

**CONTRACT DOCUMENTS
AND
SPECIFICATIONS**

**WILLIAMSBURG COUNTY SCHOOL DISTRICT
REPAIR AND RE-SURFACING PROJECT
SOLICITATION NO. WCSD202223-4**

**Kingstree High School, West Campus
Kingstree High School, East Campus
Greeleyville Primary School
Greeleyville Elementary and Middle School**

PREPARED FOR:

**WILLIAMSBURG COUNTY SCHOOL DISTRICT
500 N. Academy Street, Bldg D
KINGSTREE, SC 29556**

PREPARED BY:

**KELLAHAN AND ASSOCIATES
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OCTOBER 2022**



William M. Kellahan
11/21/22

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**WILLIAMSBURG COUNTY SCHOOL DISTRICT
SCOPE OF WORK**

I. Scope of Solicitation

Sealed bids for WILLIAMSBURG COUNTY SCHOOLS REPAIR AND RE-SURFACING PARKING LOTS AT FOUR (4) SCHOOLS will be received from Contractors properly licensed under the laws of the State of South Carolina, opened and read aloud by the Owner in the offices of Williamsburg County School District on December 15, 2022, @ 2:00 pm EST. Bids received after this time will be rejected and returned to the Bidder unopened.

The name of the project is: WILLIAMSBURG COUNTY SCHOOLS REPAIR AND RE-SURFACING PARKING LOTS AT FOUR (4) SCHOOLS IN KINGSTREE AND GREELEYVILLE, SC

Addresses:

Kingtree High School, West Campus 615 Martin Luther King Jr. Hwy., Kingtree, SC
Kingtree High School, East Campus 615 Martin Luther King Jr. Hwy., Kingtree, SC
Greeleyville Primary School 7 Varner Ave., Greeleyville, SC
Greeleyville Elementary and Middle School 222 CE Murray Blvd., Greeleyville, SC

The Owner is: Williamsburg Co. School
District
500 N. Academy St., Bldg. D
Kingtree, South Carolina
29556

The Project Engineer is: Kellahan and Associates,
Engineers and Surveyors, Inc.
116 N. Jackson Street
Kingtree, SC 29556
Telephone: (843) 355-9285
Email: wnk@ftc-i.net

Project Engineer: William N. Kellahan, Jr.

II. Instructions to Offerors

A. General Instructions

DEFINITIONS Except as otherwise provided herein, the following definitions are applicable to all parts of the solicitation. For additional definitions, see the terms and conditions below.

1. **Amendment** - means a document issued to supplement the original solicitation document.
2. **Board** - means the Williamsburg County School District Board of Trustees.
3. **Buyer** - means the Procurement Official.
4. **Change Order** - means any written alteration in specification, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties of the contract.
5. **Contract Modification** - means a written order signed by the Procurement Official, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Official to order with the consent of the contractor.
6. **Contractor** – means the Offeror receiving an award as a result of this solicitation.
7. **Cover Page** - means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.
8. **District** - means Williamsburg County School District.
9. **Offer** - means the bid, or proposal submitted in response to this solicitation. The terms “Bid” and “Proposal” are used interchangeably with the term “Offer.”

10. **Offeror** - means the single legal entity submitting the offer. The term “Bidder” is used interchangeably with the term “Offeror.” See bidding provisions entitled “Signing Your Offer” and “Bid/Proposal as Offer to Contract.”
11. **Page two** – means the second page of the original solicitation, which is labeled Page Two.
12. **Procurement Official** - means the person, or designee, identified as such on the Cover Page.
13. **Solicitation** - means this document, including all its parts, attachments, and any Amendments.
14. **Subcontractor** - means any person having a contract to perform work or render service to Contractor as a part of the Contractor’s agreement arising from this solicitation
15. **You And Your** - means Offeror.
16. **Chief Procurement Officer** – means Chief Financial Officer

AMENDMENTS TO SOLICITATION (a) The Solicitation may be amended at any time prior to opening. **It is solely the responsibility of the Offeror to ensure that it has received all pre-bid addenda. Failure to acknowledge each pre-bid addendum may render the Offer nonresponsive.** All actual and prospective Offerors should monitor the following website for the issuance of Amendments: <https://www.wcsd.k12.sc.us/WCSD>. Bidders shall acknowledge receipt of any Amendment to this solicitation (1) by signing and returning the Amendment, (2) by identifying the amendment number and date in the space provided for this purposed on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

AUTHORIZED AGENT All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only Williamsburg County School District official authorized to bind Williamsburg County School District with regard to this procurement or the resulting contract.

AWARD NOTIFICATION Notice regarding award of contract will be emailed to contractor with lowest response by bid and all other contractors submitting a bid. Any award will not be effective until the eleventh day after such notice is given.

BID / PROPOSAL AS OFFER TO CONTRACT By submitting a signed Bid you are offering to enter into a contract with Williamsburg County School District and agreeing to all terms and conditions provided herein. Your bid as well as the terms and conditions of this solicitation will become part of any contract created as a result of this solicitation. **THEREFORE, ANY OBJECTION TO THE TERMS AND CONDITIONS CONTAINED HEREIN MUST BE ADDRESSED WITH THE DISTRICT PRIOR TO SUBMITTAL OF YOUR BID. SUCH OBJECTIONS MUST BE SUBMITTED IN WRITING AS DESCRIBED HEREIN FOR ANY INQUIRIES.** Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, Williamsburg County School District the Bid may be submitted by only one legal entity; “joint bids” are not allowed.

BID IN ENGLISH & DOLLARS Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the solicitation.

PROCUREMENT OFFICER AS PROCUREMENT AGENT

(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer or designee. Unless specifically delegated in writing, the Procurement Officer is the only official authorized to bind the District with regard to this procurement.

(b) Purchasing Liability. The Procurement Officer is an employee of Williamsburg County School District acting on behalf of Williamsburg County School District pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and Williamsburg County School District. The Procurement Officer is not a party to such contracts and bears no liability for any party’s losses arising out of or relating in any way to the contract.

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008): GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

By submitting an offer, the offeror certifies that –

In order to withdraw your Offer after the minimum period specified on the Cover Page, you must notify the Procurement Official in writing.

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to –
 - a. Those prices;
 - b. The intention to submit an offer; or
 - c. The methods or factors used to calculate the prices offered.
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose or restricting competition.
- (4) Each signature on the offer is considered to be a certification by the signatory that the signatory –
 - a. Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal
 - b. Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification. [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];
 - c. As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.
 - d. If the offeror deletes or modifies paragraph (a) (2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032.1]

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS

(a)

- (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that
 - (i) Offeror and/or any of its Principals
 - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by a state or federal agency;
 - (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (A) (1) (i) (B) of this provision.
 - (ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (federal, state, or local) entity.
- (2) 'Principals.' For the purpose of this certification, means Officials; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

- (b) Offeror shall provide immediate written notice to the Procurement Official if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- (c) If Offeror is unable to certify the representations stated in paragraphs (a) (1), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Official may render the Offeror non-responsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the District, the Procurement Official may terminate the contract resulting from this solicitation for default.

CODE OF LAWS AVAILABLE The Williamsburg County School District Procurement Code is available at 500 N. Academy Street, Bldg D, Kingstree, SC

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgement, and (b) preventing an unfair competitive. If you have an unfair competitive advantage or a conflict of interest, the School District may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any such services that relate to either this solicitation or the work that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

COMPLETION OF FORMS/CORRECTION OF BIDS AND/OR ERRORS All prices, entries and notations should be printed in ink or typewritten on the forms provided herein. Any change to the bid information including, but not limited to, changes to bid pricing or correction of errors or information must be made by crossing out the original entry, entering the change or correction on the bid form or appropriate attachment, and initialing same. Any alteration of the Offer must be made on the bid form or attachments provided herein and must be initialed by the person signing the bid. Any other alterations may result in the Offer being deemed nonresponsive. (Alterations are not allowed elsewhere in the solicitation, on the face of the envelope submitting the Offer, or otherwise.)

DEADLINE FOR SUBMISSION OF OFFER Any offer received after the Procurement Official or designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office prior to the bid opening.

DRUG FREE WORK PLACE CERTIFICATION By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of the Drug-Free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

DUTY TO INQUIRE Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the District's attention.

ETHICS CERTIFICATE By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding

offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

OMIT TAXES FROM PRICE N/A

OPEN TRADE REPRESENTATION By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

PROTESTS Any prospective bidder, Offeror, vendor, or sub vendor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen (15) days of issuance of the Invitation for Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this Code.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Procurement Specialist within ten (10) days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with the Williamsburg County School District Procurement Code; except that a matter that could have been raised pursuant to § 4210.1.1 (Protest of Solicitation) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

PROHIBITED COMMUNICATIONS AND DONATIONS

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, *you must not communicate, directly or indirectly, with any Williamsburg County School District employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer.* All communications must be solely with the Procurement Officer. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. *You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.* [R. 19-445.2165] [02-2A087-1]

PUBLIC OPENING Offers will be publicly opened at the date / time and at the location identified, or last Amendment, whichever is applicable.

QUESTIONS FROM OFFERORS (a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing by email. The Procurement Official must receive questions no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. (b) The Williamsburg County School District seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Official, as soon as possible, regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

REJECTION/CANCELLATION The Williamsburg County School District may cancel this solicitation in whole or in part. The Williamsburg County School District may reject any or all proposals in whole or in part.

RESPONSIVENESS/IMPROPER OFFERS (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to Williamsburg County School District cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The Williamsburg County School District may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(f) Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).

SIGNING YOUR OFFER: Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

RESTRICTIONS APPLICABLE TO OFFERORS Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the State Ethics Act. (a) After issuance of the solicitation, you agree not to discuss this procurement activity in any way with any School District employees, its agents or officials. All communications must be solely with the Procurement Official. This restriction expires once a purchase order has been formed and may be lifted by express written permission from the Procurement Official. (b) Unless otherwise approved in writing by the Procurement Officer, You agree not to give anything to any Williamsburg County School District employee, agent or official prior to award.

OFFICE CLOSING If an emergency or unanticipated event interrupts normal Williamsburg County School District processes so that offers cannot be received at the Williamsburg County School District office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Williamsburg County School District's processes resume. In lieu of an automatic extension, an amendment may be issued to reschedule bid opening. If Williamsburg County School District offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an amendment will be issued to reschedule the conference.

SUBMITTING CONFIDENTIAL INFORMATION For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word “CONFIDENTIAL” every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words “TRADE SECRET” every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act.

For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word “PROTECTED” every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response or any part thereof, is improperly marked as confidential or trade secret or protected, the District may, in its sole discretion, determine it non-responsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked “TRADE SECRET” or “CONFIDENTIAL” or “PROTECTED”, (2) agrees that any information not marked, as required by these bidding instructions, as a “Trade Secret” is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the District will detrimentally rely on Offeror’s marking of documents, as required by these bidding instructions, as being either “Confidential” or “Trade Secret” or “PROTECTED”. By submitting a response, Offeror agrees to defend, indemnify and hold harmless the District, its Officials and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from the District withholding information that Offeror marked as “confidential” or “trade secret” or “PROTECTED”. (All references to S.C. Code of Laws.)

SUBMITTING YOUR OFFER OR MODIFICATION (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by approved electronic means) - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) Each Offeror must submit the number of copies indicated on the Cover Page. (c) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (d) Facsimile Offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (e) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

TAXPAYER IDENTIFICATION NUMBER

(a) If Offeror is owned or controlled by a Common Parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.

(b) Definitions:

- 1) “Common Parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.
- 2) “Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether

- 1) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- 2) Offeror is an agency or instrumentality of a state or local government;

- 3) Offeror is an agency or instrumentality of a foreign government; or
- 4) Offeror is an agency or instrumentality of the Federal Government.

WITHDRAWAL OR CORRECTION OF OFFER AFTER BID OPENING Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. Correction or withdrawal of bids are only allowed pursuant to the express terms of the Williamsburg County School District Procurement Code as determined by Williamsburg County School District.

NOTICES All contact should be directed to Mike Barrineau, Procurement Officer. No company should contact District staff directly. All questions should be submitted to Mike Barrineau prior to the deadline for receipt of questions via Email mbarrineau@wcsd.k12.sc.us with copy to Nicky Kellahan, Engineer, @ wnk@ftc-i.net. Answers to any questions submitted will be sent to all companies via solicitation amendment.

B. Special Instructions

BID BOND Your offer must include either a bid bond issued by a surety or sureties licensed in South Carolina or a certified check. The amount of surety shall be five per cent (5%) of the total bid amount. This bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents. If a certified check is submitted in lieu of a bid bond, it must be made payable to Williamsburg County School District.

Conference – Pre-Bid

Pre-Bid/Proposal Conference Date and Time:

Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Williamsburg County School District. The Williamsburg County School District assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the Williamsburg County District assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding, or representation is expressly stated in this contract.

A Pre-Bid Conference will be held on December 1, 2022 @ 2:00 pm at Williamsburg County School District. The Pre-Bid Conference is intended to answer any questions relating to instructions to the bidder, project scope of work, etc. All prospective Offerors are strongly urged to attend this conference.

1. Schedule and Activities

Listed below are the planned activities/milestones/dates/times pertaining to this solicitation. A milestone schedule is included in the documents. All information is subject to change. Changes will be communicated to prospective Offerors via an Amendment to the solicitation, as necessary.

Issue of Bid Documents	November 18, 2022
Pre-Bid Conference	December 1, 2022, at 2:00 pm
Deadline for Receipt of Questions	December 12, 2022, at 5:00 pm
Public Opening of Bid	December 15, 2022, at 2:00 pm
Posting of Intent to Award	January 11, 2023
Notice To Proceed (NTP)	January 26, 2023
Contract Start	January 26, 2023
Substantial Completion (60 Calendar Days from NTP)	April 12, 2023
Final Completion	May 1, 2023

2. Williamsburg County School District Board of Trustees approval required: any award is subject to prior approval by the Williamsburg County School District Board of Trustees.
3. The successful bidder will be required to furnish Performance Bond and Labor and Materials Bond in the amount of one hundred percent (100%) of the Contract Amount.
4. Discussion with bidders: After opening, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the Procurement Officers sole judgment, needing clarification must be accorded that opportunity.

CLARIFICATION: Pursuant to Section 11-32-15220(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.

PROTEST

Any protest must be addressed to the Director Contracts and Procurement Services, and submitted in writing (a) by email to Mike Barrineau, Chief Procurement Officer mbarrineau@wcsd.k12.sc.us or (b) by post or delivery to, 500 N. Academy Street, Bldg. D, Kingstree, SC 29556

III. Scope of Work / Specifications

The Owner has retained the services of Kellahan and Associates, Engineers and Surveyor's, Inc., Nicky Kellahan, PE, PLS to represent the Owner's interest during the construction of the work.

Scope of work for the WILLIAMSBURG COUNTY AREA SCHOOLS REPAIR AND RE-SURFACING PROJECT, VARIOUS SCHOOLS in the Kingstree and Greeleyville area of Williamsburg County School District. Work includes repairs to parking lots as noted on the plans and the asphalt resurfacing at Kingstree High School-West Campus, Kingstree High School – East Campus, Greeleyville Primary School, Greeleyville Elementary and Middle School to complete the KINGSTREE AND GREELEYVILLE AREA SCHOOLS RE- SURFACING PACKAGE, VARIOUS SCHOOLS per plans and specifications.

SPECIFICATIONS: Construction Plans and Technical Specifications are attached.

INSTALLATION:

The first day the contractor will have access to the site will be **January 26, 2023**, and Substantial Completion of the Work by **April 12, 2023**, with Final Completion by **May 1, 2023**. The Contractor shall commence work under this Contract within 14 days of the date of Notice to Proceed and achieve final Completion for the project on or before May 1, 2023. Any change from this schedule must have written approval of the Owner.

NOTE: A Certificate of Insurance must be submitted to Mike Barrineau, Procurement Officer, upon award. The Notice to Proceed and Purchase Order will not be issued until the Certificate of Insurance is on file in the Procurement Office.

PERMITS AND LICENSES:

The Contractor shall obtain and pay for applicable licenses and fees.

Contractor must have valid South Carolina Contractors License.

The contractor or sub-contractor performing this work must have all required licenses, both State of South Carolina and Federal, prior to start of work.

LIENS AND INCUMBRANCES:

The Contractor shall satisfy immediately any lien or encumbrance, which because of any act or default of the Contractor, is filed against the District.

NON ARBITRATION:

Disputes pertaining to this contract are not eligible for solution through arbitration procedures.

QUALITY ASSURANCE:

Protection of Williamsburg County School District Property:

The Contractor shall protect from damage due to his work, methods, procedures and workmen, the School District's property including building surfaces, finishes, systems, equipment, furniture, supplies, and other components. The Contractor shall repair or cause to be repaired damage to School District property.

Products and Materials:

The Contractor shall use materials and products in the work which are new and of top quality. The Contractor shall assume full responsibility for protection, storage, safety and damage to stored and installed materials until Substantial Completion.

Qualifications of Work Persons:

The Contractor shall use skilled work persons who are thoroughly trained and experienced in the necessary crafts and trades.

Workmanship:

The Contractor shall cause the parts to be securely anchored, bonded, joined and secured together, the installation to be done in a workman-like manner in accordance with the best recognized practices, and the working parts to be adjusted and left in perfect working order.

Corrections in the Work:

The Contractor shall replace work rejected by the Williamsburg County School District as defective or as non-conforming within 10 days from written notice of rejection at no cost to the Williamsburg County School District.

PROJECT COORDINATION:

The Contractor shall verify by field measurements before ordering materials and prefabricated items. The Contractor shall coordinate the work of all trades and schedule the timing so as not to cause delays to any phase of construction. The Contractor shall plan the work to minimize the disruption of Williamsburg County School District operations. The Contractor shall cooperate with reasonable scheduling requirements of the Williamsburg County School District. School may be in session during the construction, and the contractor shall coordinate with the Williamsburg County School District to avoid disruption of the school activities.

SAFETY:

The Contractor shall provide safety barricades, fences, temporary walks, and signals in compliance with legal requirements, police regulations, and/or as requested by Williamsburg County School District at no additional cost.

CLEANING:

The Contractor shall clean up job site as frequently as necessary, but no less than, on a daily basis. Upon Substantial Completion, the Contractor shall clean the job site of all debris, miscellaneous construction materials, trash and unused materials. The Contractor shall remove and legally dispose of all debris.

CONSTRUCTION FACILITIES AND TEMPORARY CONTROL:

Utilities:

Contractor's use of Owner's utilities shall be paid for by the contractor.

Sanitary Facilities:

Provide and maintain, in sanitary condition, enclosed weather tight chemical toilets for use of construction personnel. Installation shall be in accord with applicable codes and of authorities having jurisdiction. Upon completion of the work, toilets and appurtenance shall be removed, leaving premises in satisfactory condition as approved by the owner.

NOTE: Under no circumstances will workmen be allowed to use any student or staff toilet facility within the facility.

Barricades and Fencing:

Provide and maintain safety barricades, fences, temporary walks, bracing and shoring and signals in compliance with local requirements, police regulations and as necessary to separate non-project persons from construction areas.

WARRANTY:

All products and services shall carry, after proper completion, and under normal use, a two (2) year warranty against all defects in materials and workmanship unless noted otherwise in the individual Specifications.

TERMINATION OF AGREEMENT

The School District may terminate this agreement in whole or in part at any time, upon written notification to the successful bidder, for any reason at School District's convenience. The School District may terminate this agreement in whole or in part at any time upon written notification to successful bidder for any default involving:

- (A) Failure to develop or deliver products and/or render the services within the schedule requirements of the School District or the School District's Designee.
- (B) Successful bidder's failure to make progress reasonably satisfactory to the School District, in the performance of its obligations under this Agreement. With respect to any such default, School District's right to terminate shall be conditioned upon successful bidder's failure within ten (10) days after School District's notification to provide a remedy satisfactory to School District to cure failure of non-compliance.
- (C) In the event successful bidder becomes the subject of any proceedings under State or Federal Law for the relief of debtors or otherwise becomes insolvent, bankrupt or makes assignments for the benefit of creditors.

IV. Information for Offerors to Submit

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL: You shall submit a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis.

Bids are to be submitted on the Bid Form provided *accompanied by the Attachments contained herein and described below pursuant to the terms of this solicitation*; enclosed in a sealed, opaque envelope bearing the name and address of the bidder and name Williamsburg County School District of contract being bid. All Bids must comply with the laws of the State of South Carolina. Indicate your company name on each page of the Bid Form.

Complete and Submit attachments B, C, D, E, F and G with the bid. Complete and submit attachments E and G as applicable. Offeror must list subcontractors identified in the table appearing on Attachment B. Instructions for subcontractor listings appear on that page. Failure to properly comply with subcontractor listing requirements may render the Offeror nonresponsive and/or no responsible. The Small Woman Minority Business Enterprise information required in attachments C, D, and F will be required to be submitted by 2:00 p.m. the following day of Bid Opening along with the bid verification.

V. Qualifications

PROPOSER'S QUALIFICATIONS Bids shall be considered only from bidders who are properly licensed and regularly established in the business called for and who in the judgment of the School District are financially responsible and able to show evidence of their reliability, ability, experience, to render prompt and satisfactory service in the volume called for under this contract.

To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, WCSD Standards of Responsibility and information from any other source may be considered. An Offeror must, upon request of WCSD, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award.

Before a submittal is considered for award, the bidder may be requested by the Procurement Official to submit completed form SE-350 as to his/her previous experience in performing similar or comparable work and of his/her business and technical organization and financial resources.

VI. Award Criteria

The School District intends to award a contract to the contractor whose offer, conforming to the solicitation, is the most advantageous on the basis for all products, services and requirements contained herein.

In all cases, the School District will be the sole judge as to whether a vendor's bid has or has not satisfactorily met the requirement of this bid.

Award will be made to the lowest responsive, responsible bidder who submits a responsive bid which is most advantageous to the Williamsburg County School District.

VII. Terms and Conditions

A. General

Williamsburg County School District reserves the right to make the final determination as to the bidder's ability to provide the products or services requested herein.

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE: (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the Williamsburg County School District shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment,

(ii) the identity (by contract number) of the specific Williamsburg County School District contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its EIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19- 445.2180, which does not restrict transfers by operation of law.

BANKRUPTCY (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the School District. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract (b) Termination. This contract is voidable and subject to immediate termination by the School District upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

CHOICE-OF-LAW The agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

ORDER OF PRECEDENCE In the event of inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) bid pricing schedule, (b) bid specifications, (c) standard solicitation provisions/general contract clauses, whether incorporated by reference or otherwise, (d) special solicitation provisions/special contract clauses and (e) instructions to bidders.

DISCOUNT FOR PROMPT PAYMENT:

- a) Discounts for prompt payment will not be considered in the evaluation of Offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the Offeror. As an alternative to offering a discount for prompt payment in conjunction with the Offer, Offerors awarded contracts may include discounts for prompt payment on individual invoices.
- b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the District annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal Holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

DISPUTES (a) Choice-of-Forum: All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the Chief Procurement Officer in accordance with the Williamsburg County School District Procurement Code, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Williamsburg County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (b) Service of Process: Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

EQUAL OPPORTUNITY Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

FIXED PRICING REQUIRED Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

NON-INDEMNIFICATION Any term or condition is void to the extent it requires Williamsburg County School District to indemnify anyone.

NOTICE (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the District shall be to the Procurement Specialist's address on the cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

PAYMENT Williamsburg County School District shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this Contract, including the purchase order, payment shall not be made on partial deliveries accepted by Williamsburg County School District.

Unless the purchase order specified another method of payment, payment will be made by check. Payment and interest shall be made in accordance with S.C. code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

PUBLICITY RELEASES Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the user.

PURCHASE ORDER A purchase order may be enclosed with or issued pursuant to this contract and will be an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated in accordance with the budget of the district and assures distribution of the necessary receiving reports. The purchase order does not supersede any provisions of the resulting contract. Performance time and dates are determined solely by the contract and any modification thereto.

SURVIVAL OF OBLIGATIONS The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

TAXES : Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the District, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the School District. It shall be solely the School District's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the School District to contractor, contractor shall be liable to the School District for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

This is not a tax exempt project.

TERMINATION DUE TO UNAVAILABILITY OF FUNDS Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Contract shall be canceled. In the event of a cancellation pursuant to this paragraph, Contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

THIRD PARTY BENEFICIARY This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

WAIVER Williamsburg County School District does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Official has actual authority to waive any of Williamsburg County School District's rights under this Contract. Any waiver must be in writing.

B. Special

PURCHASE ORDER AMENDMENTS, MODIFICATIONS AND CHANGE ORDERS Any change orders, alterations, amendments or other modifications hereunder shall not be effective unless reduced to writing and approved by the Procurement Official responsible for this solicitation and the vendor. All questions, problems or changes arising after award of this purchase order shall be directed to the Procurement Official, Mike Barrineau, responsible for this solicitation, at Williamsburg County School District 500 N. Academy St., Building D, Kingstree, SC

COMPLIANCE WITH STATUTES: During the term of the contract, it shall be the Contractor's responsibility to ensure compliance with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

INSURANCE The Contractor (or Subcontractor, or anyone directly or indirectly employed by any of them) will provide and maintain, as a minimum or greater, if required by law, the following types and amounts of insurance:

1. Commercial General Liability: Contractor must provide Commercial General Liability insurance using the 1993 ISO Occurrence For (CG 00 01 10/93) or an equivalent form. The Commercial General Liability insurance must include coverage for premises-operations, independent contractors, products-completed operations, personal injury and contractual liability. The contractual liability must include the tort liability of another assumed in a business contract. The Contractor or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse or underground property damage. This insurance shall be maintained throughout the duration of the project and for a minimum of one year after final payment as provided for in Article 9.10. Limits shall be as follows:

Each Occurrence Limit	
Bodily Injury/Property Damage Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

2. The General Aggregate Limit is to be written on a "per project" basis using contractor's per project endorsement Amendment-Aggregate Limits of Insurance (CG2503). The Project/Completed Operations Aggregate Limit must be at least \$2,000,000 or written confirmation provided that the Commercial Umbrella coverage includes liability coverage for damage to the insured's completed work equivalent to that provided under the CG 00 01 10/93 coverage form.
3. The Owner is to be named as an additional insured in the Contractor's policy with respect to this project using the ISO Additional Insured-Owners, Contractors endorsement (CG 20 10) or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to the Owner by mailing a copy of the endorsement or Certificate of Insurance.
4. Insurance for all owned, non-owned and hired vehicles on ISO form CA 00 01 12/4. This insurance will apply as primary insurance with respect to any other insurance or self-insurance the Owner may have or elect to carry with respect to this Project.
5. Comprehensive Automobile Liability Insurance: Contractor must provide and maintain business auto liability 90 or equivalent coverage form with the following limits:

Combined Single Limit	\$1,000,000 per accident (or equivalent "split limits" satisfying Umbrella Excess Liability requirements.)
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If necessary, the policy shall be indorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of the ISO CA 00 01 form.

6. Workers Compensation: Contractor shall provide and maintain workers compensation and employers liability insurance providing coverage in South Carolina. Limits and coverage shall be as follows;

Workers Compensation Insurance	SC statutory benefits
Employers Liability Insurance	\$500,000 each accident
	\$1,000,000 policy limit
	\$500,000 each employee

If the project involves work which may be subject to the US Longshore and Harbor workers Act (USL&HW), or which may involve watercraft, Contractor will attach the respective endorsements to provide this coverage. USL&HW (WC 00 01 06 A) and maritime Coverage (WC 00 02 01 A).

7. Umbrella Excess Liability: Contractor shall provide umbrella excess liability insurance on an “occurrence” basis providing “following form” coverage for the underlying coverages outlined above with the following limits:

Excess Liability (Umbrella Form)	
General Aggregate	\$5,000,000
Each Occurrence	\$5,000,000

8. Certificates of insurance which shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements attached hereto and which shall be acceptable to the Owner shall be submitted to the Owner upon execution of this Agreement. When requested by the Owner, the Contractor shall furnish copies of Certificates of Insurance for each subcontractor as well. All Certificates of Insurance shall include a statement that the Owner will receive written notice 30 days prior to cancellation of any policy. Further, the Williamsburg County School District will be named as an additional insured on all policies.

CONTRACTOR PERSONNEL The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

CONTRACTOR SOLELY RESPONSIBLE FOR PERFORMANCE: The School District will rely upon the Contractor for full, complete, and satisfactory performance under the terms and conditions of this agreement.

If the Contractor’s services provided for hereunder include services, equipment, or materials supplied by a subcontractor, the Contractor must act as the prime Contractor for these items and assume full responsibility for performance hereunder. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

TERMINATION Subject to the conditions below, the School District providing a 30-day advance notice in writing is given to the vendor may terminate the purchase order for any reason.

NON-APPROPRIATIONS Any purchase order entered into by the School District resulting from this bid invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

FOR CONVENIENCE In the event that this purchase order is terminated or canceled upon request and for the convenience of the School District without the required thirty (30) days advance written notice, then the School District may negotiate reasonable termination costs, if applicable.

FOR CAUSE Termination by the School District for cause, default or negligence on the part of the vendor shall be excluded from the foregoing conditions; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived and the default clause in this bid shall apply.

DEFAULT In case of default by the vendor, the School District reserves the right to purchase any or all items in default in the open market, charging the vendor with any additional costs. The defaulting vendor shall not be considered a responsible bidder until the assessed charge has been satisfied.

DISPOSAL OF PACKAGING : Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation. [07-7B085-1]

ILLEGAL IMMIGRATION By submitting an offer, Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws (originally enacted as Section 3 of The South Carolina Illegal Immigration Reform Act, 2008 S.C. Act No. 280) and agrees to provide upon request any documentation required to establish either: (a) the applicability of Title 8, Chapter 14 to Contractor and any subcontractors or sub-subcontractors; or (b) the compliance with Title 8, Chapter 14 by Contractor and any subcontractor or sub-subcontractor. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractors language requiring the subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in any contracts with the sub-subcontractors language requiring the sub-subcontractor to comply with the applicable requirements of Title 8, Chapter 14.

INDEMNIFICATION

1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Williamsburg County School District, its agents, Board, officers and/or officials, employees and volunteers (hereinafter, the "Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnify which would otherwise exist as to a party or person described herein.
2. In claims against any person or entity indemnified herein by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation herein shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Further, any performance bond or insurance protection required by the contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnitees as herein provided.
3. The Contractor's indemnity obligations shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs), and punitive damages (if any) arising out of, or in connection with, and (1) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of this contract by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (2) means, methods, procedures, techniques or sequences or execution or performance of the services required, and (3) failure to secure and pay for permits, fees, approvals, and/or licenses related to performance of the contract by the Contractor, a Subcontractor or any person or entity for whom either is responsible.
4. The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees and court costs) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity and hold-harmless obligations under this contract.
5. The Contractor shall further indemnify and hold harmless the Indemnitees from all suits or claims of any character brought by reason of infringing on any patent, trademark or copyright. Contractor shall have no liability to the Indemnities if such patent, trademark or copyright infringement or claim is based upon the Contractor's use of materials furnished to the Contractor by an Indemnatee.

LICENSES AND PERMITS: During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the School District, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

PERFORMANCE BOND REQUIRED: Within ten (10) days after award, contractor shall provide a performance bond in the full amount of the contract sum, issued by a surety company licensed in South Carolina, with an “A” minimum rating of performance as stated in the most current publication of “Best’s key rating guide, property liability” which shall show a financial strength rating of at least five (5) times the contract amount. Each bond must be accompanied by a “power of attorney” authorizing the attorney-in-fact to bind the surety and certified to include the date of the performance bond. [07-7B155-1]

QUALITY OF PRODUCT (This clause does not apply to solicitations for service requirements). Unless otherwise indicated in this bid it is understood and agreed that any item offered or shipped on this bid shall be new and in first class condition, that all containers shall be new and suitable for storage or shipment, and that prices include standard commercial packaging. For information technology procurements as defined in Provision I., of the Williamsburg County School District Procurement Code, if items that are other than new (i.e. remanufactured or refurbished) are desired to be bid, the bidder must obtain written permission to bid such items at least 5 days in advance of bid opening from the person to whom inquiries are to be directed as listed on the front page of the invitation for bid.

PRICE ADJUSTMENTS: (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the Contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or,
- (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Specialist of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Specialist in accordance with generally accepted accounting principles, subject to the provisions of Section 4210 of WCSD Procurement Codes. (2) Submission of Price or Cost Data. Upon request of the Procurement Specialist, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 1830.

RISK OF LOSS The contractor shall assume all risk of loss, and shall maintain insurance coverage on all items installed, up to the time of final acceptance.

RECORDS RETENTION AND RIGHT TO AUDIT Williamsburg County School District has the right to audit the books and records of the contractor as they pertain to this contract, both independent of, and pursuant to, the School District Procurement Code. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract.

The School District may conduct, or have conducted, performance audits of the contractor. The School District may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the School District.

Pertaining to all audits, contractor shall make available to the School District access to its computer files containing the history of contract performance and all other documents related to the audit. Additionally, any software used by the contractor shall be made available for auditing purposes at no cost to the School District.

FORCE MAJEURE The contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet required delivery schedule.

SOUTH CAROLINA GOVERNING LAW CLAUSE The agreement and any dispute, claim, or controversy relating to the agreement shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. All disputes, claims, or controversies relating to the agreement shall be resolved exclusively by the Purchase orders and Procurement Services Director in accordance with the District Procurement Code, or in the absence of jurisdiction, only in the court of common pleas for, or a federal court located in, Williamsburg County, State of South Carolina. Vendor agrees that any act by the government regarding the agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the eleventh amendment of the United States Constitution. As used in this paragraph, the term "agreement means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

SWMBE PARTICIPATION Williamsburg County School District encourages SWMBE businesses to participate in the Bid process. It is the intent of the Williamsburg County School District to provide equal opportunity to small, minority, and woman-owned businesses in every aspect of procurement. All business conducted with SWMBE businesses certified by the South Carolina Governor's Office of Small and Minority Business Assistance is recorded in a yearly report submitted to the Williamsburg County School District Board of Trustees. In order to be included in this report you must submit a copy of your certificate with your proposal.

ITEM SUBSTITUTION (This clause does not apply to solicitations for service requirements). No substitutes will be allowed on purchase orders received from the School District without permission from the Procurement Official.

RESTRICTIONS/LIMITATIONS No purchases are to be made from this contract for any item that is not listed or for any item that is currently authorized under any other contract awarded prior to this contract.

NON INTERFERENCE: In the event Contractor is unable for any reason to provide any material, services, supplies, products or other items of any type or variety to the School District under this agreement, including but not limited to any such materials, services, supplies, etc. available from any other party (such as subcontractors) supplying said materials, services, etc. to Contractor, the School District will have the right to deal directly with the other supplier without penalty or interference from Contractor.

SUBCONTRACTORS: Subcontractors are subject to same terms and conditions of this agreement as the Contractor.

LIENS AND ENCUMBRANCES The Contractor shall satisfy immediately any lien or encumbrance which, because of any act or default of the Contractor, is filed against the School District.

PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT The School District requires all vendor activities to be in compliance with local, state, and federal mandates concerning "protection of human health and the environment". Any vendor doing business with the School District will be required to document compliance and to specify prudent practices used by the vendor to address applicable mandates including, but not restricted to "the hazard communication standard" OSHA CFR 191 0.1200 (SCRR article 1,71-1910.1200). By submission of this bid, the vendor agrees to take all necessary steps to ensure compliance with these requirements.

COMPLIANCE WITH LAWS During the term of the Contract, Contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

LIQUIDATED DAMAGES If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and as otherwise required by the Contract Documents, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, daily amounts of **\$300.00** commencing upon the first day following expiration of the Contract Time and continuing until the actual date of Completion. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work. If the Contractor fails to obtain Final Completion with 100% of the punch list completed within thirty days from the date of Substantial Completion, the Owner shall be entitled to retain or recover from the Contractor as liquidated damages the amount of **\$300.00** per calendar day from the thirty-first day following the date of Substantial Completion until completion of the punch list and until a Final Completion Certificate is obtained, regardless of how the punch list is completed.

STORAGE OF MATERIALS Absent approval of WCSD, Contractor shall not store items on the premises of WCSD prior to the time set for installation.

MINORITY BUSINESS ENTERPRISE (MBE) PLAN

Statement of Policy

It is the policy of the Williamsburg County School District that discrimination against businesses on the basis of race, color, national origin, and gender is prohibited. No person shall be denied the benefit of, or otherwise discriminated against, on the grounds of race, color, national origin or gender in connection with the award and/or performance of any contract or modification of a contract between a vendor or contractor and the Board which contract is paid or is to be paid for, in whole or part, with monetary appropriations of the Board. Further, it is the policy of WCSD to encourage and promote on an inclusionary basis contracting opportunities for all business, without regard to race, color, national origin or gender. It is expected that all firms seeking to do business with the Williamsburg County School District will comply with this WCSD policy.

MBE Designated Procurement Plan

The regulations and procedures for implementation of this program are outlined in the procurement code approved by the Board of Trustees. The Williamsburg County School District will establish goals that include expending, with Minority Business Enterprises certified by the Office of Small and Minority Business Assistance and non-certified Minority business Enterprises, an amount equal to ten percent (10%) of the School District's controllable dollars expended (with the exclusion of salary, benefits, professional services, utilities and travel) for the procurement of supplies, services, Information Technology and construction. Bidders are requested to provide good faith effort in helping the School District meet this goal.

MBE Subcontractor Participation

Williamsburg County School District, through its contract documents, encourages contractors to utilize minority subcontractors on their projects.

A prime contractor must identify MBE utilization expenditures to certified MBE subcontractors that perform a commercially useful function in the work of the contract. An MBE subcontractor is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract for which the MBE has the skill and expertise and carries out its responsibility by actually performing, managing and supervising the work involved.

MBE Utilization Commitment Report

In order to facilitate an effective monitoring system, each contractor, bidder or offeror must submit a completed and signed MBE Utilization Commitment Report (Attachment D) with the proposal submission which lists the names, addresses and contact persons of the MBE and minority owned businesses, if any, to be used in the contract, the type of work each business will perform, the dollar value of the work and the scope of work. The Utilization Report submitted by the contractor shall be submitted as a part of the contract with WCSD. If the information contained in the Contractors Utilization Report changes by the time the contract is executed, the Contractor shall amend the Utilization Report and such amended Utilization Report shall be incorporated into the contract.

All employees involved in the execution of this contract must be of legal status and be in adherence to all Federal and South Carolina State Laws

END OF SECTION

**WILLIAMSBURG COUNTY SCHOOL DISTRICT
INVITATION TO BID
SOLICITATION NUMBER: WCSD202223-4**

Sealed bids from Paving Contractors qualified under provisions of the Contractor's Licensing Law of the State of South Carolina (Secs. 40-11-10-40-11-350 of Code of Laws, 1976 as amended to date) will be received by the owners, **Williamsburg County School District, on Thursday, Dec 15, 2022**, until 2:00 pm at the **Williamsburg County School District Office located at 500 North Academy Street, Kingstree, SC 29556**; for the Repair and Resurfacing of Parking Lots to various school locations in Williamsburg County School District. Immediately thereafter the sealed bids will be opened and read publicly. Faxed bids, due to the possibility of illegibility or misread information will not be accepted.

Copies of Contract Documents may be obtained at the office of Kellahan and Associates, Engineers and Surveyors, Inc., located at 116 N. Jackson Street, Kingstree, SC upon payment of \$100.00.

Description: **Williamsburg County School Repair and Resurfacing of Parking Lots to:**

1. Kingstree High School, West Campus
2. Kingstree High School, East Campus
3. Greeleyville Primary School
4. Greeleyville Elementary and Middle

Mandatory Pre-bid: **12/01/2022 at 2:00 p.m. EST.**

Pre-Bid Location: Williamsburg County School District Office
500 North Academy Street
Kingstree, SC 29556

Deadline for Questions: **12/12/2022 at 4:00 pm EST**

Submission of Bid Due: **12/15/2022 at 2:00 pm EST**

Intent to Award: **01/11/2023**

Execute Contract: **01/26/2023**

Notice to Proceed: **01/26/2023**

Contract Closeout: **05/01/2023**

Submit to: Williamsburg County School District Office
Attn: Michael Barrineau
Repair and Resurfacing of Parking Lots
500 North Academy Street
Kingstree, SC 29556

SEALED BIDS, shall be accompanied by a Bid Bond or certified check in an amount of not less than five percent (5%) of the base bid pledging that the bidder will enter into a contract with the Owner for the terms stated in the bid. Both Performance Bond and Payment Bond will be required in an amount equal to 100 percent of the contract price. All bonds shall be a surety Licensed in the State of South Carolina with an "A" minimum rating or performance and financial strength of at least 5 times the contract amount, including add alternates. All bonds shall be accompanied by a power of attorney authorizing the attorney in fact to

bind the surety and certified to include the date of the bond. Bids are due on date and time as noted and will be publicly opened at the stated time and place. **Bids received after this time will not be considered.** You or a representative of your firm are invited to attend.

PLEASE NOTE! Williamsburg County School District assumes no responsibility for the delivery of the solicitation, addendum or solicitation response via the U.S. Postal Service, Fed Ex, UPS, electronic transmission, or any other means.

This contract will be awarded to the responsive offer or whose bid is determined to be the most advantageous to the Williamsburg County School District. However, the right is reserved to reject any and all, or portions of bids received, and in all cases, the District will be the sole judge as to whether a proposer's bid has or has not satisfactorily met the requirements of this bid solicitation. The owner reserves the right to waive any informalities and technicalities in bidding. The District is not required to furnish a statement of the reason(s) why a bid was not deemed to be the most advantageous nor will it be required to furnish any information regarding the bid solicitation.

No bid may be withdrawn for a period of 60 days after date and time of opening of bids. Substantial completion of this project is **April 12, 2023.** Liquidated damages in the amount of \$300.00 per day will be charged this contract for each day beyond the final completion date of **May 1, 2023.** Drawings and Specifications for the project were prepared by Kellahan and Associates, Engineers and Surveyors, Inc., 116 N. Jackson Street, Kingstree, South Carolina. Contractors licensed to do business in South Carolina, according to the provisions of the Contractor's Licensing Law of the State of South Carolina Code of Laws of South Carolina as amended, may bid this project.

The Contractor is asked to complete on his own letterhead and deliver to the Williamsburg County School District Office with the enclosed "Form of Proposal" in a sealed envelope marked:

SEPARATE SEALED BID FOR EACH OF THE FOLLOWING SCHOOLS CAMPUS:

- 1. Kingstree High School, West Campus**
- 2. Kingstree High School, East Campus**
- 3. Greeleyville Primary School**
- 4. Greeleyville Elementary and Middle**

Attn: Michael Barrineau
Parking Lot Upgrades
500 North Academy Street
Kingstree, SC 29556

Neither the Owner or the Engineer is responsible for any omissions or deletions to the bids submitted by the Contractor or Sub-Contractor due to receiving an incomplete or partial set of Plans and Specifications.

Bidders are required to inform themselves fully of all laws, ordinances and conditions relating to the construction and labor under which the work will be performed, and each contractor must employ, as far as possible, such methods and means in carrying out the work accordingly. Bidders are required to visit the site and become thoroughly familiar with all existing conditions before submitting a bid. Failure to do so will in no way relieve the successful bidder from the necessity of furnishing any materials or performing any work that may be required to complete the work in accordance with the true intent and meaning of the plans and specifications without additional cost to the owner.

No oral interpretations will be made to the bidders as to the meaning of the Plans and Specifications. Requests for interpretations or clarifications will not be made less than 3 days prior to receipt of proposals. All interpretations and clarifications made to bidders will be issued in the form of an addendum. Such addenda are to be itemized in the proposals and they will become a part of the Contract / Agreement.

END OF SECTION

WILLIAMSBURG COUNTY SCHOOL DISTRICT

BID PROPOSAL / INSTRUCTIONS TO BIDDERS

- A. PROPOSALS: All proposals must be presented in a sealed envelope, addressed to the Owner. All bids must have their State Contractor's license number clearly posted on the OUTSIDE of the bid package AND labeled: "Repair and Resurfacing Parking Lots". The proposal must be filed with the Owner on or before the time stated in the Invitation for Bids. Mailed proposals will be treated in every respect as though filed in person and will be subject to the same requirements.

Proposals received subsequent to the time stated will be returned unopened. Prior to the time stated any proposal may be withdrawn at the discretion of the bidder, but no proposal may be withdrawn for a period of sixty (60) days after bids have been opened, pending the execution of a contract with the successful bidder.

- B. BID DEPOSIT: Each proposal shall be accompanied by a deposit of cash or certified check for five percent (5%) of the amount of the proposal, and any proposal not accompanied by such deposit shall be absolutely void and will not be considered. Checks shall be drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation and shall be payable to the order of the Owner. The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within (10) days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his bid.

In lieu of the bid deposit required herein, the bidder may execute a bid bond for the same amount. The form of Bid Bond required under these bidding documents will be AIA Document C-430-2017 Bid Bond, published by the American Institute of Architects. Surety shall meet all requirements relating to the performance bond required in Paragraph H.

- C. EXAMINATION OF WORK: Each bidder shall, by careful examination, satisfy himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the facilities needed preliminary to and during the execution of the work, the general and local conditions, and all other matters which can in any way affect the work or the cost thereof under the contract. No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after the execution of the contract, shall affect or modify any of the terms or obligations therein.
- D. ADDENDA AND INTERPRETATIONS: No interpretation of the meaning of the plans will be made to any bidder orally. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be sent by certified mail with return receipt requested to all prospective bidders. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract

Documents. Bidder shall indicate in the space provided on the Bid Form all addenda received.

- E. PREPARATION OF BIDS: Bids shall be submitted on the forms provided and must be signed by the bidder or his authorized representative. The person signing the bid shall initial any corrections to entries made on bid forms.

Bidders must quote on all items appearing on the bid forms, unless specific directions in the advertisement, on the bid form, or in special conditions allow for partial bids. Failure to quote on all items may disqualify the bid. When quotations on all items are not required, bidders shall insert the words "No Bid" where appropriate.

Alternative bids will not be considered unless specifically called for.

- F. BASIS OF AWARD: The bids will be compared on the basis of the total pricing **FOR EACH SCHOOL SITE** which will include and cover the furnishing of all materials and the performance of all labor requisite or proper, and completing of all work called for under the accompanying contract, and in the manner set forth and described in the specifications. **SCHOOL SITES MAY BE AWARDED UNDER SEPARATE CONTRACT(S)**.

Where estimated quantities are included in certain items of the proposal, they are for the purpose of comparing bids. While they are believed to be close approximations, they are not guaranteed, and settlement will be made for such items upon the basis of the work actually executed at the unit prices in the proposal as accepted. In case of error in the extension of prices in a proposal, unit bid prices shall govern.

- G. BIDDER'S QUALIFICATIONS: No proposal will be received from any bidder unless he can present satisfactory evidence that he is skilled in work of similar nature to that covered by the Contract and has sufficient assets to meet all obligations to be incurred in carrying out the work. The Owner may make such investigations as are deemed necessary to determine the ability of the bidder to perform the work and the bidder shall furnish all such additional information and data for this purpose as may be requested. The Owner reserves the right to reject any bid if investigation of him fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.
- H. TIME LIMIT: The time allowed for completion of all work under this Contract, shall be AS SHOWN IN THE SPECIAL CONDITIONS OF THIS CONTRACT (the "Time Limit").
- I. COMMENCING WORK: Immediately upon completion of Contractual agreements, the Contractor shall submit to the Engineer for approval a construction schedule arranged to be within the Contract Time Limit.

- J. PERFORMANCE AND PAYMENT BONDS: At the time of entering into the Contract, the Contractor shall give a performance bond and a labor and material payment bond to the Owner for the use of the Owner and all persons doing work or furnishing skill, tools, machinery or materials under or for the purpose of such Contract, conditional for the payment as they become due, of all just claims for such work, tools, machinery, skill and materials, for the completion of the Contract according to its terms, for saving the Owner harmless from all costs and charges that may accrue on account of the doing of the work specified, and for the compliance with the laws appertaining thereto. Performance and Payment Bond shall be AIA Document A312-2010. Said bonds must be a substantial surety company satisfactory to the Owner and authorized by law to do business in the state in which the work is located.

Attorneys-in-fact who sign bonds must file with each copy thereof a certified and effectively dated copy of their powers of attorney.

- K. DETERMINATION OF LOW BID: The Contract will be awarded, if it is awarded, to the lowest responsible bidder. The Owner, in its sole discretion, will decide which is the lowest responsible bidder.
- L. REJECTION OF BIDS: These proposals are asked in good faith, and awards will be made as soon as practicable, provided satisfactory bids are received. The right is reserved, however, to waive informalities in bidding, to reject any or all proposals, or to accept a bid other than the lowest submitted if such action is deemed to be in the best interest of the Owner.
- M. SOUTH CAROLINA SALES TAX: Bidders shall include in amounts bid in the Proposal an allowance for payment of State Sales Tax on all taxable materials specified to be furnished by the Contractor and incorporated into the Work under this Contract.

END OF SECTION

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

1. EXPLANATION TO OFFERORS

Any explanations desired by offerors regarding the meaning or interpretation of this solicitation or the drawings and specifications should be requested in written form from the Program Manager and/or the Architect/Engineer with sufficient time allowed for a reply to reach them at least ten (10) days before the submission of their Proposal. Oral explanations or instruction given before the award of the Contract will not be binding. Any interpretations made will be in the form of an addendum to the Specifications or Drawings and will be furnished to all offerors who must acknowledge receipt of all addenda in writing in their Proposal.

2. APPROVAL OF MATERIALS, EQUIPMENT AND SUBSTITUTIONS PRIOR TO RECEIPT OF PROPOSALS

A. Substitutions:

The Contract shall be based on the standards of quality established in the Contract Documents. Products specified by reference to standard specifications such as ASTM and similar standards do not require further approval except for interface within the Work. Do not substitute materials, equipment, or methods unless such substitution has been specifically approved in writing for this Work by the Engineer. All approved substitutions shall be listed in the format required by the RFP.

B. "Or equal":

Where the phrase "or equal," or "equal as approved by the Architect", occurs in the Contract Documents, do not assume that the materials, equipment, or methods will be approved as equal unless the item has been specifically approved for this Work by the Engineer. The decision of the Engineer shall be final.

C. Approval of Substitutions and "Or equal" Materials: N/A

3. ADDENDA

Changes or corrections may be made in the General Drawings and Specifications after they have been issued and receipt of proposals. In such cases, a written addendum describing the change or corrections will be issued by the Program Manager to all offerors. Such Addendum or Addenda will take precedence over the portion of the General Drawings and Specifications concerned and will be considered a part of the Contract Documents. Except in unusual cases, an addendum will be issued to reach the offeror at least four (4) days prior to the date for receipt of proposals.

4. EXAMINATION OF DRAWINGS AND SPECIFICATIONS

Each offeror shall carefully examine Drawings and Specifications and all Addenda or other revisions thereto and thoroughly familiarize himself with the detailed requirements thereof prior to submitting a proposal. If any offeror is in doubt as to the true meaning of any part of the Drawings, Specifications or other documents, or if any part of the error, discrepancy, conflict or omission is noted, the offeror should immediately contact the Program Manager

and request clarification. The Program Manager will clarify discrepancy, conflict or omission and will notify all offerors by Addendum in cases where the extent of the Work or the cost thereof will be appreciably affected. No allowance will be made after the proposals are received for oversight by an offeror.

5. EXAMINATION OF OTHER CONDITIONS AFFECTING THE WORK

Each offeror shall examine and thoroughly familiarize himself with all existing conditions including all applicable laws, ordinances, rules and regulations that will affect the work prior to submitting a proposal. He shall visit the site, examine the grounds and all existing buildings, utilities and roads and shall ascertain by any reasonable means all conditions that will in any manner affect his work. He shall ask the Program Manager for any additional information that he deems necessary for him to be fully informed as to exactly what is to be expected prior to submitting a proposal. The drawings have been prepared on the basis of surveys and inspections of the site and physical conditions at the site. This, however, shall not relieve the offeror of the necessity for fully informing himself as to the existing physical conditions. Each offeror shall carefully examine the existing conditions as compared to the Contract Documents. Any discrepancies noted between same shall be noted in writing to the Program Manager a minimum of ten (10) days prior to the established bid date for inclusion in a written Addendum. Verbal or telephone changes will not be considered binding.

6. DRAWINGS AND SPECIFICATIONS

All copies of Drawings, Specifications and other documents furnished to offerors, sub-offerors and material suppliers shall be returned to the Program Manager within ten (10) days following the receipt of proposals.

7. PREPARATION AND SUBMISSION OF A PROPOSAL

Proposals to be considered must be made on the form provided in the Project Manual. All conditions set forth in any "Proposal Form" provided and the "Invitation to Offerors" must be complied with. If required, figures shall be entered on the proposal form in writing. All blank spaces shall be filled in properly or indicated as not applicable as necessary. No interlineations or alteration will be made on the proposal form. If erasures are necessary and appear on the forms, each such erasure must be initialed by the person signing the proposal. Proposals shall be placed in an opaque envelope, sealed, addressed and delivered in the manner and at the time stipulated in the Request for Proposal and/or Advertisement. Facsimile or telegraphic proposals and related modifications will not be considered.

8. PROPOSAL GUARANTEE

The offeror shall include with his proposal a certified check or bid bond for the sum of not less than five percent (5%) of the total amount of the proposal, as evidence of good faith and as a guarantee that if awarded the Contract, the offeror will execute the Contract and give bond(s) as required by the Specifications.

9. RETURN OF BID BONDS OR CHECKS

The bid bond or check of offerors that are not awarded the contract will be returned within 48 hours after the Owner and Contractor have executed a Contract and the executed performance bond and payment bond has been approved by the Owner, or, if no award has been made within 60 days after the opening of bids so long as he has not been notified of

the acceptance of his proposal.

10. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

The successful offeror, upon his failure or refusal to execute and deliver the Contract and bonds required within ten (10) days after he has received notice of the acceptance of his proposal, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his proposal.

11. ACCEPTANCE OR REJECTION OF PROPOSALS

The Owner reserves the right to reject any and all proposals when such rejection is in the best interest of the Owner to reject the proposal of an offeror who has previously failed to perform or to complete on time Contracts of a similar nature; and to reject the proposal of an offeror who is not, in the opinion of the Owner, Architect/Engineer and/or Program Manager, in a position to perform the Contract. The Owner reserves the right to reject any subcontractor who has previously failed to perform properly in the opinion of the Architect/Engineer, Program Manager or the Owner. The Owner also reserves the right to waive any informalities and technicalities in submission of proposals. The Owner may also accept or reject any of the alternates that may be set forth on the "Proposal Form". The Contract will be awarded (unless all proposals are rejected), under normal circumstances, to the offeror submitting the proposal deemed most advantageous to the District.

12. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn on written or telegraphed requests received from offerors prior to the time fixed for their receipt. Negligence on the part of the offeror or its subcontractors in preparing the proposal confers no right for the withdrawal of the proposal after the time for receipt of proposals.

13. CONTRACTOR'S LICENSES

A. Each offeror shall obtain a Contractor's License under the provisions of the Contractor's Licensing Law (1976 Code) Volume 14, Chapter 11, Section 40-11-10 through 40-11-340 as amended. Specialty Contractor's Licenses can be obtained for the various building trades and information regarding these licenses can be obtained from the South Carolina Licensing Board for Contractors. It shall be the offeror's responsibility to provide appropriate licensing to perform the work described in the contract documents.

B. Any Owner hiring or contracting or having a Contract with any non-resident Contractor, where such contract exceeds \$10,000 or can be expected to exceed that amount, shall be required by law to withhold two percent (2%) of each and every payment made after January 1, 1959, to such non-resident individuals and partnerships, and foreign corporations as well.

C. If a Contractor has any employees earning income in South Carolina who are legal residents of another state, he also becomes a withholding agent and must withhold South Carolina Income Taxes from the earnings of the non-resident employees on the basis of tables furnished by the South Carolina Tax Commission. If a Contractor subcontracts with other non-resident Contractors, he must withhold two percent (2%) of each and every payment made to the

the subcontractor if the total amount of the subcontract exceeds \$10,000 or can be expected to exceed that amount. The subcontractor may obtain the same relief as a Contractor by posting bond, per stipulations of this Act.

14. CLEANLINESS

A particularly high standard of cleanliness will be rigidly enforced. Contractors will be required to perform daily clean-up and failure to do so may result in the work being performed by other forces with all costs deducted from the Contract Sum.

15. WORK BY OTHER CONTRACTORS

By submission of this bid, offeror acknowledges that he has read and is totally familiar with the scope of the other Contractor's work.

16. EXISTING UTILITIES

Each Contractor shall be responsible for the protection of underground and overhead utilities in the work area which are shown on the Drawings and/or which can be detected by a visual inspection of the job site. Each Contractor is cautioned, however, that there may exist unknown underground utilities neither visible nor shown on the Drawings. Each Contractor will take all reasonable precautions necessary to detect and preserve the service which these utilities provide. Should additional work be caused to the Contractor by the presence of such unknown underground utilities, the cost borne by the Contractor as a result of same may be reimbursed by the Owner through the use of a negotiated Change Order.

17. PROHIBITION AGAINST GRATUITIES, ETC.

The Contractor's attention is directed to Section 8-13-420 of the South Carolina Code of Laws, 1976 as amended regarding the prohibition against gratuities and kickbacks, etc.

18. CONSTRUCTION SCHEDULE

The Contractor will be required to perform the work within the allocated time as outlined in the Specifications.

19. BONDS

A Performance Bond executed on EJCDC C-610 -2013 and Payment Bond, executed on EJCDC C-615 -2013, will be required in the amount of one hundred percent (100%) of the Contract amount. Cost of bonds to be included with the bid.

20. ACCESS TO PROJECT

The Contractor will not be permitted to occupy the site of the Work or allowed on the property of the Owner until the written Notice to Proceed has been issued and all documents required prior to the commencement of the work, including but not limited to, Certificates of Insurance, have been submitted and approved by the Program Manager

21. MINORITY PARTICIPATION

Williamsburg County School District strongly encourages Minority Participation in the proposal process. All businesses that are certified by the State of South Carolina as a Certified Minority Business must submit a copy of their certificate with their proposal. Successful Offeror will be required to submit to the Program Manager, on a form provided, with each Application For Payment, a listing of all SWMBE subcontracts, whether certified or not.

22. PROTEST CLAUSE

Any actual or prospective bidder, offeror, contractor or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Chief Procurement Officer within fifteen (15) days of the date of issuance of the Invitation for Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue. Any actual or prospective bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Chief Procurement Officer within ten (10) days of the date of award or posting of the Notification of Intent to Award, whichever is earlier in accordance with the Williamsburg County School District Procurement Code and Regulations.

23. SPECIAL CONDITIONS

RELATED DOCUMENTS

Attention is directed to Division 1, General Requirements, EJCDC Document C-700-2009 Edition as modified "General Conditions" and Instructions to Bidders which are binding in their entirety on this portion of the work and in particular to paragraphs concerning materials, workmanship and SUBSTITUTIONS.

GENERAL

Definition of Terms

- A. The term "Engineer" refers to:
Kellahan and Associates
Engineers and Surveyors, Inc.
116 N. Jackson Street
Kingstree, SC 29556

- B. The term "Owner" refers to:
Williamsburg Co. School District
500 N. Academy Street, Bldg D
Kingstree, SC 29556

- C. The term "Engineer" refers to:
William N. Kellahan, Jr. PE, PLS
116 N. Jackson Street
Kingstree, SC 29556
843-372-1345
Wnk@ftc-i.net

- D. The term "Contractor" refers to the prime contracting firms or person who, for a lump sum, fixed or wage, perform construction on the work included in the Plans and Specifications.

Location of Sites

Kingtree High School, West Campus
Kingtree High School, East Campus
Greeleyville Primary School
Greeleyville Elementary and Middle School

Scope of Work: Provide a complete construction package for the Williamsburg County School District Re- Surfacing Project –Work includes asphalt resurfacing at Kingtree High School – West Campus, Kingtree High School East Campus, Greeleyville Primary School, Greeleyville Elementary and Middle School as identified on plans and in specifications to complete the WILLIAMSBURG COUNTY SCHOOL DISTRICT RE- SURFACING PROJECT .

24. Time of Completion

It is the intent of the Owner to award the Contract and issue a Notice of Award if the bid is acceptable and is within the funds available for the project. Based on this, the Contractor shall commence work under this Contract within 14 days of the date of Notice to Proceed and achieve Substantial Completion for the project in **48 calendar days** from date of "Notice to Proceed".

Bidder also agrees for the Owner to withhold Project liquidated damages for each consecutive calendar day thereafter the project remains incomplete in accordance with EJCDC C-520 - 2013, Standard Form of Agreement Between Owner and Contractor, as amended and EJCDC Documents C700 - 2013, General Conditions of the Contract for Construction, as amended.

25. Proposed Phasing Plan N/A

26. Contractor's Construction Schedule

The Contractor shall submit to the Project Engineer a Construction schedule, as required in the EJCDC C-700-2013 General Conditions, within ten (10) calendar days of the Notice to Proceed. No Pay Applications will be processed until the Contractor has delivered an acceptable Construction Schedule.

27. Pumping and Dewatering: N/A

28. Contractors Quality Control:

The Contractor shall establish a Quality Control Program for his work in accordance with the Contract Documents. The Quality Control Program is to be reviewed by the Project Engineer.

The Contractor is to assign the duties of quality control (QC) to a dedicated Quality Control Manager who will be on site at all times that work is in progress.

29. Contractors Safety Plan:

The Contractor is required to submit a "Project Safety Plan" specific for this project in writing for approval from the Project Engineer. The Project Safety Plan shall include provisions for severe weather. The Project Safety Plan is required to be submitted and reviewed prior to

processing of the first Application for Payment.

30. Contractors Supervision:

The Contractor shall have on-site for the duration of his work and at all times that work is being performed a competent representative, capable of the following:

- A. Supervision of tradesmen and coordination of the work of subcontractors.
- B. Reading and interpreting the Contract Documents.
- C. Orderly coordination of this work with the Program Manager and Architect in the daily execution of the work.
- D. Laying out his work.

The Contractor's Superintendent shall be the sole supervisor of the Contractor's Labor Force and shall be on site whenever work is being performed. He shall attend the regularly scheduled progress meetings on-site, keep himself and his company informed of scheduled requirements, safety hazards and general job conditions. He shall plan and pursue the work under his supervision in a professional and expeditious manner, in close coordination with the requirements of the Contractor's approved Construction Schedule.

The Contractors Superintendent shall maintain a written daily log of the progress of the work. This Log shall be kept at the jobsite, and made available to the Project Engineer and Owner. A copy of the Contractors Daily Log shall be delivered to the Project Engineer by 11: 00 AM the following work day. These reports shall contain as a minimum: Date, Day, Low and High Temperatures, Record of Precipitation, Quantity of the Contractors and Sub-Contractors personnel on site, a general description of work activities performed, Visitors, Deliveries, Inspections and any other comments that pertain to job progress. Receipt of Daily Reports shall be a prerequisite for approval of Monthly Progress Payments by the Program Manager.

31. Owner Approval of Subcontractors and Personnel

The Contractor shall not employ any subcontractor, superintendent or workmen whose employment on the project is objectionable to the Owner or Project Engineer

The Contractor shall submit a list of all Subcontractors within 30 days of Notice to Proceed.

Contract Sublet, Assign and Transfer

The Contractor shall not sublet, assign or transfer this contract without written approval of the Owner.

32. Submittals

The Contractor shall submit for review by the Project Engineer, Shop Drawings, and Schedules, required by the Contract Documents. No Pay Applications will be processed until the Contractor has provided a "Submittal Schedule" and acceptable submittal information.

All submittals shall be transmitted to the Project Engineer for forwarding to the Owner for review based upon the Submittal Schedule which shall be prepared in conjunction with the Construction Schedule.

Initial Submittals required are as follows:

1. Prior to Mobilizing On-Site.
 - a. Insurance Certificates.
2. Following Notice to Proceed.
 - a. Contract executed by the Contractor
 - b. Payment Bond (within 7 days after Contract execution by Owner and prior to mobilizing on site)
 - c. Performance Bond (within 7 days after Contract execution by Owner and prior to mobilizing on site)
 - d. Shop Drawing Submittal Schedule (within 7 days)
 - e. Schedule of Values (within 7 days)
 - f. Superintendent's and Quality Control Representative's Resume (within 7 days unless previously submitted)
 - g. Detailed Construction Schedule (within 10 days)
 - h. Subcontractors listing and Major Material Suppliers (within 7 days)
 - i. All required Submittals (within 60 days)
 - j. Quality Control Plan (within 14 days)
 - k. Project Safety Plan (within 14 days)
 - l. A letter accepting all project conditions prior to the start of work as required by Special Condition herein.
33. Project Closeout, Punch List, and Deficiency List
The Contractor shall complete all punch list and deficiency items and submit all close out documents to the Project Engineer.

Liquated Damages will resume if all punch list items are not completed within 30 days of Substantial Completion. Retainage will continue to be withheld, and Final Payment will not be processed until all Closeout Documents, As Built and Record Drawings, Warranties and Guarantees and other items required for closeout are transmitted to the Program Manager.
34. Project Engineer
The Owner has contracted with Kellahan and Associates, Engineers and Surveyors, Inc., to serve as his agent throughout this project.
35. Cleanliness
A particularly high standard of cleanliness will be rigidly enforced. The Contractor will be required to perform daily cleanup.
36. Special Conditions
The following scope of work (and/or special conditions) considered a part of the bid requirements for the site work. All terms and conditions as outlined in the project plans, specifications and addenda shall apply.

- A. Contractor shall maintain the construction site. Adjacent public streets, sidewalks, curbs, and parking lots shall be swept and kept clean daily throughout all site operations.
- B. Garbage and/or trash will be placed in appropriate containers and removed from the site a minimum of two (2) times per week (more often as deemed necessary by the Project Engineer).
- C. Contractor to schedule his work in accordance with all noise ordinance's per the authority having jurisdiction.
- D. Contractor shall provide a letter accepting all project conditions prior to commencing work.
- E. Contractor will be responsible for submitting a Project Safety Plan taking into consideration that this is an occupied campus. Safety Plan will be reviewed by the Project Engineer.

END OF SECTION

**WILLIAMSBURG COUNTY SCHOOL DISTRICT
SPECIAL CONDITIONS**

- A. TIME FOR COMPLETION: The work which the Contractor is required to perform under this contract shall be commenced at the time stipulated by the Owner in the Notice to Proceed to the Contractor and shall be fully completed **NOT LATER THAN May 1, 2023**.
- B. LIQUIDATED DAMAGES: The Contractor shall pay to the Owner as liquidated damages the sum of \$300.00 (dollars) for each calendar day that the Contractor shall be in default of completing the work.
- C. AVAILABILITY OF CONTRACTOR: The Contractor shall insure that an employee in a reasonable position with the company will be available to the Owner 24 hours per day, including weekends, holidays and during extended shutdown periods. Prior to beginning construction, the Contractor shall furnish the Owner a list of such persons, including names, addresses and telephone numbers. The purpose of this requirement is to enable the Owner to contact the contractor in case of emergencies or other problems that may arise during non-working hours.
- D. LOCAL CODES: All work under this contract shall be done between 6:00 a.m. and 8:00 p.m., Monday through Saturday, unless otherwise approved in writing by the Owner.
- E. CONTRACT DOCUMENTS AND DRAWINGS: The Owner will furnish the Contractor without charge two (2) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.
- F. ORDER AND DISCIPLINE: The Contractor shall at all times enforce strict discipline and good among his employees. Any employees of the Contractor who shall appear to be incompetent, disorderly, intemperate or in any other way disqualified for or unfaithful to work entrusted to him, shall be discharged immediately on the request of the Engineer, and he shall not again be employed on the work without the Engineers written consent.
- G. CLEANING UP: The Contractor shall keep the premises free from the accumulation of waste material and rubbish and upon completion of the work, prior to the final acceptance of the completed project by the Owner, he shall remove from the premises all rubbish, surplus materials, implements, tools, etc., and leave his work in a clean condition, satisfactory to the Engineer.

- H. MAINTENANCE OF TRAFFIC: In any work within the public right-of-way, the Contractor shall provide adequate warning and protection for pedestrian and 16 vehicular traffic from any hazard arising out of the Contractors operations and will be held responsible for any damage caused by negligence on his part or by the improper placing of or failure to display danger signs and road lanterns. All traffic controls shall conform with the Manuel on Uniform Traffic Control (MUTCD), latest edition.
- I. NOTIFICATION OF LOCAL RESIDENTS: N/A
- J. WATER SUPPLY: The Contractor shall provide, **at his cost**, all water necessary for construction operations. Any water obtained from the Town of Kingstree must be drawn through a meter device provided by the Town. A deposit of \$200, payable at the Town's Utility Billing Office, is required prior to issuance of a meter. Upon completion of the project, and at the request of the Contractor, the Town will retrieve the meter and invoice the Contractor for the water used at the current rate.
- K. SCHEDULE: A detailed schedule shall be submitted to the Engineer prior to the beginning of work on this contract. The schedule shall include at a minimum the anticipated start date, the order of paving, the time frame for each school, and any other items associated with this project.

WILLIAMSBURG COUNTY SCHOOL DISTRICT

TERMS AND CONDITIONS

Unless otherwise modified, the following terms and conditions will apply to the Repair and Resurfacing of 4 School Parking Lots services rendered as specified herein and as shown on the drawings. Bids must be held firm and may not be withdrawn for sixty (60) days after the bid opening.

Services to be Provided

The Contractor shall provide services as set forth in their bid and in accordance with the terms identified herein. The services provided will be performed on behalf of and solely for the Williamsburg County School District and any information, tests, reports, correspondence, and conclusions shall not be released to other parties unless authorized by the Williamsburg County School District or in accordance with any applicable state or federal law.

Billing and Payment

Williamsburg School District will pay the Contractor for services performed in accordance with the bid documents and signed Agreement (see Application for Payment). Williamsburg County School District reserves the right to request substantiating information on any bill submitted. Williamsburg County School District will, within 10 days after approval of an invoice requesting payment, either indicate the approval of payment and process the invoice or indicate to the Contractor in writing, the reason for refusing to approve said invoice. In the later case, the Contractor will make the necessary corrections and resubmit the invoice. Williamsburg County School District will, within 30 days of an approved invoice, pay the amount to the Contractor.

Court Litigation and Waiver of Jury Trial

Notwithstanding the existence of any provision for arbitration of disputes in the contract or any legislation providing for arbitration, any dispute arising under this contract shall not be submitted to arbitration and the parties shall be left to the remedies at law. It is further expressly agreed that both parties waive and relinquish their right to a trial by jury of any dispute arising out of this contract. The intent of the parties is not to have a jury decide any aspect of any dispute which may arise under this contract.

Mediation

All claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be submitted to non-binding mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate its representative and shall meet at the Williamsburg County School District within ten (10) days after the service of notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties themselves be unable to agree on a resolution of this dispute, and then the parties shall appoint a third party, who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Each party shall pay the fees and expenses of the party mediator and such costs shall be borne equally by both parties. Upon agreement of the parties, either party may waive the first step in the mediation process and appoint a mutually acceptable mediator. Any third party mediator designated to serve in accordance with the provisions of the Agreement shall be disinterested and shall be qualified to evaluate the performance of both parties. This process shall be considered as a condition precedent to moving to court. Equitable Relief Nothing herein shall prevent either party from obtaining a court order enforcing the mediation process or such other temporary or equitable relief until such time that the dispute is settled or finally adjudicated.

END OF SECTION

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

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- E. Based on the information and observations referred to in Paragraph 3.01.D above, Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of any other Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- I. Bidder will submit written evidence of its authority to do business in the State or other jurisdiction where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on the behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 - BASIS OF BID

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

SEE SCHEDULE OF VALUES

SCHEDULE OF VALUES
KINGSTREE HIGH SCHOOL – WEST CAMPUS

	Items	Units	Qty	Unit Price	Price
1	Mobilization and demobilization.	LS	1	\$_____	\$_____
2	Insurance	LS	1	\$_____	\$_____
3	Permits.	LS	1	\$_____	\$_____
4	Clean Existing surface and removal of debris	LS	1	\$_____	\$_____
5	Spray Primatol Weed/Grass Killer on areas where grass now exist	LS	1	\$_____	\$_____
6	Mill and Repair of asphalt areas with Type B HMA where indicated including disposal of milled material - complete	SF	40,760	\$_____	\$_____
7	Tack Coat	SY	31,022	\$_____	\$_____
8	Surface Course 2" Type C	SY	31,022	\$_____	\$_____
9	Stripping	LS	1	\$_____	\$_____
10	Painted Handicap Symbols	EA	16	\$_____	\$_____
11	Clean up	LS	1	\$_____	\$_____
12	Contingency	LS	1	\$30,000.00	\$30,000.00

TOTAL BASE BID

\$_____

Note: Contingency is for use by Owner. Money can only be used by Owner with approved change order originated by Engineer and approved by Contractor and Owner.

**SCHEDULE OF VALUES
KINGSTREE HIGH SCHOOL – EAST CAMPUS**

	Items	Units	Qty	Unit Price	Price
1	Mobilization and demobilization.	LS	1	\$_____	\$_____
2	Insurance	LS	1	\$_____	\$_____
3	Permits.	LS	1	\$_____	\$_____
4	Clean Existing surface and removal of debris	LS	1	\$_____	\$_____
5	Spray Primatol Weed/Grass Killer on areas where grass now exist	LS	1	\$_____	\$_____
6	Mill and Repair of asphalt areas with Type B HMA where indicated including disposal of milled material - complete	SF	10,004	\$_____	\$_____
7	Tack Coat	SY	22,566	\$_____	\$_____
8	Surface Course 2" Type C	SY	22,966	\$_____	\$_____
9	Stripping	LS	1	\$_____	\$_____
10	Painted Handicap Symbols	EA	16	\$_____	\$_____
11	Clean up	LS	1	\$_____	\$_____
12	Contingency	LS	1	\$30,000	\$30,000

TOTAL BASE BID

\$_____

Note: Contingency is for use by Owner. Money can only be used by Owner with approved change order originated by Engineer and approved by Contractor and Owner.

**SCHEDULE OF VALUES
GREELEYVILLE PRIMARY SCHOOL**

	Items	Units	Qty	Unit Price	Price
1	Mobilization and demobilization.	LS	1	\$_____	\$_____
2	Insurance	LS	1	\$_____	\$_____
3	Permits.	LS	1	\$_____	\$_____
4	Clean Existing surface and removal of debris	LS	1	\$_____	\$_____
5	Spray Primatol Weed/Grass Killer on areas where grass now exist	LS	1	\$_____	\$_____
6	Mill and Repair of asphalt areas with Type B HMA where indicated including disposal of milled material - complete	SF	516	\$_____	\$_____
7	Tack Coat	SY	9,218	\$_____	\$_____
8	Surface Course 2" Type C	SY	9,218	\$_____	\$_____
9	Stripping	LS	1	\$_____	\$_____
10	Painted Handicap Symbols	EA	8	\$_____	\$_____
11	Clean up	LS	1	\$_____	\$_____
12	Contingency	LS	1	\$15,000	\$15,000

TOTAL BASE BID

\$_____

Note: Contingency is for use by Owner. Money can only be used by Owner with approved change order originated by Engineer and approved by Contractor and Owner.

SCHEDULE OF VALUES
GREELEYVILLE ELEMENTARY AND MIDDLE SCHOOL

	Items	Units	Qty	Unit Price	Price
1	Mobilization and demobilization.	LS	1	\$_____	\$_____
2	Insurance	LS	1	\$_____	\$_____
3	Permits.	LS	1	\$_____	\$_____
4	Clean Existing surface and removal of debris	LS	1	\$_____	\$_____
5	Spray Primatol Weed/Grass Killer on areas where grass now exist	LS	1	\$_____	\$_____
6	Mill and Repair of asphalt areas with Type B HMA where indicated including disposal of milled material - complete	SF	3,900	\$_____	\$_____
7	Remove and Replace Conc. Parking Bumpers	LS	1	\$_____	\$_____
8	Tack Coat	SY	16,050	\$_____	\$_____
9	Surface Course 2" Type C	SY	16,050	\$_____	\$_____
10	Stripping	LS	1	\$_____	\$_____
11	Painted Handicap Symbols	EA	6	\$_____	\$_____
12	Clean up	LS	1	\$_____	\$_____
13	Contingency	LS	1	\$20,000	\$20,000

TOTAL BASE BID

\$_____

Note: Contingency is for use by Owner. Money can only be used by Owner with approved change order originated by Engineer and approved by Contractor and Owner.

ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damage.

ARTICLE 7 - ATTACHMENTS TO THIS BID

7.01 The following documents are attached to and made a condition of the Bid:

- A. Evidence of authority to do business in the state or jurisdiction of the Project; or a written covenant to obtain such license within the time frame for acceptance of Bids;
- B. Contractor's License No.: _____ Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;

ARTICLE 8 - DEFINED TERMS

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

ARTICLE 9 - BID SUBMITTAL

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____

(Individual's signature)

SEAL, if required by State

Doing business as:

A Partnership

Partnership Name: _____

By: _____

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

SEAL, if required by State

Name (typed or printed):

A Corporation

Corporation Name:

State or Jurisdiction of Incorporation: _____

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

By: _____

(Signature -- attach evidence of authority to sign)

Name (typed or printed):

Title: _____

CORPORATE
SEAL,
if required by State

Attest _____

(Signature of Corporate Secretary)

Date of Qualification to do business in _____ [State or other jurisdiction where
Project is located] is ___ / ___ / _____

A Joint Venture

Name of Joint Venture:

First Joint Venture Name: _____

SEAL,
if required
by State

By: _____

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

Name (typed or printed):

Title: _____

Second Joint Venture Name:

SEAL,
if required
by State

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

Name (typed or printed): _____

Title: _____

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

9.02 Bidder's Business address: _____

Business Phone No. (_____) _____

Business FAX No. (_____) _____

Business E-Mail Address _____

Employer's Tax ID No. _____

Bid submitted on _____, 20__.

State Contractor License No. _____

GC License # _____

COMPANY NAME

ADDRESS

COMPANY
REPRESENTATIVE
Authorized to Sign

BY:

TITLE:

TELEPHONE:

ADDENDA RECEIPT (if applicable)	()	Addendum #1	Date
	()	Addendum #2	Date
	()	Addendum #3	Date

The undersigned, as bidder, proposes and agrees, if this bid is accepted, to contract with Williamsburg County School District, in the form of contract specified, to pay all required fees and permits, and to furnish any necessary materials, tools, equipment, apparatus, transportation, and labor to complete the projects, and has bid in full and complete accordance with the shown, noted, described and reasonably intended requirements of the contract documents.

1. The bidder further declares that he/she has examined the site of work and has become thoroughly familiar with all conditions pertaining to the work to be performed. The bidder also has examined the plans and specifications for the work and contractual documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he/she has been satisfied relative to the work to be performed.
2. The bidder agrees that this Bid Proposal is valid from bid date and for a minimum of 60 days hence.
3. The bidder agrees that this IFB supersedes any and all previous agreements, both written and oral, and that the terms and conditions of this Agreement shall exclusively govern the agreement between the parties.
4. WILLIAMSBURG COUNTY SCHOOL DISTRICT RESERVES THE RIGHT TO REJECT A CONTRACTOR'S BID IF THE CONTRACTOR IS CURRENTLY PERFORMING WORK FOR THE DISTRICT AND HIS CURRENT PROJECT IS BEHIND SCHEDULE.
5. Time is of the essence. By submitting a bid and signing this bid form, Contractor acknowledges that the time for completion of this project is reasonable and that it can complete this project in the time allotted. Further, Contractor acknowledges that it has notice of the liquidated damages provisions contained within Article 3.6 of the AIA A132 Standard Form of Agreement Between Owner and Contractor.

Company Name

Name of Authorized Rep. – Typed or Printed

Signature of Authorized Representative

Street Address

City / State / Zip Code

Date

ATTACHMENT LISTING

- A. Offeror's Checklist**
- B. Minority Participation Affidavit**
- C. MBE Utilization Commitment Form**
- D. Statement of Intent to Perform Work without Subcontracting**
- E. Certificate of Minority Business Enterprise Unavailability**
- F. Williamsburg County School District No Bid Form**

Firm Name: _____

Attachment A

OFFEROR'S CHECKLIST
AVOID COMMON MISTAKES

Web site:

Review this checklist prior to submitting your proposal
If you fail to follow this checklist, you risk having your proposal rejected.

- COMPLETED AND SIGNED ALL REQUIRED DOCUMENTS.
- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE PROPOSAL TO MAKE SURE YOUR PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE DISTRICTS MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE HEADING ENTITLED: FOIA BIDDING INSTRUCTIONS, SUBMITTING CONFIDENTIAL INFORMATION. ***DO NOT MARK YOUR ENTIRE BID AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! Do NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!***
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE.
- MAKE SURE A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS SIGNS THE COVER PAGE.
- MAKE SURE YOUR PROPOSAL INCLUDES THE THREE (3) COPIES REQUESTED.
- CHECK TO ENSURE YOUR PROPOSAL INCLUDES EVERYTHING REQUESTED INCLUDING A BID SUBMITTAL AS REQUIRED BY PARAGRAPH VIII OF THE INVITATION FOR BIDS!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS! PLEASE SEE BIDDING INSTRUCTIONS AND ANY PROVISIONS REGARDING PRE-BID CONFERENCES.**

NOTE: This checklist is included only as a reminder to help Offerors avoid common mistakes
Responsiveness will be evaluated against the solicitation **not** against this checklist.
You do not need to return this checklist with your response.

Firm Name: _____

Attachment B

Minority Participation Affidavit

- Is the bidder a South Carolina Certified Minority Business? (Yes) _____ (No) _____
- Is the bidder a Minority Business certified by another governmental entity?

(Yes) _____(No) _____
- If so, please list the certifying governmental entity: _____

- Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? (Yes)_____ (No) _____
- If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? _____%
- Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? (Yes) _____(No) _____
- If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? _____%

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- _____ Traditional minority
- _____ Traditional minority, but female
- _____ Women (Caucasian females)
- _____ Hispanic minorities
- _____ Temporary certification
- _____ Other minorities (Native American, Asian, etc.)

Note: If more than one minority Contractor will be utilized in the performance of this contract, please provide the information above for each minority business.

Attachment D

STATEMENT OF INTENT TO PERFORM WORK WITHOUT SUBCONTRACTING

Firm Name: _____

Project: _____

Bid/Proposal #: _____

Signature: _____

It is the intent of the above named firm to self-perform 100% of the work as outlined in this bid/proposal.

The bidder/proposer states the following:

1. That it is a normal business practice of the bidder to perform **all elements** of this type contract with its own employees.
2. That if it should become necessary to subcontract some portion of the work at a later date, the bidder/proposer will notify program manager and provide documented good-faith efforts to comply with all requirements of the MBE program in providing equal opportunities to MBE firms.
3. Bidder/proposer will provide equal opportunity for MBEs to participate in significant material-supplier opportunities available under this scope of work and will document good faith efforts as required by program manager.

**WILLIAMSBURG COUNTY SCHOOL DISTRICT
NO BID REPLY FORM**

**BID TITLE:
WILLIAMSBURG COUNTY SCHOOLS REPAIR AND RE-
SURFACING PROJECT
KINGSTREE HIGH SCHOOL EAST CAMPUS,
KINGSTREE HIGH SCHOOL WEST CAMPUS,
GREELEYVILLE PRIMARY SCHOOL,
GREELEYVILLE ELEMENTARY AND MIDDLE
SCHOOL**

IF YOU INTEND TO ENTER A "NO BID" RESPONSE TO OUR REQUEST FOR BIDS, PLEASE INDICATE YOUR REASONS BELOW. WE WILL USE THIS INFORMATION TO BETTER IDENTIFY BIDDERS FOR PARTICULAR COMMODITIES, UPDATE OUR RECORDS AND IMPROVE THE QUALITY AND CONTENT OF OUR REQUESTS FOR BIDS. THIS INFORMATION WILL NOT PRECLUDE YOUR RECEIPT OF FUTURE INVITATIONS UNLESS YOU REQUEST REMOVAL FROM THE BIDDERS LIST OR FROM A PARTICULAR PRODUCT CATEGORY. WE TREAT THIS "NO BID" RESPONSE AS A PROPER REPLY TO AN INVITATION. FAILURE TO RETURN THIS FORM FOR A "NO BID" COULD RESULT IN YOUR BEING REMOVED FROM THE BIDDERS LIST AS "NOT INTERESTED".

() 1. We do not wish to participate in the bid process.

() 2. We do not wish to bid under the terms and conditions of the request for bid document. Our objections are.....

() 3. We do not feel we can be competitive.

() 4. We cannot submit a bid because of the marketing or franchising policies of the manufacturing company.

() 5. We do not wish to sell to Williamsburg County School District. Our objections are.....

() 6. We do not sell the items/service on which bids are requested.

() 7. Other _____

() 8. We wish to remain on the bidders' list.

() 9. We wish to be deleted from the bidders' list.

() 10. Remove us from this item(s)/service only.

COMPANY NAME _____

SIGNED _____

Date: _____

END OF SECTION

BID BOND

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

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum

\$

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

(Seal)

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

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

THIS AGREEMENT is by and between Williamsburg County School District (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

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

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Repair and Resurfacing of Parking Lots at four school sites.

ARTICLE 3 – ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by Kellahan and Associates, Engineers and Surveyors, Inc.
- 3.02 The Owner has retained Kellahan and Associates, Engineers and Surveyors, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed on or before July 15, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before July 31, 2023.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$300.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$300.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work other than Unit Price Work, a lump sum of:
 All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
 - B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

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

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

ARTICLE 6 – PAYMENT PROCEDURES

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

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
- B. Upon Substantial Completion, of the entire construction to be provided under the Contract Documents Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions.

6.03 *Final Payment*

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

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 4 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- E. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies,

or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- I. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 6 inclusive).
 - 2. General Conditions (pages 1 to 65 inclusive).
 - 3. Supplementary Conditions (pages 1 to 1, inclusive).
 - 4. Specifications as listed in the table of contents of the Project Manual.
 - 5. Drawings consisting of 4 sheets with each Drawings listed on the attached cover sheet index.
 - 6. Addenda (numbers ___ to ___, inclusive).
 - 7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages ___ to ___, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages ___ to ___, inclusive).
 - 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

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

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

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

PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*:

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND (BOND MUST BE AT LEAST 100% OF THE BID AMOUNT)

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal *(seal)*

Surety's Name and Corporate Seal *(seal)*

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
 - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 7. The total amount of previous payments received by the Claimant; and
 - 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



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CONSTRUCTION CONTRACT**

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

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

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

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

1.02 *Terminology*

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

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

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

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

3.02 Reference Standards

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

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

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

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

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

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

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

4.05 *Delays in Contractor's Progress*

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

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

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

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

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

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

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

5.03 *Subsurface and Physical Conditions*

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

5.04 *Differing Subsurface or Physical Conditions*

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

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

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

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

5.05 *Underground Facilities*

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

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

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

5.06 *Hazardous Environmental Conditions at Site*

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

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

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

6.02 *Insurance—General Provisions*

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

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

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

6.03 *Contractor's Insurance*

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

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

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

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

6.04 *Owner's Liability Insurance*

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

6.05 *Property Insurance*

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

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

6.06 *Waiver of Rights*

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

6.07 *Receipt and Application of Property Insurance Proceeds*

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

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

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

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

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

7.02 Labor; Working Hours

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

7.03 Services, Materials, and Equipment

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

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

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

7.04 "Or Equals"

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

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

7.05 Substitutes

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

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

7.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

- O. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

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

7.08 *Permits*

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

7.09 *Taxes*

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

7.10 *Laws and Regulations*

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

7.11 *Record Documents*

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

7.12 *Safety and Protection*

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

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

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

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

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

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

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

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

2. *Samples:*

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

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

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

D. *Engineer's Review:*

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

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

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

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

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

7.18 *Indemnification*

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

7.19 *Delegation of Professional Design Services*

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

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

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

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

8.02 *Coordination*

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

8.03 *Legal Relationships*

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

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

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

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

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

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

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

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

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

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

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

11.02 *Owner-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

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

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

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

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

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

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

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

11.07 Execution of Change Orders

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

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

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

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

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

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

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

13.01 *Cost of the Work*

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

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

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

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

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

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

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

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

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

13.02 Allowances

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

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

13.03 *Unit Price Work*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

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

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

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

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

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

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

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

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

15.01 Progress Payments

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

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

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

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

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

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

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

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

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

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

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

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

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

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

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

15.07 *Waiver of Claims*

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

15.08 *Correction Period*

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

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

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

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

16.03 *Owner May Terminate For Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

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

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

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

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

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

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

18.02 Computation of Times

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

18.03 Cumulative Remedies

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2013 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

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

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SC-1.01.A.3. Add the following language to the end of Paragraph 1.01.A.3:

The Application for Payment form to be used on this Project is EJCDC No. C-620. The Engineer and Owners representative must approve all Applications for Payment before payment is made by Owner.

SC-1.01.A.9. Add the following language to the end of Paragraph 1.01.A.9:

The Change Order form to be used on this Project is EJCDC No. C-941.

SC-6.03. Add the following new paragraph immediately after Paragraph 6.03:

- C. The limits of liability for insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

INSURANCE INFORMATION FOUND IN SCOPE OF SOLICITATION PAGE 15 & 16.

NOTICE OF AWARD

Date of Issuance:

Owner:

Owner's Contract No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated [_____] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ _____ *[note if subject to unit prices, or cost-plus]*

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. *[revise if multiple copies accompany the Notice of Award]*

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [4] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *[e.g., performance and payment bonds]* and insurance documentation as specified in General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

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

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner:

Authorized Signature

By:

Title:

Copy: Engineer

NOTICE TO PROCEED

Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:
	Effective Date of Contract:

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the number of days to achieve Substantial Completion is _____.

Before starting any Work at the Site, Contractor must comply with the following:
[Note any access limitations, security procedures, or other restrictions]

Owner:

Authorized Signature

By:

Title:

Date Issued:

Copy: Engineer

Date of Issuance:	Effective Date:
Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:

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

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title _____	Title _____
Date: _____	Date _____	Date _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

Certificate of Substantial Completion

Project:	
Owner:	Owner's Contract No.:
Contract:	Engineer's Project No.:

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

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

Date of Substantial Completion

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

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

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

- Amended Responsibilities Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

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

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

Executed by Engineer

Date

Accepted by Contractor

Date

Accepted by Owner

Date

SECTION 01410

TESTING AND LABORATORY SERVICES

PART 1: GENERAL

1.01 REQUIREMENTS INCLUDED

- A. Contractor will select and pay for an independent testing laboratory to perform the following test:
 - 1. Pavement compaction and density testing in accordance with SC DOT.
- B. Contractor shall select (subject to Owner's approval), coordinate, and pay for all testing and test lab services not specified in 1.01 A. Costs for these tests shall be included in the Contractor's Base Bid.
- C. Contractor shall cooperate with testing laboratories and personnel to facilitate the execution of the required testing services.
- D. Employment of testing laboratories shall in no way relieve Contractor's obligations to perform the Work of the Contract.

1.02 RELATED REQUIREMENTS – N/A

1.03 LIMITATIONS OF AUTHORITY OF TESTING LABORATORY

- A. Laboratory is not authorized to:
 - 1. Release, revoke, alter, or enlarge on requirements of Contract Documents.
 - 2. Approve or accept any portion of the Work.
 - 3. Perform any duties of the Contractor.

1.04 CONTRACTOR'S RESPONSIBILITIES

- A. Cooperate with laboratory personnel and provide access to work.
- B. Secure and deliver to the laboratory adequate quantities of representative samples of materials proposed to be used and requiring testing.
- C. Submit to the laboratory the preliminary design mix proposed to be used for HOT MIXED ASPHALT CONCRETE which require control by the testing laboratory.
- D. Materials and equipment used in the performance of work under this Contract are subject to inspection and testing. Standard specifications for quality and workmanship are indicated in the Contract Documents. The Engineer may require the Contractor to provide statements or certificates from the manufacturers that the materials provided by them are manufactured in full accordance with the standard specifications for quality and workmanship indicated in the SC DOT Standard Specifications.

- E. Furnish incidental labor and facilities:
 - 1. To provide access to work to be tested.
 - 2. To obtain and handle samples at the Project site or at the source of the product to be tested.
 - 3. To facilitate inspections and tests.
 - 4. For storage and curing of test samples. (If required)
- F. Notify Testing Lab sufficiently in advance of operations to allow for laboratory assignment of personnel and scheduling of pavement compaction tests.
- G. If the test results indicate the material complies with the Contract Documents, provide test results to Engineer. If the tests and any subsequent retests indicate the materials fail to meet the requirements of the Contract Documents, the Engineer shall be notified by email.

PART 2: PRODUCTS (NOT USED)

PART 3: PRODUCTS (NOT USED)

END OF SECTION

SECTION 01510
TEMPORARY TOILET FACILITIES

PART 1: GENERAL

1.01 REQUIREMENTS INCLUDED

- A. Furnish and maintain temporary toilet required for construction personnel. Remove on completion of work.

1.02 RELATED REQUIREMENTS – N/A

1.03 REQUIREMENTS OF REGULATORY AGENCIES

- A. Comply with local health department regulations.

PART2: PRODUCTS

2.01 MATERIALS – N/A

2.02 TEMPORARY ELECTRICITY AND LIGHTING – N/A

2.03 TEMPORARY HEAT AND VENTILATION – N/A

2.04 TEMPORARY WATER – N/A

2.05 TEMPORARY SANITARY FACILITIES

- A. Provide sanitary facilities in compliance with laws and regulations.
- B. Service, clean, and maintain facilities and enclosures.

2.06 ENCLOSURES AND CONSTRUCTION FACILITIES – N/A

PART 3: EXECUTION

3.01 GENERAL

- A. Maintain and operate temporary toilet to assure continuous service.
- B. Modify and extend temporary toilet as work progress requires.

3.02 REMOVAL

- A. Completely remove temporary toilet and equipment when their use is no longer required.

END OF SECTION

SECTION 01570

TRAFFIC CONTROL

PART 1: GENERAL

1.01 SCOPE OF WORK

- A. The Contractor shall furnish, install, operate and maintain equipment, services and personnel, with traffic control and protective devices, as required to expedite vehicular traffic flow during construction.

1.02 SUBMITTALS – N/A

1.03 RELATED REQUIREMENTS – N/A

PART 2: PRODUCTS (NOT USED)

PART 3: EXECUTION

3.01 TRAFFIC CONTROL

- A. No road shall be closed to traffic without the prior consent of the Engineer, the agency responsible for the road, and the local police department. All standards of the governing agency shall be strictly followed.

3.02 CONSTRUCTION PARKING CONTROL

- A. The Contractor shall control vehicular parking to preclude interference with public traffic or parking, access by emergency vehicles.
- B. The Contractor shall monitor parking of construction personnel's private vehicles, maintain free vehicular access to and through parking areas and prohibit parking on or adjacent to access roads or in State or County DOT roadways.
- C. No parking shall be allowed on any private roads or driveways.

END OF SECTION

SECTION 01700
CONTRACT CLOSEOUT

PART 1: GENERAL

1.01 REQUIREMENTS INCLUDED

- A. The Contractor shall comply with requirements stated in General Conditions and in the various Specification sections for administrative procedures in closing out the Work.

1.02 SUBSTANTIAL COMPLETION

- A. When Contractor considers the Work is substantially complete, he/she shall submit to the Engineer:
1. A written notice that the Work or designated portion thereof, is substantially complete.
 2. A list of items to be completed and corrected.
- B. Within a reasonable time after receipt of such notice, the Engineer will make an inspection to determine the status of completion.
- C. Should the Engineer determine that the Work is not substantially complete:
1. The Engineer will promptly notify the Contractor in writing, giving the reasons, therefore.
 2. Contractor shall remedy the deficiencies in the Work and send a second written notice of substantial completion to the Engineer.
 3. The Engineer will reinspect the Work.
- D. When the Engineer finds that the Work is substantially complete, he/she will:
1. Prepare and deliver to Owner a tentative Certificate of Substantial Completion on EJCDC Form C-625, with a tentative list of items to be completed or corrected before final payment.
 2. After consideration of any objections made by the Owner as provided in Conditions of the Contract, and when the Engineer considers the Work substantially complete, he/she will execute and deliver to the Owner and Contractor a definite Certificate of Substantial Completion with a revised tentative list of items to be completed or corrected.

1.03 FINAL INSPECTION

- A. When the Contractor considers the Work is complete, he/she shall submit written certification that:
1. Contract Documents have been reviewed.
 2. Work has been inspected for compliance with Contract Documents.

3. Work has been completed in accordance with Contract Documents.
 4. Work is completed and ready for final inspection.
- B. The Engineer will make an inspection to verify the status of completion with reasonable promptness after receipt of such certification.
- C. Should the Engineer consider that the Work is incomplete or defective:
1. The Engineer will promptly notify the Contractor in writing, listing the incomplete or defective work.
 2. Contractor shall take immediate steps to remedy the stated deficiencies and send a second written certification to the Engineer that the Work is complete.
 3. The Engineer will reinspect the Work.
- D. When the Engineer finds that the Work is acceptable under the Contract Documents, Engineer shall request the Contractor to make closeout submittals.
- 1.04 REINSPECTION FEES – N/A
- 1.05 CONTRACTOR'S CLOSEOUT SUBMITTALS TO ENGINEER
- A. Evidence of compliance with requirements of governing authorities.
 - B. Project Record Documents: Requirements of Section 01720.
 - C. Warranties and Bonds: Requirements of General Conditions, Article 5.
 - D. Evidence of Payment and Release of Liens: Requirements of General and Supplementary Conditions.
- 1.06 FINAL ADJUSTMENT OF ACCOUNTS
- A. Submit a final statement of accounting to the Engineer.
 - B. Statement shall reflect all adjustments to the Contract Sum:
 1. The original Contract Sum.
 2. Additions and deductions resulting from:
 - a. Previous Change Orders
 - b. Unit Prices
 - c. Deductions for liquidated damages
 3. Total Contract Sum, as adjusted.
 4. Previous payments.

5. Remaining sum due.

C. Engineer will prepare a Final Change Order, reflecting approved adjustments to the Contract Sum which were not previously made by Change Orders.

1.07 FINAL APPLICATION FOR PAYMENT

A. Contractor shall submit the final Application for Payment in accordance with procedures and requirements stated in the General Conditions.

PART 2: PRODUCTS (NOT USED)

PART 3: EXECUTION (NOT USED)

END OF SECTION

SECTION 01720
PROJECT RECORD DOCUMENTS

PART 1: GENERAL

1.01 REQUIREMENTS INCLUDED

A. Maintain at the site for the Owner one copy of:

1. Contract Drawings.
2. Contract Specifications.
3. Contract Addenda.
4. Change Orders, Work Change Directives, and other modifications to the Contract.
5. Engineer's Field Orders or written instructions.
6. Approved shop drawings, working drawings, and samples.
7. Field test records.
8. Construction photographs.
9. Detailed progress schedule.

1.02 RELATED REQUIREMENTS – N/A

1.03 MAINTENANCE OF RECORD DOCUMENTS AND SAMPLES

A. Store Record Documents apart from documents used for construction.

1. Provide files and racks for storage of Record Documents.

B. Maintain Record Documents in a clean, dry, legible condition and in good order, do not use Record Documents for construction purposes.

C. Make Record Documents available at all times for inspection by the Engineer.

1.04 RECORDING

- A. Label each document "PROJECT RECORD" in neat large, printed letters.
- B. Record information concurrently with construction progress.
- C. Drawings shall be clearly marked to include the field – verified information for the following:
 - 1. Changes made by Field Order or by Change Order.
 - 2. Details not on original contract drawings.
- D. Specifications and Addenda shall be clearly marked to include:
 - 1. Changes made by Field Order or by Change Order.

1.05 SUBMITTAL

- A. At Substantial Completion, deliver Record Drawings to the Engineer for the Owner.
- B. Accompany substantial with transmittal letter, in duplicate, containing:
 - 1. Date
 - 2. Project title and number
 - 3. Contractor's name and address
 - 4. Title and number of each Record Document
 - 5. Signature of Contractor or authorized representative
- C. Monthly progress payments will not be made unless Record Documents are shown to be current. Final payment will not be made unless correct and complete Record Documents are submitted.

PART 2: PRODUCTS (NOT USED)

PART 3: EXECUTION (NOT USED)

END OF SECTION

SECTION 01740

WARRANTIES AND BONDS

PART 1: GENERAL

1.01 SCOPE OF WORK

- A. This Section specifies general administrative and procedural requirements for warranties and bonds required by the Contract Documents.

1.02 RELATED WORK

- A. Refer to Article 12.00 of the General Conditions for the requirements relating to warranties and bonds.

1.03 SUBMITTALS

- A. Submit written warranties to the Owner prior to the date fixed by the Engineer for Substantial Completion. If the Certificate of Substantial Completion designates a commencement date for warranties other than the date of Substantial Completion for the work, or a designated portion of the work, submit written warranties upon request of the Owner.
- B. When a designated portion of the work is completed and occupied or used by the Owner, by separate agreement with the Contractor during the construction period, submit properly executed warranties to the Owner within 15 days of completion of that designated portion of the Work.

1.04 WARRANTY REQUIREMENT

- A. Related Damages and Losses: When correcting warranted work that has failed, remove and replace other work that has been damaged as a result of such failure or that must be removed and replaced to provide access for correction of warranted work.
- B. Reinstatement of Warranty: When work covered by a warranty has failed and been corrected by replacement or rebuilding, reinstate the warranty by written endorsement. The reinstated warranty shall be equal to the original warranty.
- C. Replacement Cost: Upon determination that work covered by a warranty has failed, replace the work to an acceptable condition complying with requirements of Contract Documents. The Contractor is responsible for the cost of replacing or rebuilding defective work regardless of whether the Owner has benefited from use of the work through a portion of its anticipated useful service life.
- D. Owner's Recourse: Written warranties made to the Owner are in addition to implied warranties, and shall not limit the duties, obligations, rights, and remedies otherwise available under the law, nor shall warranty periods be interpreted as limitations on time in which the Owner can enforce such other duties, obligations, rights, or remedies.

1.05 MANUFACTURERS CERTIFICATIONS – N/A

PART 2: PRODUCTS (NOT USED)

PART 3: EXECUTION (NOT USED)

END OF SECTION

SECTION 02512

ASPHALTIC CONCRETE BINDER/SURFACE COURSES

PART 1 - GENERAL

1.1 SECTION INCLUDES

- A. Surface Course
- B. Repair Course

1.2 RELATED SECTIONS – N/A

1.3 MEASUREMENT AND PAYMENT

- A. Asphaltic Concrete Repair Course: Will be paid on a square foot basis at Unit Price Bid.
- B. Asphaltic Concrete Surface Course: Will be paid on a square yard basis at Unit Price Bid.
- C. Tack Coat: Will be paid on a square yard basis at Unit Price Bid.
- D. Weed Killer: Will be paid on a lump sum basis for each school site.
- E. Work associated with pavement and tack coat includes preparing and cleaning, providing all materials, labor and equipment including placing, compacting and testing.

1.4 REFERENCES (LATEST REVISION)

- A. ASTM D 946 - Penetration-Graded Asphalt-Cement for Use in Pavement Construction.
- B. ASTM E 329 -Agencies Engaged in Construction Inspection and/or Testing.
- C. ASTM D 3740 - Minimum Requirements for Agencies Engaged in Testing and/or Inspection of Soil and Rock Used in Engineering Design and Construction.
- D. ASTM D 2726 - Bulk Specific Gravity and Density of Non-Absorptive Compacted Bituminous Mixtures.
- E. ASTM D 2950 - Density of Bituminous Concrete in Place by Nuclear Methods.
- F. ASTM D 1188- Bulk Specific Gravity and Density of Compacted Bituminous Mixtures Using Coated Samples.
- G. ASTM D 1754 - Effect of Heat and Air on Asphaltic Materials (Thin-film Oven Test).

1.5 QUALITY ASSURANCE

- A. Perform work in accordance with South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.
- B. Mixing Plant: Conform to South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.

1.6 ENVIRONMENTAL REQUIREMENTS

- A. Do not place asphalt mixture when ambient air temperature is less than that indicated in the Table nor when the surface is wet or frozen.

Lift Thickness	Min. Air Temperature, Degrees F.
1" or less	55
1.1" to 2"	45
2.1" to 3"	40
3.1" to 4.5"	35

- B. Mixture shall be delivered to the spreader at a temperature between 250 degrees F and 325 degrees F.

1.7 GUARANTEE

- A. Contractor shall guarantee the quality of materials, equipment, and workmanship for a period of 12 months after acceptance. Defects discovered during this period shall be repaired by the Contractor at no cost to the Owner.

1.8 TESTING

- A. Testing laboratory shall operate in accordance with ASTM D 3740 and E 329 and be acceptable to the Engineer.
- B. Testing laboratory and Project Engineer/Project Representative shall be given a minimum of 48-hours' notice by Contractor prior to paving.
- C. Contractor shall select and engage the testing laboratory. Testing laboratories provide test results to Contractor and Engineer. Payment for laboratory and all tests shall be by the Contractor.
- D. Test results shall be furnished to the Engineer prior to continuing with associated or subsequent work.

PART 2 – PRODUCTS

2.1 TACK COAT

- A. Shall consist of asphalt binder (asphalt cement) or emulsified asphalt, conforming to Section 401 of the South Carolina Department of Transportation 2007 Standard Specifications for Highway Construction. Asphalt binder shall be PG64-22. The acceptable grades of emulsified asphalt are RS-1, MS-1, MS-2, HFMS-1, HFMS-2, SS-1, CRS-1, CRS-2, CMS-2, and CSS-1.

2.2 ASPHALT BINDER AND ADDITIVES

- A. Shall be PG64-22 and conform to Section 401 of the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.
- B. Anti-Stripping: Shall conform to requirements of Section 401 of the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.

2.3 AGGREGATES

- A. General: Mineral aggregate shall be composed of fine aggregate or a combination of fine and coarse aggregate. Coarse aggregate shall be that portion of the material retained on a No. 4 sieve.

Fine aggregate shall be considered that portion passing the No. 4 sieve. Fine aggregate, coarse aggregate, and any additives in combination with the specified percentage of asphalt cement shall meet the requirements of tests specified, before acceptance may be given for their individual use. Marine (Fossiliferous) limestone shall not be used.

- B. Fine Aggregate: Shall conform to the requirements of Section 401 of the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.
- C. Coarse Aggregate: Shall be granite stone and conform to the requirements of Section 401 of the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.
- D. Surface Course: The surface course shall consist of fine and coarse aggregate and mineral filler uniformly mixed with hot asphalt binder in an acceptable mixing plant. The plant shall conform to South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition. The gradations, asphalt content and air voids shall be the following:

TYPE C	
Square Sieve	% Passing
1 inch	100
3/4 inch	98- 100
1/2 inch	90-100
3/8 inch	72-90
No.4	44-62
No.8	23-43
No. 30	10-25
No. 100	4- 12
No. 200	2-8
% Asphalt Binder	4.5-6
Air Voids, %	3-4

- E. Intermediate or Binder Course: The mineral aggregates and asphalt binder shall be combined in such proportions the composition by weight of the finished mixture shall be within the following range limits:

TYPE B	
Sieve Designation	Percentage by Weight Passing
1 inch	100
3/4 inch	90-100
1/2 inch	75-90
3/8inch	64-80
No. 4	38-54
No.8	22-36
No. 30	8-22
No. 100	3-10
No. 200	2-8
% Asphalt Binder	4.5-6
Air Voids, %	3-4

2.4 SOURCE QUALITY CONTROL AND TESTS

- A. Section 01410 - Testing Laboratory Services.
- B. Submit proposed mix design for review prior to beginning of work.
- C. Test samples in accordance with the requirements of these specifications.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. On-Site Observations: Owner's Representative or Engineer will have the right to require any portion of work be completed in their presence. If work is covered up after such instruction, it shall be exposed by the Contractor for observation at no additional cost to Owner. However, if Contractor notifies Engineer such work is scheduled, and Engineer fails to appear within 48 hours, the Contractor may proceed. All work completed, and materials furnished shall be subject to review by the Engineer or Project Representative. Improper work shall be reconstructed. All materials, which do not conform to requirements of specifications, shall be removed from the work upon notice being received from Engineer for rejection of such materials. Engineer shall have the right to mark rejected materials to distinguish them as such.

Contractor shall give the Owner, Project Engineer or Project Representative a minimum of 48-hours' notice for all required observations or tests.

- B. Contractor shall verify base has been tested, is dry, and slopes and elevations are correct.

3.2 PREPARATION

- A. Apply tack coat in accordance with Section 401 of the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition. Rate of application shall be 0.10 to 0.15 gallons per square yard of surface.
- B. Work shall be planned so no more tack coat than is necessary for the day's operation is placed on the surface. All traffic not essential to the work should be kept off the tack coat.
- C. Apply tack coat to contact surfaces of curbs and gutters. Apply in manner so exposed curb or gutter surfaces are not stained.
- D. Coat surfaces of manhole frames and inlet frames with oil to prevent bond with asphalt pavement. Do not tack coat these surfaces.

3.3 PLACEMENT

- A. Construction shall be in accordance with Sections 401, 402, and 403 of the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.
- B. Asphaltic concrete shall not be placed on a wet or frozen surface.
- C. Compaction shall commence as soon as possible after the mixture has been spread to the desired thickness. Compaction shall be continuous and uniform over the entire surface. Do not displace or extrude pavement from position. Hand compact in areas inaccessible to rolling equipment. Perform rolling with consecutive passes to achieve even and smooth finish without roller marks. Compaction rolling shall be complete before material temperature drops below 175° F.
- D. Areas of pavement with deficient thickness or density shall be removed and replaced at no additional cost to the Owner.

3.4 TOLERANCES

- A. General: All paving shall be subject to visual and straightedge evaluation during construction operations and thereafter prior to final acceptance. A 10-foot straightedge shall be maintained in the vicinity of the paving operation at all times for the purpose of measuring surface irregularities on all paving courses. The straightedge and labor for its use shall be provided by the Contractor. The surface of all courses shall be checked with the straightedge as necessary to detect surface irregularities. Irregularities such as rippling, tearing or pulling, which in the judgment of the Engineer indicate a continuing problem in equipment, mixture or operating technique, will not be permitted to recur. The paving operation shall be stopped until appropriate steps are taken by the Contractor to correct the problem.
- B. Flatness: All irregularities in excess of 1/8-inch in 10-feet for surface courses and 1/4-inch in 10-feet for intermediate courses shall be corrected.

- C. Variation from Design Elevation:
 - 1. General Paving: Less than ¼-inch.
 - 2. Accessible Routes: Shall not exceed ¼-inch. However, accessible routes shall not exceed maximum ADA allowable slopes. Contractor shall remove and replace any and all portions of the accessible route that exceed maximum ADA allowable slopes.
- D. Scheduled Compacted Thickness: Within ¼-inch per lift.
- E. Pavement Deficient in Thickness: When measurement of any core indicates the pavement is deficient in thickness, additional cores will be drilled 10-feet either side of the deficient core along the centerline of the lane until the cores indicate the thickness conforms to the above specified requirements. A core indicating thickness deficiencies is considered a failed test. Pavement deficient in thickness shall be removed and replaced with the appropriate thickness of materials. If the Contractor believes the cores and measurements taken are not sufficient to indicate fairly the actual thickness of the pavement, additional cores and measurements will be taken, provided the Contractor will bear the extra cost of drilling the cores and filling the holes in the roadway as directed.

3.5 FIELD QUALITY CONTROL

- A. Acceptance of the in-place density of the binder and surface courses shall be in accordance with the South Carolina Department of Transportation Standard Specifications for Highway Construction, latest edition.
- B. Density Testing: Performed in accordance with ASTM D-2726 and ASTM D-2950. Core samples for each day's operation shall be taken, tested and results reported to the Engineer the following day. The areas sampled shall be properly restored by the Contractor at no additional cost to the Owner. Nuclear gauge tests shall be taken during the asphaltic concrete placement.
 - 1. The pavement core and nuclear gauge densities shall range between 94% and 96% of the theoretical maximum density.
- C. Temperature:
 - 1. Asphaltic concrete shall not exceed 325 degrees F at any time.
 - 2. Asphaltic concrete shall not be placed once the temperature of the mix falls below 250 degrees F, or the delivered temperature is more than 15 degrees F below the batch plant's delivery ticket.
 - 3. Temperature at time of loading shall be recorded on the truck delivery ticket.

D. Frequency of Tests:

1. Asphaltic Concrete - One test for each 250 tons placed.
 - a. Asphalt extraction and gradation test.
 - b. Core Sample
2. Field determination of density by nuclear method every 5,000 square feet during construction of the asphaltic concrete binder/surface course.

END OF SECTION

SECTION 02520

ASPHALT REPAIR AND RESURFACING

SCOPE OF WORK AND MATERIALS:

GENERAL:

WORK COVERED BY CONTRACT DOCUMENTS:

1. Cleaning the entire existing parking lot areas shown on plans of all loose rocks, slag, sand, grass, etc. Dispose of these materials off-site.
2. The repairs by milling 4" of existing asphalt and base material in areas shown on plans.
3. Compaction of existing base material in milled area.
4. Replacement of 4" of milled asphalt and base material in areas noted on plans to bring milled areas to elevation of existing asphalt with hot asphalt, Type B.
5. Spray Area at Kingstree High School West Campus noted on plans with Pramitol 25E per manufactures recommendation to area indicated at Kingstree High School – West Campus to control grass growing through the existing Asphalt Surface.
6. Apply Tack coat to all asphalt prior to resurfacing.
7. Installation of 2" compacted hot asphalt over entire parking lot, Type C.
8. Re-stripe all lines and symbols on new asphalt as shown on the plans.

CONTRACT:

1. For the purpose of this contract, the terms Owner, District, and Engineer shall have the following meaning:
 - Owner or District – Williamsburg County School District
 - Engineer – Kellahan and Associates, Engineers and Surveyors, Inc.
2. Perform the work at each school under a single unit-price contract for each school site.

CONTRACTOR'S USE OF PREMISES:

1. Contractor shall have use of the work site and immediate area surrounding the work site for the execution of the work.
2. Contractor shall be advised that the school may be occupied during the progress of work. The security and safety of on-site personnel in the vicinity of the work site shall be the responsibility of the contractor.
3. Contractor shall be advised that the school may maintain normal operations during the progress of the work. Contractor shall be required to maintain access to school building at all times. Contractor shall coordinate efforts with the district to minimize disruption to the schools Operation.

4. Contractor shall be advised that the site will be available for construction from June 5, 2023 through July 31, 2023. All paving operations must be completed during that period.
5. Contractor shall assume full responsibility for the protection and safe keeping of any products under this contract, stored on the site.

MINIMUM TECHNICAL SPECIFICATIONS

CONTRACTOR'S RESPONSIBILITIES:

EXCEPT AS SPECIFICALLY NOTED OTHERWISE, PROVIDE AND PAY FOR:

1. Labor, materials and equipment.
2. Tools, materials and machinery.
3. Facilities and services necessary for proper execution of the work.
4. Legally required sales, consumer and use taxes.
5. Permits, fees and licenses.

GIVE REQUIRED NOTICES

Comply with codes, ordinances, rules, regulations, order and other legal requirements of public authorities that bear on performance of the work.

Promptly submit written notice of observed variances of contract documents from code requirements.

Enforce strict discipline and good order among employees. Do not employ persons unskilled in the assigned task.

SITE IMPROVEMENTS

PART 1 -GENERAL

DESCRIPTION:

The new asphalt is a repair and resurfacing replacement of existing asphalt surfaces at Williamsburg County school sites. Construction includes but is not necessarily limited to milling and removal of existing asphalt concrete pavement, crack repair where indicated, asphalt tack coat, asphalt surfacing materials, and asphalt, seal coat on all asphalt surfaces and pavement markings.

QUALITY ASSURANCE:

Standard requirements: insofar as is consistent with project requirements, conform to applicable requirements of South Carolina Department of Transportation, STANDARD SPECIFICATIONS, latest edition, hereinafter referred to as STANDARD SPECIFICATIONS and incorporated by reference.

Qualifications of Workers: Provide at least one person who is thoroughly trained and experienced in the skills required and who shall be completely familiar with the design and application of work required by this section and who shall be present at all times during progress of the work of this section and shall direct all work performed under this section. For actual finishing of asphalt concrete surfaces and operation of the required equipment, use only personnel who are thoroughly trained and experienced in the skills required.

COMPACTION

Immediately after the asphalt mixture has been spread, struck off and surface irregularities adjusted, it shall be thoroughly and uniformly compacted by rolling. The surface shall be rolled when the mixture is in the proper condition and when the rolling does not cause undue displacement, cracking, or shoving. Initial rolling shall be done with a steel-drum roller with the drive roll operating toward the paver, and/or a suitable pneumatic tired roller. Initial rolling shall be completed while the bituminous mat temperature is above two hundred twenty-five degrees (225°) Fahrenheit. Following the initial rolling at least three coverages of the pavement shall be completed with a pneumatic tired roller, while the mat temperature is above one hundred seventy-five degrees (175°) Fahrenheit.

Final rolling shall be completed with a steel-drum roller and shall continue until roller marks and further compression are not evident in the pavement and specified density has been achieved. Any displacement occurring as result of the reversing of the direction of a roller, or from other causes, shall be corrected at once by the use of rakes and addition of fresh mixture when required. Care shall be exercised in rolling not to displace the line and grade of the edges of the asphalt. To prevent adhesion of the mixture to the rollers, the wheels shall be kept properly moistened with water or water mixed with very small quantities of detergent or other approved material. Excess liquid will not be permitted. Along forms, curbs, headers, walls, and other places not accessible to the rollers, the mixture shall be thoroughly compacted with hot hand tampers, smoothing irons, or with mechanical tampers. On depressed areas, a trench roller may be used, or cleated compression strips may be used under the roller to transmit compression to the depressed area. Rollers or other vehicles shall not be parked or left standing on pavement that has not cooled sufficiently to prevent indentation by wheels.

WEATHER LIMITATIONS

Asphalt concrete mixture shall not be placed when it is raining or when rain is imminent, on a saturated surface, on an unstable/yielding roadbed, when the base material is frozen, or when weather conditions prevent proper handling or finishing of the mixture. Asphalt concrete mixture shall not be placed unless the surface temperature is forty-five degrees (45°) Fahrenheit or warmer and the ambient air is at least thirty-two degrees (32°) Fahrenheit and not descending. Air temperature shall be measured in the shade away from heat sources at the paving site.

PRODUCT HANDLING

Protection: use all means necessary to protect the material of this section before, during and after installing and to protect the work of other trades.

Replacements: In the event of damage, immediately make all repairs and replacements necessary to the satisfaction of the Project Manager at no additional cost to the Owner.

SUBMITTALS:

Certificate of Compliance: Upon completion of all work, submit certificate signed by the material supplier attesting that the material, sources, grading, etc., are as specified.

Best Management Practice (BMPs)

BMPs are scheduling of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

The contractor shall exercise every reasonable precaution and shall conduct and schedule operations so as to protect all storm drain systems, storm water retention/detention basins, irrigation canals or natural streams located within adjacent to or in any way connected with the Project from pollution with mud, silt, fuels, oils bitumen's, calcium chloride, pesticides, herbicides, and any other harmful materials whether emanating from storm runoff or non-storm water discharge.

DUST CONTROL

Dust control shall be provided in accordance with SCDOT Standard Specifications and as specified herein. The Contractor shall maintain dust control about the site of the work, including any haul roads to or from the sites, by whatever means are necessary, such as watering, or oiling so as to cause the least possible dust nuisance to the public. Any dust control measure ordered by the Engineer shall be promptly and immediately carried out.

The contractor shall make his own arrangements for and shall provide himself with a satisfactory water supply, except as the otherwise set forth in the Special Provisions.

The Contractor shall furnish his own equipment for transporting and applying water. Such equipment shall meet the approval of the District. Water for the work may be taken from the City water system, but only after obtaining a meter from the City utilities Division and payment of any deposit required, therefore. Where the Contractor is allowed to utilize the public water supply, if the City furnished meters is not so equipped, the Contractor shall provide an approved backflow prevention device between the public water supply and his equipment for applying or transporting water when the District determines that a backflow condition could be caused by the method or equipment used to draw water from the public supply.

Full compensation for dust control shall be included in the lump sum about bid, therefore. Where no bid item is provided for dust control, the cost therefore shall be included in the various bid items of work and no separate payment will be made, therefore.

PART 2 –PRODUCTS

SOURCE OF SUPPLY

Provide paving materials from sources generally acceptable to the South Carolina Department of Transportation. Prior to commencing work furnish Engineer written information as to source of supply.

MATERIALS

ASHPALT REPAIR AND RESURFACE MATERIAL

Shall meet standards specified by SCDOT standard specifications.

SEAL COAT:

Pavement shall be sealed with an asphalt-based emulsion with selected mineral fillers and blended binders as approved by SC DOT.

ASPHALT SEAL COAT:

Do not commence application of seal coat for a period of 20 calendar days after asphalt concrete has been completed, unless otherwise directed by the District.

Inspection: Examine the areas and conditions under which sealer is to be applied. Correct conditions detrimental to the timely and proper completion of the work. Do not proceed until unsatisfactory conditions have been corrected.

Preparation: Paved areas shall be thoroughly cleaned. Brooms and power blowers are to be used simultaneously.

Application: After placement of asphalt concrete pavement, wait a minimum of twenty (20) calendar days prior to placing sealer. Apply two (2) coats of asphalt-based seal coat to pavement surface. As soon as first coat is dry enough to walk on without picking up, apply the second coat. If manufacturer indicates that the product may be diluted it may be done so up to maximum 20 percent by volume with clean fresh water. The total application rate shall be a minimum of 20 gallons of undiluted product per 1,000 square feet. The finished surface shall be smooth and uniform. Apply sealer by six-foot spread squeegee. Mixtures shall be continuously agitated. Trim edges of pavement by hand using squeegee blades.

Pavement Markings:

Preparation: Thoroughly clean the areas where pavement markings will be applied.

Painting: Apply the painting in accordance with the manufacturer's published recommendations, using all means necessary to protect the paint surfaces until dry. All pavement striping and marking shall receive a minimum of two (2) coats of paint.

Paint: paint shall conform to specification for paint as specified in SC DOT Standard Specification.

DISPOSAL OF REMOVED MATERIALS:

All material specified for removal shall be removed from the site and disposed of off-site in accordance with Federal, State and Local ordinances and regulations. Material to be disposed of off-site must be removed from the site immediately after demolition. Contractor shall be responsible for all fee and permits.

CRACK SEAL:

Cracks larger than 1/4" shall be sealed with Hot-Applied, Polymetric Sealant. Hot-applied sealant must be a premium-quality, single-component joint sealing compound. Sealant shall be formulated

with a balanced blend of 100% polymer, asphalt, plasticizers and inert, reinforcing fillers to produce a hot-pour joint sealant with excellent bonding properties, high resiliency, ductility and resistance to degradation from weathering. It should not become brittle at low temperatures and will not flow or migrate from the joint at temperatures up to 140° F (60° C).

PAINT:

Quick drying high visibility water-soluble acrylic stripping paint, Stripe-Master, Wikel Manufacturing Company or similar by Sherwin-Willian, J.E. Bauer, PPG or ICI Paint World Group or equivalent.

PART 3–EXECUTION

CONSTRUCTION:

1. Milling shall conform to the SC DOT Standard Specifications.
2. Asphalt Concrete: Mixed, spread and compacted in accordance with SCDOT Standard Specification.

SPECIAL CONDITIONS:

1. Close Out Documentation: must provide the District with Warranties, Maintenance Instructions and any pertinent guidelines – where applicable
2. Time of Completion: The District has determined time of completion to be no later than July 31, 2023.
3. Schedule of Work:
 - a. Notice to Proceed Date: June 5, 2023
 - b. Completion Date: July 31, 2023
 - c. Hours of Work: 6:00 A.M to 8:00 P.M. DST
4. Low bid determination: Low bid will be determined by total of Base bid.

END OF SECTION

SECTION 02575

PAVEMENT MARKINGS

PART 1: GENERAL

1.01 SCOPE OF WORK

- A. Furnish all labor, materials, equipment, and incidentals required to install the bituminous paved parking areas as shown on the Drawings and as specified herein.
- B. The work includes preparation of existing paved surfaces and repaving of those surfaces as specified herein.

1.02 RELATED WORK – N/A

1.03 SUBMITTALS – N/A

1.04 REFERENCE STANDARDS

- A. Except as otherwise specified herein, the material and construction shall be in accordance with the current Standard Specifications for Highway Construction as issued by SCDOT.

PART 2: PRODUCTS

2.01 MATERIALS

- A. Bituminous concrete surface course shall meet Section 403 of SCDOT standards as referenced above.
- B. Bituminous concrete binder course shall meet Section 402 of SCDOT standards.
- C. Calcium chloride shall meet AASHTO M-144 and shall be spread wherever directed to allay dust conditions. The Engineer may direct the Contractor to employ sprinkling of water in lieu of calcium chloride for dust control.
- D. Asphalt - Tack coat shall consist of either emulsified asphalt or cutback asphalt conforming to the above referenced SCDOT standards.
- E. Pavement marking paint shall be fast-drying type conforming to the above referenced SCDOT standards and Federal Specifications TT-P 1952B.

PART 3: EXECUTION

3.01 BITUMINOUS CONCRETE PAVING- GENERAL

- A. Bituminous concrete pavement shall be installed in accordance with SCDOT standards.
- B. Contractor shall maintain pavement under this Contract during the guarantee period of 1 year and shall promptly (within 30 days of notice given by Engineer or Owner) refill

and repave areas which have settled or are otherwise unsatisfactory for traffic.

- C. All pavement thicknesses referred to herein are compacted thicknesses. The Contractor shall place sufficient mix to ensure that the specified thickness of pavement occurs where called for.
- D. When required, remove existing pavement by saw, pneumatic hammer, or wheel, cutting edges of trenches to be repaved as directed by the Engineer. After pipe laying, backfilling, and compaction operations are completed satisfactorily, and after the gravel subbase is shaped and compacted, place the type of pavement as shown on the Drawings.
- E. All existing manhole frames, utility boxes, and drain inlets shall be set to the grade of the wearing course. At no time shall the manhole frames be allowed to protrude above the surface of the wearing course.
- F. Furnish and spread calcium chloride on or wet down disturbed surfaces to allay dust conditions as directed by the Engineer.
- G. The contact surfaces of castings, previously constructed asphalt or Portland cement concrete pavements shall be painted with a tack coat in accordance with SCDOT standards. Surfaces shall be thoroughly cleaned of all loose material and debris prior to application of the tack coat.
- H. After the paving mixture has been properly spread, initial compaction shall be obtained by the use of power rollers weighing not less than 240 pounds per inch width of tread.
- I. Final compaction of the surface shall be accomplished by rollers weighing not less than 285 pounds per inch width of tread. Along curbs, structures, and all places not accessible with a roller, the mixture shall be thoroughly compacted with tampers. Such tampers shall not weigh less than 25 pounds and shall have a tamping face of not more than 50 square inches. The surface of the mixture after compaction shall be smooth and true to the established line and grade.
- J. When the air temperature falls below 50°F, extra precautions shall be taken in drying the aggregates, controlling the temperatures of the materials, and placing and compacting the mixtures.
- K. No mixtures shall be placed when the air temperature is below 40°F nor when the material on which the mixtures are to be placed contains frost or has a surface temperature the Engineer considers too low.
- L. No vehicular traffic or loads shall be permitted on the newly completed pavement, until adequate stability has been attained and the material has cooled sufficiently to prevent distortion or loss of fines. If climatic or other conditions warrant it, the period of time before opening to traffic may be extended at the discretion of the Engineer.

3.02 TRENCH PAVEMENT RESTORATION – N/A

3.03 GUARDRAILS – N/A

3.04 ROAD MARKERS

- A. Road markers shall be installed in accordance with the manufacturer's instructions.
- B. Road marker locations shall be spotted in the field and approved by the Engineer before installation.

3.05 ROADWAY MARKINGS

- A. Markings shall be located as follows:
 - I. Parking area as shown on the Drawings.
- B. All surface dirt within the areas to be painted shall be removed. Large areas of tar, grease, or foreign materials may require sand blasting, steam cleaning, or power brooming to accomplish complete removal. Application of stripes shall not proceed until final authorization is received from the Engineer.
- C. No thinners shall be used for the pavement marking applications, except in accordance with the manufacturer's specifications and at the direction of the Engineer.
- D. No paint or pavement marking material shall be heated above the temperature marked on the container.
- E. Bituminous concrete pavements shall have been in place for 48 hours prior to the application of pavement markings.
- F. If, for any reason, material is spilled or tracked on the pavement; or if any markings applied, in the Engineer's judgement, fail to conform because of a deviation from the desired pattern, the Contractor shall remove such material by a method that is not injurious to the roadway surface and is acceptable to the Engineer, clean the roadway surface and prepare the surface for a reapplication of markings, and reapply the markings as directed without additional compensation for any of the foregoing corrective operations.

END OF SECTION