water services; all cost shall be included in the prices bid for all bid items.

12. Tree Saving and Removal

The contractor shall provide a New Jersey certified Forester or New Jersey certified Tree Expert during the construction of the improvements to examine, prune and protect the branch and/or root systems of all trees and shrubs to remain or be relocated on the project.

The name and certifications of this person will be provided to the Engineer prior to the commencement of work on the project. All trees to be removed shall be done so by persons certified in New Jersey to work adjacent to overhead electrical lines.

All trees to be removed shall be done so by a person certified

in New Jersey to work adjacent to overhead electrical line.

The contractor must contact the homeowner and the Engineer prior to beginning tree removal work.

13. Irrigation and Sprinkler System Resetting

The contractor must submit the name, address and license number of the subcontractor to be utilized on the project for irrigation and sprinkler system resetting work. The information must be submitted during preconstruction meeting.

14. Funding

The contractor is herein advised that the Improvements to Tracey Drive project is partially funded by a state grant from the "1984 Transportation Trust Fund Authority Act". All work shall be performed in accordance with the contract documents and requirements of the NJDOT.

15. Testing

The contractor is advised that all soil and stone materials must be certified clean by the submission of acceptable TAL/TCL+30 test results prior to delivery of the materials to the site.

16. Milling

The contractor is directed that the time period between the milling and paving operations shall not exceed 24 hours unless otherwise approved by the Engineer. In no case shall the period be greater than 48 hours.

SPECIFICATIONS

DIVISION 1 - GENERAL REQUIREMENTS

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SPECIFICATIONS

DIVISION 1 - GENERAL REQUIREMENTS

1-2.6 PROGRESS SCHEDULE. - Supplement to General Conditions Article F 2.6

Within ten (10) days after the award of the Contract, the Contractor shall submit in writing a proposed program of operation, showing clearly how he proposes to conduct the work so as to bring about the completion of his work within the time limit specified. This program shall outline the proposed sequence of operations, the rates of progress and the dates when each part of his work will be completed. The work under this Contract shall, in general, be so scheduled that the work will be coordinated with work by others on adjacent contracts, if any.

The Contractor shall accompany this schedule with a list of delivery dates for materials and equipment.

This plan of operation may be adjusted and revised as the work progresses, but such changes must have at all times the approval of the Engineer.

In any event it shall be the purpose of the progress schedule to guide the course of the work, and strict adherence to it will be demanded by the Engineer.

If all or part of the work of the Contract will be substantially delayed by the extremes of winter weather, the Contractor shall anticipate such delays, shall prepare his progress schedule in a manner that will minimize the overall effect of such anticipated weather delays, and shall periodically update said schedule in accordance with actual weather delays experienced to that date and anticipated for any subsequent period.

1-4.1 BOUNDARIES OF THE WORK.- Supplement to General Conditions Article F 4.1

The Contractor shall obtain from the Owner all information regarding the areas that may be available for his operations and to what extent and for what period of time he may occupy them.

He shall also obtain from the Municipality, County and/or NJDOT required provisions to provide and maintain traffic along Municipal or County Roads and/or State or Federal Highways approaching or within the site or sites of his work, and he shall comply with the requirements of these public agencies.

1-4.4 LINES AND GRADES. - Supplement to General Conditions Article F 4.4

All work under this Contract shall be constructed in accordance with the lines and grades shown on the Plans or as given by the Engineer. The full responsibility for keeping alignment and grade shall rest upon the Contractor.

Primary reference points for the laying out of the work shall be provided by the Owner.

Lines and grades will be set by a N.J. Licensed Land Surveyor employed by, or retained by the Contractor as the work progresses and will be located to cause as little inconvenience to the prosecution of the work as possible. The Contractor shall so place excavation and other materials so as to cause no inconvenience in the use of the lines and grades established. He shall remove any obstructions placed by him contrary to this provision.

The Contractor shall furnish and maintain at his own expense, stakes, and other such materials, and give such assistance, including qualified helpers, as may be required for setting line and checking grade marks.

The Contractor shall provide grade sheets at least two (2) working days in advance of the time same will be needed for review, and shall keep the Engineer informed of daily work schedules so that all necessary measurements may be made for record and payment with a minimum of inconvenience to the Engineer or of delay to the Contractor.

It is the intention not to delay the work for the giving of lines and grades, but, when necessary, working operations shall be suspended for such reasonable times as Contractor's surveyor may require for this purpose.

The Contractor shall safeguard all points, stakes, grade marks, monuments and bench marks made or established on the work, re-established them and bear the entire expense of rectifying work improperly installed due to not maintaining or protecting or for removing without authorization such established points, stakes, and marks. Replacement of disturbed or destroyed Principal reference points shall be completed by a N.J. Licensed Land Surveyor, acceptable to the Owner and Engineer, and at the Contractor's expense.

1-6.3 WORK IN BAD WEATHER. - Supplement to General Conditions Article F 6.3

During freezing, stormy or inclement weather, the Contractor shall provide heat, shelter, and other facilities as directed and necessary to maintain the progress schedule and all work shall be done in a manner to secure first class construction throughout.

1-6.4.1 CONTRACTOR'S OFFICE. - Supplement to General Conditions Article F 6.4

Unless specifically waived in the Proposal, the Contractor shall erect, furnish and maintain a field office, with a telephone at the site during the entire period of construction. He or an authorized agent shall be present at said office at all times or at definite times while his work is in progress. Readily accessible copies of both the Contract Documents and the latest approved working drawings shall be kept at said field office. This office shall be suitably heated and shall be equipped with proper sanitary facilities.

1-6.4.2 WATER AND ELECTRICITY. - Supplement to General Conditions Article F 6.4

The Contractor shall unless specified, provide the necessary water supply at his own expense and shall pay for all water used.

The Contractor shall unless otherwise specified, provide, at his own expense, adequate temporary lighting and electrical power facilities if required for the proper prosecution and inspection of the work. If, in the opinion of the Engineer, these facilities are inadequate, the Contractor shall provide facilities which are satisfactory to the Engineer.

1-6.4.3 HEATING - Supplement to General Conditions Article F 6.4

The Contractor shall provide temporary heat, whenever required on account of work being carried on during cold weather and to prevent freezing of water pipes and other damage to the work. Heat shall be furnished when and as directed and at the Contractor's own expense.

1-6.4.4 TRAFFIC PROTECTION AND PARKING OF CARS - Supplement to General Conditions Article F 6.4

The Contractor shall protect all traffic and parked cars, when lawfully parked, and shall see to it that the cars belonging to his workmen are parked in areas permitted by the municipal authorities.

He shall take particular care to provide access to adjacent property, both for ordinary traffic and emergency vehicles. Access to fire hydrants shall be kept clear at all times.

Unless expressly authorized in advance and in writing, the Contractor shall maintain a minimum of one lane of traffic through the project area controlled by competent Flagmen as necessary. IMMEDIATE clearance through the project area shall be furnished for Fire/Rescue/Police Vehicles and School Buses. If necessary, work shall be temporarily suspended to permit the immediate passage of Fire/Rescue/Police or other emergency vehicles and/or school buses.

Local and through traffic shall be maintained at all times unless the Owner approves a detour route for a duration of time.

Whenever it is necessary to maintain only a single line of traffic, the contractor shall furnish and employ sufficient competent traffic directors during the day and night to adequately guide and protect traffic.

The Contractor will be required to prevent the formation and flying of dust to the satisfaction of the Engineer by the use of water or chemicals.

The Contractor shall erect and maintain barricades, danger signals and warning signs at working sites, closed roads, intersections and other places of danger to traffic or to the completed work as directed and approved by the Engineer. Each barricade shall be provided with red flashing lights battery operated not more than five feet apart and not less than three lights shall be used.

Where specific detour routes or traffic protection signs and equipment are specified or required by the plans, the Contractor will provide same along with all other signage equipment and flagmen necessary to satisfactorily protect and safely coordinate traffic.

Vehicular and pedestrian traffic on streets shall be maintained and protected at all times, and all operations in or adjacent to streets, sidewalks, and walkways shall be conducted and controlled accordingly.

The Contractor shall, for the protection of the traveling public and his personnel, familiarize himself and adhere strictly to the requirements of these Specifications and to the requirements of Title 39, the Motor Vehicle Code of the State of New Jersey, wherever it shall pertain to necessary and required precautionary measures regarding the type of work being done.

The cost of protection of traffic as above described shall be included in the prices bid for the various items scheduled in the Proposal.

1-6.4.5 SURFACE DRAINAGE. - Supplement to General Conditions Article F 6.4

The Contractor shall furnish all necessary equipment, shall take all necessary precautions, and shall assume the entire cost of handling any surface drainage occurring during the construction of the work. The manner of providing for these flows shall meet the approval of the Engineer and the entire cost of said work shall be deemed included in the unit or lump sum prices for the various items of work to be done under the Contract.

1-6.4.6 ENGINEER'S FIELD OFFICE.- Supplement to General Conditions Article F 6.4

If not waived by the terms of the proposal and contract agreement, the contractor shall furnish Engineer's Field Office, provide the necessary utilities for same, including heat, light, potable water, power, telephone, toilet facilities, janitorial supplies and services, and waste disposal, and shall pay all costs associated with same and fully complying with the following particulars. No separate payment will be made for these facilities and all costs related to same are to be included in the respective bid prices in the Proposal.

1-6.5 DOMESTIC MATERIAL - Supplement to General Conditions Article F 6.5

The contractor during the course of this contract agrees to use, supply or deliver only such manufactured articles, materials and supplies as have been manufactured in the United States substantially from articles, materials and supplies mined, produce or manufactured in the United States, wherever available.

1-6.17.1 SANITARY-REGULATIONS. - Supplement to General Conditions Article F 6.17

Toilet accommodations properly secluded from observation shall be erected and maintained by the Contractor, in such a manner and in such locations as approved by the Board of Health, and their use shall be strictly enforced.

The building of shanties or other structures for housing the men, tools, machinery or supplies, will be permitted only at approved places and the sanitary conditions of the ground in and at such shanties or other structures must be at all times maintained in a satisfactory manner.

1-6.17.2 FINAL CLEANING. - Supplement to General Conditions Article F 6.17

At the conclusion of the work, all erection plant, tools, temporary structures, and materials belonging to the Contractor shall be promptly taken away, and he shall remove and promptly dispose of all water, dirt, rubbish, or any other foreign substances.

The Contract shall thoroughly clean all equipment and materials installed by him and shall deliver over such materials and equipment undamaged in a bright, clean, polished, and new appearing condition.

1-6.20.2 PROTECTION OF WORK UNTIL COMPLETION. - Supplement to General Conditions Article F 6.20.2

During performance and up to the date of final acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished work against any damage, loss or injury. The Contractor shall take proper precautions to protect the finished work from loss or damage, pending completion and the acceptance of all the work included in the entire Contract, provided that such precaution shall not relieve the Contractor from any and all liability and responsibility for loss or damage to the work occurring before acceptance by the Owner. Such loss or damage shall be at the risk of and borne by the Contractor, whether arising from acts or omissions of the Contractor or others, or from floods, storms, high tides, or otherwise. In the event of any such loss or damage, the contractor shall forthwith repair, replace and make good the work without additional compensation or extension of time therefore, except as may be otherwise provided herein.

These provisions shall not be deemed to create any new right of action in favor of third parties against the Contractor or Owner.

The contractor shall provide for the removal of all dirt spilled from the trucks on existing pavements over which it is hauled, or which is washed or otherwise deposited thereon by reason of his work, whenever, in the opinion of the Engineer, the accumulation is sufficient to cause the formation of mud, interfere with drainage or to create a traffic hazard.

Costs incidental to the maintenance of existing roadways as herein described, shall not be paid for under any specific item but shall be included in the unit prices bid for other items scheduled in the Proposal. In the event that the contractor fails to maintain safe traffic conditions and job conditions, the Municipality may after failure of the contractor to provide safe traffic conditions, hire guards or take such precautions to safeguard traffic, and the cost of same shall be deducted from payment due the contractor.

1-6.20.3.1 CARE OF PUBLIC AND PRIVATE PROPERTY - Supplement to General Conditions
Article F 6.20.3

The Contractor shall preserve from damage all property along the line of the work, or which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not called for by the Plans. This applies to the public utilities, railroads, trees, monuments, fences, pipe and underground structures, public streets (except natural wear and tear of streets resulting from legitimate use thereof by the Contractor), and wherever such property is damaged due to the activities of the Contractor, it shall be immediately restored to a first class condition by the Contractor and at his own expense.

In case of failure on the part of the Contractor to restore such property, or make good such damage or injury, the Owner may, upon forty-eight hours notice, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any moneys due or which may become due the Contractor under this Contract.

Nothing in this clause shall prevent the Contractor from receiving proper compensation for his costs incurred because of the removal or replacement of any public or private property, when this is made necessary by alteration of grade or alignment, or any such work authorized by the Owner, provided that such property has not been damaged through fault of the Contractor, his employees, or agents.

1-6.20.3.2 PROTECTION AND REPLACEMENT OF SUBSURFACE STRUCTURES AND UTILITIES - Supplement to General Conditions Article F 6.20.3

The plans may show certain but not all subsurface structures known to exist in the working area. The Contractor shall particularly note that the indicated locations of subsurface water, gas, electric, telephone, sewerage and drainage systems in the area may be quite different from their actual locations and that there may be some subsurface structure or utility encountered that is not shown on the plans. Therefore, it shall be his responsibility to proceed with caution in executing the work, so as to prevent undue interruptions of utility service to property owners and damage to structures or utilities, or injury to workmen or others.

The Contractor will be held responsible FOR ALL DAMAGES to all utilities or other underground or surface structures whether or not they are shown on the Contract Drawings, and he shall pay all costs for protecting them or for repairing and/or replacing them IF THEY ARE DAMAGED AS A RESULT OF OPERATIONS UNDER THIS CONTRACT.

In the event that UNDERGROUND STRUCTURE OR UTILITIES are disclosed by the Contractor's operations THAT OCCUPY THE SAME SPACE AS REQUIRED BY INSTALLATIONS UNDER THIS CONTRACT, the Contractor shall notify the Engineer and await his orders concerning the removal and replacement of said structures or utilities. The procedures regarding compensation in this event will be as follows:

- a. Where it develops that the utility company will remove and relocate the structure or utility at its own expense and with its own forces, no compensation therefore will

be due the Contractor.

b. Where the utility company will not assume the expense but exercises its right to perform the work with its own forces, the Contractor shall pay the cost incurred upon being presented with a bill for the same, and will in turn be reimbursed by the Owner for the amount paid thereon plus five percentum (5%).

c. Where the Contractor has to perform the work of removal and relocation with his own forces, he shall be reimbursed as set forth under Article G 10.1.1, entitled, "Extra Work - Increased Compensation". This provision shall likewise apply to instances under (a) and (b) above, where the contractor's forces or equipment are required for only a portion of the work.

Wherever gas mains, petro-chemical mains, electrical or heating ducts, electric, telephone, or telegraph poles or ducts, private or municipal water mains are encountered and service may be interrupted, the Contractor shall keep the Owner utility company or department fully informed in advance of any changes he desires to make. The Contractor shall cooperate with the utility company or department in the removal, relocation, and replacement of such structures, so as to avoid all unnecessary interruption of service. He shall arrange with the owners of the utilities for this work to be done.

If, in the opinion of the Engineer, it is necessary to install temporary lines, to prevent interruptions in utility service to residents, the Contractor shall install or have installed the temporary lines necessary to provide service. He shall maintain and protect such lines during the course of the work and shall remove them when permanent connections have been made unless otherwise directed by the Engineer. The costs therefore shall be assumed by the Contractor in all cases excepting only where the structure or utility requiring such temporary replacement, occupies the same space as that needed for installations under this Contract, in which event the procedures for compensation listed under (a), (b) and (c) in this Article will be followed.

Such work shall be performed to the satisfaction of the Engineer.

Where the Owner's storm drains, sewer lines, or water mains are encountered and repair, replacement, or relocation is necessary before work can proceed, the Contractor shall carry out the work promptly as directed by the Engineer.

1-6.20.4 ACCIDENT PREVENTION AND FIRST AID - Supplement to General Condition F 6.20

Precautions shall be exercised at all times for the protection of persons and property. The safety provisions and applicable laws, building and construction codes shall be observed. Machinery and equipment shall be guarded and all hazards eliminated in accordance with safety provisions of Construction Industry OSHA Safety and Health Standards (29CFR 1926/1910), including amendments and supplements to date, published by the U.S. Department of Labor, Occupational Safety and Health Administration, to the extent that such provisions are not in contravention of applicable law. The Contractor shall provide suitable barricades, red lights, "Danger" or "Caution" signs and watchmen at all places where the work

constitutes in any way a hazard to the public, or workmen.

The Contractor shall keep upon the site, at each location where work is in progress, a completely equipped first-aid kit and shall provide ready access thereto at all times when men are employed on the work.

1-6.20.4.1 CONTRACTOR'S SIGNS. - Supplement to General Conditions Article F 6.20

The Contractor shall erect and maintain safety signs, temporary barricades, temporary fences, and take all precautions to guard against all dangers and hazards, as are necessary in the interest of the public health and safety.

Signs shall be of suitable size to be readily seen and shall be black letters on orange background. Barricades, drums and like items shall be standard orange and white striped. Warning and detour signs and barricades and other safety devices shall be reflectorized painted or lighted, and maintained.

1-6.20.4.2 WATCHMEN & FLAGMEN - Supplement to General Conditions Article F 6.20

Watchmen and/or Flagmen shall be furnished and shall be on duty appropriate to carry out the Contractor's responsibility for safety and protection.

1-6.23.1 WORKING DRAWINGS - Addition to General Conditions Article F 6.23

The Contractor shall promptly prepare and submit layout, detail, and shop drawings for such parts of the work as specified hereafter under the specifications for materials, workmanship and Contract Items. These drawings will be known as "Working Drawings".

The drawings shall be numbered to coincide with the Division and article of the specifications related to same, and consecutively numbered for all individual drawings for a particular item or items related to the particular division and article and shall accurately and distinctly present the following:

- a. All work and erection dimensions.
- b. Arrangement and sectional views.
- c. Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
- d. Kinds of materials and finishes.
- e. Parts list and description thereof.

Each drawing shall be dated and shall contain the name of the project, contract number, Contract Item and paragraph number, names of equipment or materials, and the locations at which the equipment or materials are to be installed in the work. The Engineer

may decline to consider any working drawing that does not contain complete data on the work and full information on related matters.

If the working drawings show departures from the Contract requirements, the Contractor shall make specific mention thereof in his letter of submittal and on the subject drawing or drawings. Otherwise, approval of such submittals shall not constitute approval of the departures. Approval of the drawings shall constitute approval of the subject matter thereof only and not of any structure, material equipment or apparatus shown or indicated. The approval of drawings will be general and shall not relieve the Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract and not indicated on the drawings. No work called for by working drawings shall be done until the said drawings have been approved by the Engineer.

The procedure in seeking approval of working drawings shall be as follows:

- a. The contractor shall submit for approval two prints and one reproducible sepia copy, or six prints in the case of manufacturer's catalogue "cuts" and similar items, of each of the drawings to the Engineer. The submission of drawings shall be accomplished by letter of transmittal in duplicate, containing the name of the project, the name of the Contractor, the number of drawings, titles, and other requirements.
- b. When a drawing is satisfactory to the Engineer, it will be stamped "NO EXCEPTIONS TAKEN", be dated, and two copies thereof will be returned to the Contractor by letter.
- c. Should a drawing be unsatisfactory to the Engineer, he will stamp thereon "REVISE AND RESUBMIT", or "REJECTED", and will return one copy thereof to the contractor with the necessary corrections and changes indicated. The Contractor must make such corrections and changes and again submit two prints and one reproducible sepia copy of the drawing for approval, within five (5) working days of the date of rejection.

The Contractor shall revise and resubmit the working drawings as required by the Engineer, until "NO EXCEPTIONS TAKEN" thereof is obtained.

1-13.2 INSPECTION. - Supplement to General Conditions Article F 13.2

During the progress of the work and up to the date of final acceptance, the Contractor shall, at all times afford the representatives of the Owner every reasonable, safe and proper facility for inspecting the work done or being done at the site. The inspection of any work shall not relieve the Contractor of any of his obligations to perform proper and satisfactory work as herein specified. Finished or unfinished work found not to be in strict accordance with the Contract shall be replaced as directed by the Engineer, even though such work may have been previously approved and payment made therefore.

Failure or neglect on the part of the Engineer to condemn or reject bad or inferior work or materials shall not be construed to imply an acceptance of such work or materials, if

it becomes evident at any time prior to the final acceptance of the work by the Owner, neither shall it be construed as barring the Owner at any subsequent time, from the recovery of damages or of such a sum of money as may be needed to build anew any portion of the work in which fraud was practiced or improper materials hidden, or used, wherever found.

1-13.3 NOTICE OF INSPECTION TO BE GIVEN BY THE CONTRACTOR. - Supplement to General Conditions Article F 13.3

Certain items in the work will require special inspection by the Engineer and/or his inspectors. The Engineer will so specify these items to the Contractor during the course of the work; whereupon the Contractor, before proceeding with such specified items, shall give two working days written notice in advance to the Engineer, for the purpose of scheduling and providing such inspection service.

1-13.10 STOPPING WORK - Supplement to General Conditions Article F 13.10

The Contractor is required to fully inform himself as to the nature and location of existing utilities within the project area, all locations of actual or potential interference, and coordinate the activities of affected utilities regarding any necessary temporary or permanent relocations to minimize possible or actual delay to planned progress.

1-18.1 PROJECT PHOTOGRAPHS

IF REQUIRED BY THE TERMS OF THE PROPOSAL and Contract Agreement, only, the Contractor shall provide three sets of acceptable, unretouched 8"x10" glossy, cloth mounted 8½"x11" format, properly identified Pre-construction, Progress, and Final Construction Project Photographs comprising not less than the total number of individual prints stipulated in the proposal, with the cost of same included in the various prices bid. All project photographs shall conform with the following particulars and be delivered as required hereinafter.

1-19.1 ABBREVIATIONS

Where any of the following abbreviations are used in the Specifications they shall have the meaning set forth opposite each.

ACI	American Concrete Institute
ASTM	American Society for Testing Materials
ASCE	American Society of Civil Engineers
AWWA	American Water Works Association
ASME	American Society of Mechanical Engineers
NBS	National Bureau of Standards
AIEE	American Institute of Electrical Engineers
AASHO	American Association of State Highway Officials
NEMA	National Electrical Manufacturers Association
NEC	National Electric Code, latest edition
AISC	American Institute of Steel Construction
ASA	American Standards Association
AWS	American Welding Standards

FEDERAL SPECIFICATIONS

Federal Specifications issued by Federal Supply Service of the General Services Administration, Washington, D.C.

125 LB. AMERICAN STANDARD

American Standard (ASA B16.1-1948) for Cast Iron Pipe Flanges and Flanged Fittings, Class 125

USS GAGE	United States Stand Gage
N.J.S.H.D.S.S.	New Jersey State Highway Department Specifications, 1983 (as amended)
GPD	Gallons per day
MGD	Million gallons per day
GPM	Gallons per minute
CFS	Cubic feet per second

SPECIFICATION ABBREVIATIONS

Omission in wording. For brevity, some sentences are incomplete and such words and phrases as "the contractor shall", "in conformity there-with", "shall be", "as noted on drawing", "according to the drawings", "a", "an", "the" and "all" which clutter up most specifications are sometimes omitted. They shall be supplied by the reader.

The contractor shall provide all items, articles, materials, operating methods listed, mentioned or scheduled on drawings or in specifications, including all labor, materials, equipment, incidentals necessary and required for their completion.

Approvals, etc., wherever the words "approved", "satisfactory", "direct", "submitted", "inspected" or similar words or phrases are used, it shall be assumed that the word "Engineer" or one of their representatives follows the verb as the object of the clause, such as "approved by the Engineer" and "submitted to the Engineer".

References to the Standard Specifications or manufacturer's installation directions shall mean to the latest edition thereof, as published prior to the date of the agreement unless otherwise indicated.

Terminology: Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

1. "Acceptable", "equal to", "proper", and other qualifying terms imply the judgment by the Architect/Engineer.
2. "Approved", or "Approval" means any equipment, item or material approved by the Architect/Engineer.
3. "Approved equal" means any equipment, item or material approved by the Architect/Engineer as equivalent to the specified equipment, item or material.
4. "Concealed" means work which is not exposed to view when the project is complete.
5. "Exposed" means work which remains exposed to view when the project is complete.
6. "Delivery" means unloading and storing at the site.
7. "Furnish" means to supply and deliver to the job.
8. "Governmental" means all Municipal, State and Federal government agencies.
9. "Install" means complete erection and connection of work.
10. "Piping" includes piping and all fittings, valves, hangers and other accessories related to piping.
11. "Provide" means "furnish" and "install" as defined above.
12. Words in singular form shall include as many such devices as are required to complete the work.

SECTION 1-20 - EXISTING UTILITIES

Prior to the start of any excavation work, the contractor shall contact the following in order to obtain firsthand information of underground piping and conduits:

Milltown Borough Utilities

39 Washington Avenue
Milltown, NJ 08850
732-828-2100

Public Service Electric & Gas Co.

150 How Lane
New Brunswick, NJ 08902
732-220-6216

Verizon Communications

445 Georges Road
North Brunswick, NJ 08902
732-247-7143

New Jersey Natural Gas

1415 Wyckoff Road
Wall, NJ 07719
732-933-5941

Cablevision

275 Centennial Avenue
Piscataway, NJ 08855
732-317-7000

Williams Gas Pipeline-Transco

99 Farber Road
Princeton, NJ 08540
609-936-2423

One number to call for various private utilities 1-800-272-1000.

11/07/11

Taxpayer Identification# 453-707-773/000

Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

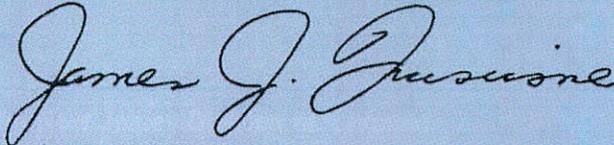
Additionally, please note that State law requires all contractors and subcontractors with Public agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.

If you have any questions or require more information, feel free to call our Registration Hotline at (609)292-9292.

I wish you continued success in your business endeavors.

Sincerely,



James J. Fruscione
Director
New Jersey Division of Revenue

STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE

DEPARTMENT OF TREASURY/
DIVISION OF REVENUE
PO BOX 252
TRENTON, N J 08646-0252

TAXPAYER NAME:

LANDTEK CONSTRUCTION L.L.C.

TRADE NAME:

ADDRESS:

875 RIVER RD
PISCATAWAY NJ 08854

EFFECTIVE DATE:

11/07/11

SEQUENCE NUMBER:

1675138

ISSUANCE DATE:

11/07/11



Director
New Jersey Division of Revenue

FORM-BRC
(04-08), D205846V

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

FEE REQUIRED

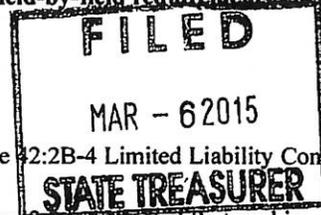
REGISTRATION OF ALTERNATE NAME

C-150G

Complete the following applicable information, and sign in the space provided. Please note that once filed, the information contained in the filed form is considered public. Refer to the instructions on page 26 for filing fees and field-by-field requirements. Remember to remit the appropriate fee amount. Use attachments if more space is required for any field.

Check Appropriate Statute:

- | | |
|---|---|
| <input type="checkbox"/> Title 14A:2-2.1 (2) New Jersey Business Corporation Act | <input checked="" type="checkbox"/> Title 12:2B-4 Limited Liability Company |
| <input type="checkbox"/> Title 15A:2-2-3 (b) New Jersey Nonprofit Corporation Act | <input type="checkbox"/> Title 12:2A-6 Limited Partnership |



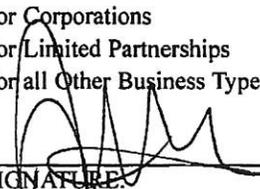
Pursuant to the provisions of the appropriate statute, checked above, of the New Jersey Statutes, the undersigned corporation/business entity hereby applies for the registration of an Alternate Name in New Jersey for a period of five (5) years, and for that purpose submits the following application:

- Name of Corporation/Business: LandTek Construction LLC
- NJ 10-digit ID number: 0400449795
- Set forth state of Original Incorporation/Formation: New Jersey
- Date of Incorporation/Formation: October 1, 2011
Date of Authorization (Foreign): _____
- Alternate Name to be used: United Terrain Group
- State the purpose or activity to be conducted using the Alternate Name: Construction
- The Business intends to use the Alternate Name in this State.
- The Business has not previously used the Alternate Name in this State in violation of this Statute, or; if it has, the month and year in which it commenced such use is: _____

Signature requirements:

For Corporations
For Limited Partnerships
For all Other Business Types

Chairman of the Board., President, Vice-President
General Partner
Authorized Representative


SIGNATURE: _____

President
TITLE: _____

Juan Urro
NAME (please type): _____

3/4/15
DATE: _____

THE PURPOSE OF THIS FORM IS TO SIMPLIFY THE FILING REQUIREMENTS. IT DOES NOT REPLACE THE NEED FOR COMPETENT LEGAL ADVICE.

Certificate Number
687860

Registration Date: 03/25/2020
Expiration Date: 03/24/2022



State of New Jersey
Department of Labor and Workforce Development
Division of Wage and Hour Compliance
Public Works Contractor Registration Act

Pursuant to N.J.S.A. 34:11-56.48, et seq. of the Public Works Contractor Registration Act, this certificate of registration is issued for purposes of bidding on any contract for public work or for engaging in the performance of any public work to:

Responsible Representative(s):

Juan Urro, President

Handwritten signature of Robert Asaro-Angelo.

Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development

Landtek Construction LLC
2020

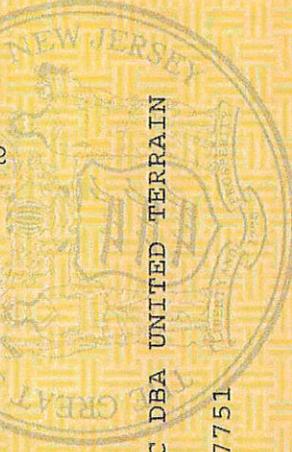
NON TRANSFERABLE

This certificate may not be transferred or assigned and may be revoked for cause by the Commissioner of Labor and Workforce Development.

Certification 58837

CERTIFICATE OF EMPLOYEE INFORMATION REPORT INITIAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of 15 - MAR - 2018 to 15 - MAR - 2025



LANDTEK CONSTRUCTION LLC DBA UNITED TERRAIN
386 STATE ROUTE 79
MORGANVILLE NJ 07751

Elizabeth M. Muoio

ELIZABETH MAHER MUOIO
State Treasurer

CERTIFICATE OF EMPLOYEE INFORMATION REPORT

INITIAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of **15-MAR-2018** to **15-MAR-2025**

LANDTEK CONSTRUCTION DBA UNITED TERRAIN GRP
875 RIVER ROAD
PISCATAWAY NJ 08854



Elizabeth Maher Muoio

ELIZABETH MAHER MUOIO
Acting State Treasurer



State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE & ENTERPRISE SERVICES
P.O. BOX 026
TRENTON, NJ 08625-034
PHONE: 609-292-2146 FAX: 609-984-6679

FORD M. SCUDDER
Acting State Treasurer

APPROVED *under the*

Small Business Set-Aside Act and Minority and Women Certification Program

This certificate acknowledges LANDTEK CONSTRUCTION LLC as a Category 5 approved Small Business Enterprise that has met the criteria established by N.J.A.C. 17:13 and/or 17:14.

This registration will remain in effect for three years. Annually the business must submit, not more than 60 days prior to the anniversary of the registration notice, an annual verification statement in which it shall attest that there is no change in the ownership, revenue eligibility or control of that business.

If the business fails to submit the annual verification statement by the anniversary date, the SBE registration will lapse and the business SBE status will be revoked in the New Jersey Selective Assistance Vendor information (NJSAVI) database that lists registered small businesses. If the business seeks to be registered again, it will have to reapply and complete the New SBE online registration located at: www.njportal.com/DOR/SBERegistry/.



A handwritten signature in black ink that reads "Peter Lowicki".

Peter Lowicki
Deputy Director

Issued: 6/28/2018
Certification Number: A0072-65

Expiration: 6/28/2021



United Terrain - Automobile Fleet Schedule

VEHICLES (Year, Make, Model, Color)	Serial #	
2008 Ford F250	1F1SW215X8EB67882	Pick Up
2000 International Single Axle Dump Truck	1HTSDAAN5YH212406	Truck
2001 Chevrolet 2500	1GCHK29191E303738	Pick Up
2015 Ford E350	1FDWE3FL0FDA20700	Van
2016 Dodge Ram 2500	3C6TR5CT4GG129992	Pick Up
2016 Dodge Ram 3500	3C63R3CT8GG122645	Pick Up
2016 Ford F150	1FTEW1EF1GFB07024	Pick Up
2004 Tri-Axle Mack Dump Truck	1M2AG11C04M010164	Truck
1997 International 470 Truck	1HTSCAAR0VH449919	Truck
2002 International Tandem Dump Truck	1HTSHAA142H512044	Truck
2015 Ford F250	1F7W2B61FEC83997	Pick Up
2015 Ford F250	1F7W2B67FEC84006	Pick Up
2017 Ford F350	1FDRF3G68HEE29169	Pick Up
2019 GMC Yukon Denali (Black)	1GKS2CKJ4KR321102	SUV
2019 Ford F150 (White)	1FTEW1E45KFB10192	Pick Up
2017 Ford F250 Super Duty	1F7W2B63HED60453	Pick Up
2020 Ford F250	1F7W2B6XLEC66000	Pick Up
2013 Ford F550	1FDUF5HT8DEA05723	Pick Up - Mechanics Body



United Terrain - Equipment Schedule

MACHINERY AND EQUIPMENT	Serial #	Vendor
Trailer		
Cutoff Saw		
1996 Komatsu Excavator PC128 UU-1	196365 SD95L-1	West Michigan Tractor Sales
2014 305 CAT Excavator	OYFA02315	Foley, Inc.
2014 Supercam Equipment Trailer	5JIPBU7128EP034426	
1996 John Deer Dozer 450D	70450GFR18939	
2014 Townmaster Trailer	4KNFT2225EL160500	
Trench Roller RT82, RTX-SC2	20278482	
Skidsteer 285C2	OTAW02440	
Skidsteer 289D	OTAW02424	
CAT 308 E2 Hydraulic Excavator	308E2CRSB-FIX02024	Foley, Inc.
Reversible Plate Compactor		Foley, Inc.
GPS Model 305E CR		Foley, Inc.
20' FT x 8' FT x 8'6" Cargo Worthy Container		Crist Container
8' Skid Steer Snow Pusher, Buyers Product, Model BP85	ID # 15R0763, Serial # 11000	Foley, Inc.
8' Skid Steer Snow Pusher, Buyers Product, Model BP85	ID # 15R0762, Serial # 11001	Foley, Inc.
8' Skid Steer Snow Pusher, Dingo, Model TX525	ID # 15R0860, Serial # 315000318	Foley, Inc.
Magnum 500 Gallon Water Trailer, Model MW1T - 500	ID # 15R0872, Serial # 1506610	Foley, Inc.
Enclosed Trailer		Private Seller
Multitrip, Gas Powered Rammer, Model MTX70HD	ID # 14R0365, Serial # Z-9789	Foley
Salter for F550		Livingston Park Nursery
1998 Cat 938G Wheel Loader	6W500349	Jesco Inc.
40' Shipping Container		Port Containers LLC
Transmission for Chevy 2500		Lou's Enterprises LLC
2014 John Deere 310K Wheel Loader Backhoe & 1.25 Bucket	ITD310KXVEE269858 & JROC125SD5105G	John Deere
40' Weatherproof Shipping Container		Port Containers LLC
20' Weatherproof Shipping Container		Port Containers LLC
2014 Wacker Trench Roller	2027842	Foley, Inc.
2015 CAT Reversible Plate Compactor	M4C00900	Foley, Inc.
Western Snow Plow, 8' Pro Plus Ultra Mount		Livingston Park Nursery
HTM/BG Hudson Trailer 7 Ton Capacity		Cherry Valley Tractor Sales
Toolbox/diesel tanks for new F-250		Cyclevan Unlimited, Inc
Enclosed Cab		Suburban Caps Inc.
Husqvarna Zero Turn Mower PZT60		Gamka Sales Co
Flatbed for International Truck		Vitelli Trucking Inc.
Husqvarna Snow Blower ST327P		Gamka Sales Co
Billy Goat F1302H Blower		Gamka Sales Co
2017 CAT 908M	H8802367	CAT
2017 CAT 272D2	BL200851	CAT
2017 Sullair 185CFM Air Compressor	HOP058079	Mario's Heavy Equipment
2016 CAT CS44 Vibrator Compactor, Model CS44	M4C00900	Foley Inc.
2018 CAT 325F Hydraulic Excavator, Model 325FLCR	NDJ20498	Foley Inc.
Topsider Tool Box For White Dodge Ram Pickup	UWSTBTS48	Cyclevan Unlimited, Inc
CAT 305 Thumb Hydraulic (Excavator Bucket), 5T	16A171819C	Foley Inc.
CAT 308E2CRSB Hydraulic Excavator	FX13463	Foley Inc.
WAS WP1550AW Water Tank	10980046	Gamka Sales Co
2019 Aluminum Tool Box / Led Light / Cab Protector for 2017 Ford F350	Backtrak-RAC15018/Hardware-KE-RAC0022/Century Lights-STRMCL6MCA/85 Gallon Diesel Tank-UWSTB5COMBO/GPM Transfer Pump- GH11000099/Topsider Tool Box-UWSTBTS48	Cyclevan Unlimited, Inc
2019 CAT PR184 Hydraulic Angler Power Rake	PRW01916	Foley Rents
Topcon TP-15A Laser Level	RT1031	Cleary Machinery

CAT 46" SSL Forks	6555FP061536	Foley Rents
12" Bucket For Excavator	Blade 1809191012676980, Pump 19082310486875700-3	\$K Repairs and Maintenance LLC
2019 8' Pro Plus Ultra Mount (2) Plows	1901009PU672	Livingston Park Nursery Foley Inc.
Zanetis Pick Up Broom Sweeper	DEED279	Cyclevan Unlimited, Inc
Diamond Plate Tool Boxes	JUMBO TOPSIDER TOOL BOX 72 LONG X 15.5 DEEP X 20 HIGH ALUMINUM DIAMONDPLATE Labor DISMOUNT EXISTING TOOLBOXES, MOUNT NEW, LARGER SIDE-MOUNT TOOLBOXES INCLUDING NEW FABRICATED BRACKETS. MAKE SPECIAL UPRIGHT HOLDER FOR SHOVELS Sales FABRICATE SPECIAL BRACKETS, AND MOUNT YOUR 6" PVC TUBE ONTO "BACKRACK" CAB PROTECTOR PANWLS8 RECTANGULAR HIGH-POWER LED WORK LAMP (3000 LUMENS) Labor FABRICATE MOUNTING BRACKETS AND INSTALL LED WORK LAMPS ONTO "BACKRACK" CAB PROTECTOR, CONNECT LIGHTS TO EXISTING DASH-MOUNTED TRANSFER PUMP SWITCH Labor SEAL UP TOP HOLES ON THE 2 REMOVED TOOL BOXES	
CAT 36" Bucket	AF014215N	Foley, Inc.
CAT 36" Bucket	RAF00194	Foley, Inc.
CAT C22 Compressor	HOP058079	Foley, Inc.
CAT CB14B Roller	47301392	Foley, Inc.
2020 Genie GS2032 20' Scissor Lift	GS3215A-136828	Foley, Inc.
2019 Maxxd 20' Equipment Hauler Trailer	5R8PC202XMD58592	Middletown Trailer Supply
Diamond Plate Tool Boxes & Back Rack	BACKL508 CAB PROTECTOR, MAIN SECTION (HARDWARE KIT RECD) FITS FORD SUPERDUTY 2017 +, BACKRACK HARDWARE/ MOUNT KIT FOR BACKRACK. FITS SUPERDUTY 2017+ BUY 1492186 WORK LAMP, RECTANGULAR 9 000 LUMEN, BUY1492163 32" LED LIGHT BAR, 16,000 LUMENS SPOT/FLOOD BEAM FACING FORWARD FABRICATE RISER BRACKETS TO ELEVATE LED LIGHT BAR OVER ROOF OF TRUCK, BET37024153 36 GALLON ALUMINUM TRANSFER TANK, VERTICAL INDUSTRIAL SERIES, GP11L000099 TRANSFER PUMP 12 VOLT WITH 12 FOOT HOSE FIK1200KTF7018 3/4" FILTER KIT FOR TRANSFER PUMP, GP115040002 3/4" TRANSFER PUMP SWIVEL JOINT, BET64010143 TOP MOUNT, TRUCK TOOL BOX 48" X 12" X 16" SINGLE DOOR, STRESSLIMAW SNW E6 SLIM AMBER WHITE MOUNTED IN FRONT GRILLE, Sales E6sw STROBE S MOUNTED ON BACKRACK FACING REAR,	Cyclevan Unlimited, Inc
CAT Hydraulic Hammer	BE510140	Foley Cat
CAT Oil Injected Vibratory Rammer	24414615	Foley Cat



386 Route 79, Morganville, NJ 07751
 Ph. 732.970.7980 ~ Fax 732.970.7981
www.unitedterrain.com

Project Owner	Name Location & Project Type	Prime or Sub	Owners Rep & Phone #	Contract Price	Date Completed	Was Time Extension Required	Any Penalties Imposed	Were liens, claims, stop notices filed
Borough of Sea Bright 1099 Ocean Avenue Sea Bright NJ 07760	Ocean Ave (NJSH Route 36) Streetscape, Sea Bright NJ - Drainage, curb & sidewalk, lighting, plantings	Prime	Frank Lawrence 732-740-7787	\$ 1,200,000.00	5/5/2017	No	No	No
New York MTA Capital Construction 2 Broadway New York NY 10004-2207	Contract# HHM-387 Outfall Enhancements Along Southbound Henry Hudson Parkway Between Dyckman St and Pedestrian Underpass - Install outfall protection	Sub to Lock Construction	Frank Malhas 917-697-7331	\$ 110,000.00	5/19/2019	No	No	No
Borough of Point Pleasant 416 New Jersey Avenue Point Pleasant Beach NJ 08742	FY2019 Municipal Aid Road Program - Improvements to Arnold Avenue Sidewalks - Install new curb and sidewalks	Prime	Charles Cunliffe PE 732-473-3400	\$190,000.00	10/18/2019	No	No	No
Township of Ocean 399 Monmouth Road Oakhurst NJ 07755	Proposed Sidewalk on NJSH Route 35 - Install new sidewalk	Prime	Sam Avakian PE 732-922-9229	\$140,000.00	11/15/2019	No	No	No
Township of Piscataway 455 Hoes Lane Piscataway NJ 08854	Various Park Projects 2019 - Install new sidewalks, play equipment, plantings, parking lot, and drainage	Prime	Henry Hinterstein 732-841-8369	\$944,000	6/7/2020	No	No	No
Township of Piscataway 455 Hoes Lane Piscataway NJ 08854	Rebid of Johnson Avenue Drainage Project - Install new drainage, widen road & Install Curb	Prime	Joe Herrera 732-562-6560	\$162,000.00	6/10/2020	No	No	No

Selective Insurance Company of America
40 Wantage Avenue
Branchville, New Jersey 07890
973-948-3000

B 1232226

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That **Landtek Construction LLC**

386 State Route 79 Morgantown, NJ 07751

(hereinafter called the Principal)

as Principal, and the SELECTIVE INSURANCE COMPANY OF AMERICA, a corporation created and existing under the laws of the State of New Jersey, with its principal office in Branchville, New Jersey (hereinafter called the Surety), as Surety,

are held and firmly bound unto **Borough of Milltown**

39 Washington Avenue Milltown, NJ 08850

(hereinafter called the Obligee)

in the full and just sum of **10 % Percent of the Total Bid Amount Not To Exceed \$20000**

(**10%Percent**), good and lawful money of the United States of America, to the payments of which sum of money well and truly to be made, the said Principal and Surety bind themselves, their and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

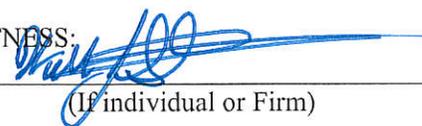
Signed, sealed and dated this **1st** day of **July** A.D. **2020** .

THE CONDITION OF THIS OBLIGATION IS SUCH, That, if the Obligee shall make any award within 60 days to the Principal for **Improvements to Tracy Drive**

according to the terms of the proposal or bid made by the Principal therefor, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof with Surety or Sureties approved by the Obligee; or if the Principal shall, in case of failure so to do, pay to the Obligee the damages which the Obligee may suffer by reason of such failure, not exceeding the penalty of this bond, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

In Testimony Whereof, the Principal and Surety have caused these presents to be duly signed and sealed.

WITNESS:



(If individual or Firm)

Landtek Construction LLC



(SEAL)

(SEAL)

(SEAL)
Principal

ATTEST:



(If Corporation)
Pamela Lipkin, Witness

SELECTIVE INSURANCE COMPANY OF AMERICA

By:



Attorney-in-Fact
Michael Culnen



Borough of
Milltown
39 Washington Ave.
Milltown, NJ 08850
(732)828-2100

Consent of Surety

N.J.S.A. 40A:11-22

A performance bond will be required from the successful contractor on this project, and consequently, all bidders shall submit, with their bid, consent of surety in substantially in the following form:

To: Borough of Milltown

Re: Landtek Construction LLC
Contractor

Project: IMPROVEMENTS TO TRACEY DRIVE

This is to certify that that Selective Insurance Company
Surety Company

will provide to the Borough of Milltown a performance bond in the full amount of awarded contract in the event that said contractor is awarded a contract for the above project

Contractor Landtek Construction Company

Authorized Agent of Surety Company Selective Insurance Company, Michael Culnen, Attorney-in-Fact
M. Culnen

Date July 1, 2020

CONSENT OF SURETY MUST BE SIGNED BY AN AUTHORIZED AGENT OR REPRESENTATIVE OF A SURETY COMPANY AND NOT BY THE INDIVIDUAL OR COMPANY REPRESENTATIVE SUBMITTING THE BID.

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

Selective Insurance Company of America, surety on the attached bond, hereby certifies the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Banking and Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of the State of New Jersey, of the surety issuing the attached bond are in the following amounts as of the calendar year ended December 31, 2018, which amounts have been certified by certified public accountants:

<u>Company</u>	<u>Capital</u>	<u>Surplus</u>	<u>CPA</u>
Selective Insurance Company of America	\$4,400,000	\$632,803,000	KPMG LLP 345 Park Avenue New York, NY 10154

(3) With respect to the surety issuing the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. sec 9305, the underwriting limitation established therein and the date as of which the limitation was effective is as follows:

<u>Company</u>	<u>Underwriting Limitation</u>	<u>Effective Date</u>
Selective Insurance Company of America	\$63,280,000	July 1, 2019

(4) The amount of the bond to which this statement and certification is attached is
\$ Ten Percent (10%) of Amount Bid
Not to Exceed \$20,000

CERTIFICATE

(To be completed by an authorized certifying agent/officer for each surety on the bond)

I, Timothy A. Marchio, as Vice President, Bond SBU for Selective Insurance Company of America, a corporation domiciled in New Jersey, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOIDABLE.


(Signature of certifying agent/officer)

Timothy A. Marchio
(Printed name of certifying agent/officer)

Vice President, Bond SBU
(Title of certifying agent/officer)

Dated: July 1, 2020
(month, day, year)

SELECTIVE INSURANCE SM

Selective Insurance Company of America Bond No. B 1232226
40 Wantage Avenue
Branchville, New Jersey 07890
973-948-3000

Public Bid

STATEMENT OF FINANCIAL CONDITION

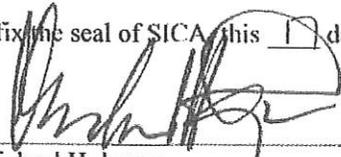
I hereby certify that the following information is contained in the Annual Statement of Selective Insurance Company of America ("SICA") to the New Jersey Department of Banking and Insurance as of December 31, 2019:

<u>ADMITTED ASSETS (in thousands)</u>		<u>LIABILITIES AND SURPLUS (in thousands)</u>	
Bonds	\$1,822,293	Reserve for losses and loss expenses	\$1,119,532
Preferred stocks at convention value	15,960	Reserve for unearned premiums	434,068
Common stocks at convention values	63,288	Provision for unauthorized reinsurance	588
Subsidiary common stock at convention values	0	Commissions payable and contingent commissions	32,565
Short-term investments	109,584	Other accrued expenses	33,869
Mortgage loans on real estate (including collateral loans)	21,163	Other liabilities	<u>395,608</u>
Other invested assets	121,112	Total liabilities	2,016,230
Interest and dividends due or accrued	14,561		
Premiums receivable	407,001	Surplus as regards policyholders	<u>680,090</u>
Other admitted assets	<u>121,358</u>		
Total admitted assets	<u>2,696,320</u>	Total liabilities and surplus as regards policyholders	<u>2,696,320</u>

I further certify that the following is a true and exact excerpt from Article VII, Section 1 of the By-Laws of SICA, which is still valid and existing.

The Chairman of the Board, President, Chief Executive Officer, any Executive Vice President, any Senior Vice President or any Corporate Secretary may, from time to time, appoint attorneys in fact, and agents to act for and on behalf of the Corporation and they may give such appointee such authority, as his/her certificate of authority may prescribe, to sign with the Corporation's name and seal with the Corporation's seal, bonds, recognizances, contracts of indemnity and other writings obligatory in the nature of a bond, recognizance or conditional undertaking, and any of said Officers may, at any time, remove any such appointee and revoke the power and authority given him/her.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of SICA this 17 day of March, 2020.

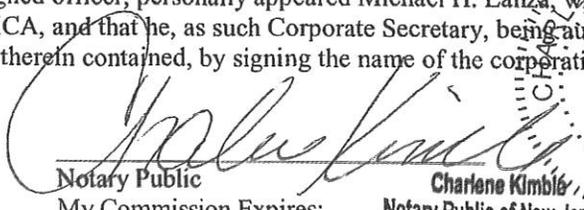

Michael H. Lanza
SICA Corporate Secretary

STATE OF NEW JERSEY :

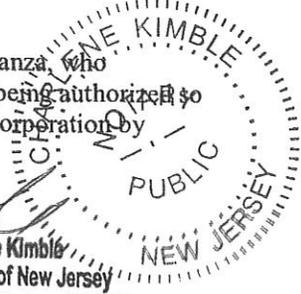
:ss. Branchville

COUNTY OF SUSSEX :

On this 17 day of March 2020, before me, the undersigned officer, personally appeared Michael H. Lanza, who acknowledged himself to be the Corporate Secretary of SICA, and that he, as such Corporate Secretary, being authorized to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Corporate Secretary.


Notary Public

My Commission Expires:


Charlene Kimble
Notary Public of New Jersey
My Commission Expires 6/2/2021