PROJECT MANUAL

Cattle Crossing

Prairie Island Indian Community

Welch, MN
I hereby certify that this plan, specification or report was prepared by me or under my direct supervision, and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

By: Cristina Miejnek, P.E.
License No. 48340

Date: October 18, 2017
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Cattle Crossing
Prairie Island Indian Community
Welch, MN

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****END OF SECTION****
SECTION 00100 – INVITATION FOR BIDS

Cattle Crossing
Prairie Island Indian Community
Welch, MN

RECEIPT AND OPENING OF PROPOSALS: Sealed and/or emailed proposals for the work described below will be received at the Office of the Prairie Island Indian Community Tribal Attorney, Prairie Island Indian Community, 5636 Sturgeon Lake Road, Welch, MN 55089 and/or Daniel.derudder@piic.org until 10:00 am on Tuesday, October 31th 2017 after which time, no further bids will be accepted.

DESCRIPTION OF WORK: The work includes the construction of approximately:

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMON EXCAVATION</td>
<td>125 CY</td>
</tr>
<tr>
<td>8” CMP CULVERT</td>
<td>80 LF</td>
</tr>
<tr>
<td>SELECT GRANULAR BORROW</td>
<td>140 CY</td>
</tr>
<tr>
<td>AGGREGATE BASE, CLASS 5</td>
<td>145 TN</td>
</tr>
</tbody>
</table>

together with numerous related items of work, all in accordance with Plans and Specifications. This project is subject to Prevailing Wage Rates.

COMPLETION OF WORK: All work under the Contract must be complete by December 1, 2017.

ADDENDUMS: Any addendums will be mailed or emailed to all planholders.

PLANHOLDERS LIST, ADDENDUMS AND BID TABULATION: The planholders list, addendums and bid tabulations will be available via email upon request.

TO OBTAIN BID DOCUMENTS: Complete project bidding documents are available via email: DanielDeRudder@piic.org. Please contact Cristina at (612) 760-4350 or the email shown above to request a set to be emailed. Please contact us if there are any questions.

BID SECURITY: None required.

OWNER'S RIGHTS RESERVED: The Owner reserves the right to reject any or all bids and to waive any irregularities and informalities therein and to award the Contract to other than the lowest bidder if, in their discretion, the interest of the Owner would be best served thereby.

The Prairie Island Indian Community gives employment preference, to the greatest extent feasible, to Indians (including but not limited to members of the Prairie Island Indian Community). The Community also gives preference in the award of contracts and subcontracts and in the procurement of services, materials, supplies and equipment, to the greatest extent feasible, to Indian organizations and Indian-owned economic enterprises. The bidding entity agrees, to the greatest extent feasible: (1) to give preference and opportunities for employment to Indians; and (2) to give preference in the award of any subcontracts and in the procurement of services, materials, supplies and equipment to Indian organizations and Indian-owned economic enterprises. Indians seeking to qualify for Indian preference shall submit evidence of at least 51% Indian ownership and control of the bidding entity.

Direct inquiries to Engineer’s Project Manager Cristina Mlejnek at 612-760-4350.

Dated: October 25, 2017 /s/ Daniel DeRudder
Prairie Island Indian Community Utility/Project Manager

****END OF SECTION****
ARTICLE 1 - DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. Issuing Office – The office from which the Bidding Documents are to be issued.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the advertisement or invitation to bid. Bid Documents deposit amount, if any, is stated in the advertisement or invitation to bid. Deposits shall be refundable, or not, as indicated in the advertisement or invitation to bid.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

2.04 When the advertisement indicates supplemental digital formats of all or portions of the bidding documents are available for bidding purposes, the Owner and Engineer will, upon request, provide the Bidder with such documents. The terms of use of such documents shall be as set forth in the Bidding Documents (“Document 00210 - Electronic/Digital Documents”).

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder’s qualifications to perform the Work, after submitting its Bid and within 5 days of Owner’s request, Bidder shall submit (a) written evidence establishing its qualifications such as financial data, previous experience, and present commitments, and (b) the following additional information:

A. None.

3.02 A Bidder’s failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder’s qualifications.

3.04 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.

ARTICLE 4 - SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER’S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 Site and Other Areas

A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for
4.02 **Existing Site Conditions**

A. **Subsurface and Physical Conditions; Hazardous Environmental Conditions**

1. The Supplementary Conditions identify:

   a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

   b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

   c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

   d. Technical Data contained in such reports and drawings.

2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

B. **Geotechnical Baseline Report:** The Bidding Documents contain a Geotechnical Baseline Report (GBR). The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations ("Baseline Conditions"). The GBR is a Contract Document.

   The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, Bidders cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.

   Nothing in the GBR is intended to relieve Bidders of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.

C. **Underground Facilities:** Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

D. **Adequacy of Data:** Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.
4.03 Site Visit and Testing by Bidders
   A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.
   B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
   C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner’s authority regarding the Site.
   D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
   E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 Owner’s Safety Program
   A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.05 Other Work at the Site
   A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 - BIDDER’S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:
   A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
   B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
   C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
   D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;
   E. consider the information known to Bidder itself; 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
INSTRUCTIONS TO BIDDERS

October 2017

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performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs;

F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;

I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and

J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 - PRE-BID CONFERENCE

6.01 No pre-bid Conference is scheduled for this project.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 - BID SECURITY

8.01 Not required.

ARTICLE 9 - CONTRACT TIMES

9.01 The number of days within which, or the dates by which, Milestones are to be achieved and the Work is to be substantially completed, and completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 - LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 - SUBSTITUTE AND “OR-EQUAL” ITEMS

11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer
authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

12.03 The apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of the Subcontractors or Suppliers.

If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 - PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents.

A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.

B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words "No Bid" or “Not Applicable.”

13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership’s address for receiving notices shall be shown.
13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm’s address for receiving notices shall be shown.

13.05 A Bid by an individual shall show the Bidder’s name and address for receiving notices.

13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture’s address for receiving notices shall be shown.

13.07 All names shall be printed in ink below the signatures.

13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

13.10 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder’s state contractor license number, if any, shall also be shown on the Bid Form.

**ARTICLE 14 - BASIS OF BID**

14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.

B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity” (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

**ARTICLE 15 - SUBMITTAL OF BID**

15.01 With each paper copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 7 of the Bid Form.

15.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the project title “Cattle Crossing”, Project No. C15.113987 (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation “BID ENCLOSED.” A mailed Bid shall be addressed to the person indicated in the advertisement or invitation to bid.
15.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

15.04 The Owner does not allow electronic bid submittals.

**ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID**

16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the Bid Opening.

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

**ARTICLE 17 - OPENING OF BIDS**

17.01 Bids will be opened privately.

**ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

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

**ARTICLE 19 - EVALUATION OF BIDS AND AWARD OF CONTRACT**

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.

19.03 Evaluation of Bids
   A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

19.04 In evaluating whether a Bidder is responsible, Owner will consider applicable mandatory criteria established by governing statutes and regulations, including but not limited to all applicable State Statutes and Local Ordinances, qualifications of the Bidder, and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
ARTICLE 20 - BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 - SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 22 - SALES AND USE TAXES

22.01 Owner is exempt from Minnesota state sales and use taxes on materials and equipment to be incorporated in the Work, except as provided in the attached Exemption No. ST3.

Said taxes on exempted items shall not be included in the Bid; all other taxes shall be included in the Bid. Refer to Paragraph SC-7.09 of the Supplementary Conditions for additional information.

ARTICLE 23 - CONTRACTS TO BE ASSIGNED

23.01 There are no material contracts for this project that will be assigned to the Contractor.

****END OF SECTION****
PART 1 -- GENERAL

1.1 SUMMARY

A. The Owner or Engineer may elect to provide copies of the contract documents or supplemental information to the Contractor in electronic/digital media format. This section governs the availability, use and limitations of information provided in electronic/digital format.

1.2 FORMAT OF DOCUMENTS AND CONTROLLING CRITERIA

A. The Agreement identifies the contract documents upon which the Bidder or Contractor may rely. The General Conditions set forth the provisions governing the intent, interpretation and use of the contract documents. This section is intended to augment the Agreement and General Conditions and to clarify limitations on the use of electronic/digital documents.

B. “Hard Copies” of the Contract Documents consist of complete sets of those documents specifically listed in the Agreement including the version of the plans and specifications that are signed and sealed with original signature (or unalterable and legally acceptable facsimile copy of said signature) denoting the designer’s final intent for bidding purposes. Electronic/digital files in the “Native File Format” are saved in the default file format used by a specific software application. The native file format of an application is proprietary and these types of files are not meant to be transferred to other applications. Electronic/digital files in the native file format may be altered and may not be representative of the paper copies of the documents.

C. For bidding purposes only, Hard Copies of the Contract Documents shall be construed to include electronic/digital files of the Bidding Documents (as defined in Section 00200), prepared by Engineer and provided under direction of Engineer in a Portable Document Format (PDF) format or other file format that is intended by the Engineer and Owner to be unalterable and exactly representative of the information contained in the paper copies of the documents.

D. The project plans graphically set forth design requirements for the project. These plans are a two-dimensional representation of three-dimensional existing conditions and proposed improvements. Because it is generally impossible to economically or graphically duplicate real world conditions on a two-dimensional plan format, certain approximations, graphical simplifications, intentional or unintentional inaccuracies must generally be used to adequately describe the existing conditions and work to be done on the plans. Because of these graphical compromises, certain dimensions and other supplementary notes and information may be added to the plans to control the specific requirements of the design. Electronic/digital versions of the plans in PDF format, native file format or other electronic file format may imply a spatial accuracy that exceeds the graphical limitations of the original plan set. This is also true of supplementary electronic/digital information developed from the plans or underlying support data (such as layers, hidden lines, survey points or topographic computational networks).

E. In the event of a conflict between an electronic/digital version of a Contract Document and the Hard Copy of the document, the Hard Copy shall be deemed to govern. Bidders, by submitting a bid, and the Contractor by executing the contract, acknowledge these graphical limitations to the plan development process and accept the controlling nature of the Hard Copies of all project documents as set forth in the General Conditions.

1.3 AVAILABILITY AND USE OF DIGITAL/ELECTRONIC DOCUMENTS

A. When the Advertisement for Bids or Project Manual indicate that electronic/digital copies of the Plans and Specifications are available, such documents shall be made available to the Bidder or Contractor upon request in PDF format or other file format that is intended by the Engineer and Owner to be unalterable and exactly representative of the information contained in the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of electronic/digital documents nor the Contractor’s means of reproduction of such documents, the Owner and Engineer cannot
and do not guarantee that electronic/digital versions and reproductions prepared from those versions are identical in every manner to the paper copies.

B. Except as otherwise advised, the Bidder may use and rely upon complete sets of the PDF or other electronic/digital version of the Bidding Documents, prepared by the Engineer and provided under direction of the Engineer, for preparation of its bid. However, Contractor assumes all risks associated with differences arising from transmission/receipt of electronic/digital versions and reproductions prepared from those versions and, further, assumes all risks, costs and responsibility associated with use of the electronic/digital versions to derive information that is not explicitly contained in the paper copies of the documents and for Bidder’s reliance upon such derived information.

C. When using PDF versions of the bidding documents, the Contractor shall prepare its Bid on a printed paper copy of the Bid Form from the PDF file; submit its bid together with all required submittals; and deliver the Bid in the manner described in the bidding documents. The printed copy of the Bid Form shall be clearly legible, printed on 8 ½ inch by 11 inch paper and as closely identical in appearance to the PDF Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the Hard Copy of the Bid Form, providing that all required information and submittals are included with the bid.

D. After a Contract is awarded, the Owner may provide or direct the Engineer to provide for the use of the Contractor such electronic/digital copies of the contract documents or other support documents in native file formats as may have been previously developed as part of the Project design process. Release of such information, if available, shall be deemed to be solely for the convenience of the Contractor. Unless the Contract Documents explicitly identify that such information shall be available to the successful Bidder, nothing herein shall create an obligation on the part of the Owner or Engineer to provide or create such information and the Contractor is not entitled to rely on the availability of such information in the preparation of its Bid or pricing of the work. In all cases, the Contractor shall take appropriate measures to verify that any electronic/digital data is appropriate and adequate for the Contractor’s specific purposes. In no case shall the Contractor be entitled to extra compensation or adjustment in contract time due to claims arising from any differences between the Hard Copies of the Contract Documents and electronic/digital data.

E. Release of all electronic/digital information requested by the Contractor shall be at the sole discretion of the Owner or Engineer and a separate charge will be made to the Contractor for creation or preparation of such information.

F. Release of electronic/digital data shall be subject to the herein accompanying form, entitled “REQUEST TO PROJECT ENGINEER FOR ELECTRONIC/DIGITAL DATA AND CONDITIONS OF USE,” together with such other limitations as the Owner or Engineer may deem appropriate for the Project. In the event of questions, conflicts, inconsistencies between any the electronic/digital data, the Hard Copies of the Contract Documents shall govern unless otherwise directed in writing by the Owner and Engineer.

G. In the event that Owner elects to provide or directs the Engineer to provide to the Contractor any Contractor-requested electronic/digital data that is not explicitly identified in the Contract Documents as being available to the successful bidder, the Engineer shall be reimbursed by the Contractor on an hourly basis (at $120 per hour) for all engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by the Engineer.

****END OF SECTION****
REQUEST TO PROJECT ENGINEER (BOLTON & MENK, INC. “BMI”) FOR ELECTRONIC/DIGITAL DATA AND CONDITIONS OF USE

Project Contractor ("USER"): Prairie Island Indian Community
Project Owner: Cattle Crossing

Description of Data/Files To Be Provided:

A. The electronic/digital data covered by this Request was prepared by BMI as an internal working document for its purposes solely and is being provided to USER on an “AS IS” basis without any warranties of any kind, including, but not limited to implied warranties of fitness for any purpose. As such, the USER is advised and acknowledges that the information may not be suitable for the USER's application or may require substantial modification and independent verification by the USER. Information may include intentional or unintentional inaccuracies, approximations, graphical simplifications, undocumented intermediate revisions and other devices that may affect subsequent reuse.

B. The electronic/digital data may not accurately reflect the printed products (also known as Hard Copies) that are signed or sealed by BMI. In the case of conflicts between the signed or sealed documents and electronic/digital data, the Hard Copies shall control. Files in electronic/digital media format of text, data, graphics, or of other types that are provided by BMI to USER are only for convenience of USER. Any conclusion or information obtained or derived from such electronic/digital data will be at the USER's sole risk and the USER waives any claims against BMI or PROJECT OWNER arising from use of electronic/digital data.

C. USER shall indemnify and hold harmless PROJECT OWNER and BMI and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from USER's use, adaptation or distribution of any electronic/digital data provided under this Request.

D. All Documents provided in electronic/digital format are instruments of service and, unless otherwise specifically identified in the Contract between the USER and PROJECT OWNER, are not Contract Documents. BMI shall retain all ownership, copyrights and property interests therein, subject to any agreement between BMI and the PROJECT OWNER. Nothing herein shall be deemed to be a transfer of the ownership rights of BMI or those of the PROJECT OWNER to the USER and USER’s rights regarding any information shall be limited those explicitly described in this Request.

E. Although BMI may advise the USER of known errors or required updates in electronic/digital data provided to the USER upon discovery by BMI or notice to BMI of such conditions, the USER agrees that BMI and PROJECT OWNER are under no obligation to notify USER or correct, revise, update or otherwise maintain any electronic/digital data provided to the USER, nor shall the USER be entitled to make any claim for extra compensation or other consideration on account of using such data.

F. USER agrees not to sell, copy, transfer, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of BMI, unless such distribution is specifically identified in this request and is limited to USER's sub contractors. USER warrants that subsequent use by USER'S subcontractors shall comply with all terms of this Request.

G. Provision of this information does not include any license of software or other systems necessary to read, use or reproduce the information. USER assumes all responsibility to obtain any necessary software and appropriate licenses to utilize the information in any format or application.

H. The USER shall compensate BMI in the amount of $120.00/per hour for all labor and expenses associated with the handling, processing and delivery of the information in an “as is” form or to adapt such information into a form which BMI, in its sole discretion, deems to reasonably reflect the limits of the accuracy or usability of the information. USER acknowledges such compensation shall be deemed to be a data processing fee and is not a design fee or part of the design fees paid by the PROJECT OWNER to BMI.

Accepted by: USER

Printed Name of “USER”

Date

Name and Title of Authorized Representative of USER

Approved: Project Engineer:

Signature of Authorized Representative of USER

(BMI)

Signature of Project Engineer’s Representative

Version 04/11/07
Items to Be Submitted With the Bid

for

Cattle Crossing

Prairie Island Indian Community

Welch, MN
ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to:

Prairie Island Indian Community  OR  Daniel.DeRudder@piic.org
5636 Sturgeon Lake Road
Welch, MN 55089

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 - BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Advertisement or Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 61 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Addendum Date</th>
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<tbody>
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</tbody>
</table>

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; 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 any 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; and (3) Bidder’s safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 - BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive 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 anything 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 price(s):

A. Bidder will complete the work in accordance with the Contract Documents at the prices shown in the attached Bidding Schedule.

B. Unit Prices have been computed in accordance with Paragraph 13.03.B of the General Conditions.
C. Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids. Final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

**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 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 damages.

**ARTICLE 8 - DEFINED TERMS**

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.
BIDDER agrees to perform all of the work described in the CONTRACT DOCUMENTS for the following unit prices:

NOTE: BIDS shall include sales tax and all applicable taxes and fees.

BIDDER must fill in unit prices in numerals, make extension for each item, and total.

CY (LV) = Cubic Yards, Loose Volume
CY (CV) = Cubic Yards, Compacted Volume (Measured in Place)
(P)=Planned Quantity Basis of Measurement

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM</th>
<th>APPROX. QUANT.</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
</tr>
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<td>1</td>
<td>LS</td>
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<tr>
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<td>SUBGRADE PREPARATION</td>
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<td>AGGREGATE BASE, CLASS 5</td>
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<td>TN</td>
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<td>8</td>
<td>SILT FENCE</td>
<td>150</td>
<td>LF</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>RESTORATION (INCL FERTILIZER, SEED, MULCH)</td>
<td>1</td>
<td>LS</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL BASE BID:**
ARTICLE 9 - BID SUBMITTAL

BIDDER:

By:
[Signature]  [Printed name]

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature]  [Printed name]

Title:

Submittal Date:

Address for giving notices:

Telephone Number:

Fax Number:

Contact Name and e-mail address:

Bidder’s License No.:

(where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.
Items to Be Executed After Bid Opening

for

Cattle Crossing

Prairie Island Indian Community

Welch, MN
NOTICE OF AWARD

Date of Issuance:
Owner: Prairie Island Indian Community  Owner's Contract No.:
Engineer: Bolton & Menk, Inc.  Engineer's Project No.: C15.113987
Project: Cattle Crossing  Contract Name:

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]

[ ] 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 this Notice of Award:

1. Deliver to Owner [____] 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 the Instructions to Bidders and 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: Prairie Island Indian Community

Authorized Signature

By:

Title:

Copy: Engineer
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: Cattle Crossing

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Cattle Crossing Surface

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Bolton & Menk, Inc.

3.02 The Owner has retained Bolton & Menk, Inc., 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 November 24, 2017, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before December 1, 2017.

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 $200.00 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 $200.00 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 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)

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

C. 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 ^TBD day of the month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

a. 95 percent of Work completed (with the balance being retainage); and

b. No compensation will be made for materials and equipment delivered to the site and not incorporated into the project.

6.03 Progress Payment to Subcontractors

A. For contracts within the State of Minnesota, MN Statute 471.425 Subd. 4a. shall apply. MN Statute 471.425 Subd. 4a. requires:

1. The prime contractor shall pay any subcontractor within ten days of the prime contractor’s receipt of payment for undisputed services provided by the subcontractor.
2. The prime contractor shall pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.

3. The minimum monthly interest penalty payment for an unpaid balance of $100 or more is $10. For an unpaid balance of less than $100, the prime contractor shall pay the actual penalty due to the subcontractor.

4. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney’s fees, incurred in bringing the action.”

6.04 Final Payment

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

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 1.5 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 carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, if any, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, if any, 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.

F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to ___, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. Other bonds.
   a. ___ (pages ___ to ___, inclusive).
5. General Conditions (pages 1 to 65, inclusive).
6. Supplementary Conditions (pages ___ to ___, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Addenda (numbers ___ to ___, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
   a. Contractor’s Bid (pages ___ to ___, inclusive).
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
   a. Work Change Directives.
   b. Change Orders.
   c. Field Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

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

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 Contractor’s Certifications

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.
IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.
This Agreement will be effective on __________ (which is the Effective Date of the Contract).

OWNER:

Prairie Island Indian Community

By: ________________________________

Title: ________________________________

CONTRACTOR:

______________________________

By: ________________________________

Title: ________________________________

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

Attest: ________________________________

Title: ________________________________

Address for giving notices:

5636 Sturgeon Lake Road

Welch, MN 55089

License No.: ________________________________

(where applicable)

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

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

****END OF SECTION****
NOTICE TO PROCEED

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<tr>
<th>Owner:</th>
<th>Prairie Island Indian Community</th>
<th>Owner’s Contract No.:</th>
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<tr>
<td>Contractor:</td>
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<td>Contractor’s Project No.:</td>
</tr>
<tr>
<td>Engineer:</td>
<td>Bolton &amp; Menk, Inc.</td>
<td>Engineer’s Project No.: C15.113987</td>
</tr>
<tr>
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<td>Cattle Crossing</td>
<td>Contract Name:</td>
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<td>Effective Date of Contract:</td>
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TO CONTRACTOR:

_____________________, 20_____.

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 date of Substantial Completion is November 24, 2017, and the date of readiness for final payment is December 1, 2017.

Before starting any Work at the Site, Contractor must comply with the following:

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Copy: Engineer
PERFORMANCE BOND

CONTRACTOR (name and address): 

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

OWNER (name and address):
Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description: Cattle Crossing

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
(seal)
Contractor’s Name and Corporate Seal
By: ______________________________
Signature

Print Name
Title
Attest: __________________________
Signature

SURETY
(seal)
Surety’s Name and Corporate Seal
By: ______________________________
Signature (attach power of attorney)

Print Name
Title
Attest: __________________________
Signature

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint ventures. (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):
Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089

CONSTRUCTION CONTRACT:

   Effective Date of the Agreement:
   Amount:
   Description: Cattle Crossing

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 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

   ________________________________ (seal)
   Contractor’s Name and Corporate Seal

   ________________________________
   By: ________________________________
   Signature

   ________________________________
   Print Name

   ________________________________
   Title

   ________________________________
   Attest: ________________________________
   Signature

   ________________________________
   Title

SURETY

   ________________________________ (seal)
   Surety’s Name and Corporate Seal

   ________________________________
   By: ________________________________
   Signature (attach power of attorney)

   ________________________________
   Print Name

   ________________________________
   Title

   ________________________________
   Attest: ________________________________
   Signature

   ________________________________
   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 here from 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
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

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.

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:
General Conditions

for

Edition C-700 (Rev 1) EJCDC - 2013

Cattle Crossing

Prairie Island Indian Community

Welch, MN
STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

Prepared by

Issued and Published Jointly by

American Council of Engineering Companies

American Society of Civil Engineers

National Society of Professional Engineers®
These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC’s Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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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 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; contesting Engineer’s decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer’s decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer
has declined to address. A demand for money or services by a third party is not a Claim.

11. **Constituent of Concern**—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. **Contract**—The entire and integrated written contract between the Owner and Contractor concerning the Work.

13. **Contract Documents**—Those items so designated in the Agreement, and which together comprise the Contract.

14. **Contract Price**—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. **Contract Times**—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. **Contractor**—The individual or entity with which Owner has contracted for performance of the Work.

17. **Cost of the Work**—See Paragraph 13.01 for definition.

18. **Drawings**—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. **Effective Date of the Contract**—The date, indicated in the Agreement, on which the Contract becomes effective.

20. **Engineer**—The individual or entity named as such in the Agreement.

21. **Field Order**—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

22. **Hazardous Environmental Condition**—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

23. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. **Liens**—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

25. **Milestone**—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.

26. **Notice of Award**—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.

27. **Notice to Proceed**—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

28. **Owner**—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

29. **Progress Schedule**—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.

30. **Project**—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

31. **Project Manual**—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.

32. **Resident Project Representative**—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.

33. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

34. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.

35. **Schedule of Values**—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.

36. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. **Site**—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

38. **Specifications**—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

39. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

40. **Substantial Completion**—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

41. **Successful Bidder**—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.

42. **Supplementary Conditions**—The part of the Contract that amends or supplements these General Conditions.

43. **Supplier**—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

44. **Technical Data**—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

45. **Underground Facilities**—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

46. **Unit Price Work**—Work to be paid for on the basis of unit prices.

47. **Work**—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. **Work Change Directive**—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 **Terminology**

A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. **Intent of Certain Terms or Adjectives:**

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. **Day:**

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. **Defective:**

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
   
   a. does not conform to the Contract Documents; or
   
   b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
   
   c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. Bonds: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. Evidence of Contractor’s Insurance: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

C. Evidence of Owner’s Insurance: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

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

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

A. Preliminary Schedules: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

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

2.04 Preconstruction Conference; Designation of Authorized Representatives

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or
computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

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

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

3.03 Reporting and Resolving Discrepancies
A. Reporting Discrepancies:
   1. Contractor’s Verification of Figures and Field Measurements: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,
error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by
Engineer, or by an amendment or supplement to the Contract Documents issued
pursuant to Paragraph 11.01.

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

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict,
error, ambiguity, or discrepancy in the Contract Documents unless Contractor had
actual knowledge thereof.

B. **Resolving Discrepancies**:

1. Except as may be otherwise specifically stated in the Contract Documents, the
provisions of the part of the Contract Documents prepared by or for Engineer shall
take precedence in resolving any conflict, error, ambiguity, or discrepancy between
such provisions of the Contract Documents and:

   a. the provisions of any standard specification, manual, reference standard, or code,
      or the instruction of any Supplier (whether or not specifically incorporated by
      reference as a Contract Document); or

   b. the provisions of any Laws or Regulations applicable to the performance of the
      Work (unless such an interpretation of the provisions of the Contract Documents
      would result in violation of such Law or Regulation).

3.04 **Requirements of the Contract Documents**

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

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or
decision on the issue submitted, or initiate an amendment or supplement to the Contract
Documents. Engineer’s written clarification, interpretation, or decision will be final and
binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner,
unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract
Documents that do not involve (1) the performance or acceptability of the Work under the
Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or
otherwise), or (3) other engineering or technical matters, then Engineer will promptly give
written notice to Owner and Contractor that Engineer is unable to provide a decision or
interpretation. If Owner and Contractor are unable to agree on resolution of such a matter
in question, either party may pursue resolution as provided in Article 12.
3.05 Reuse of Documents

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner’s express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

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

4.02 Starting the Work

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

4.03 Reference Points

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

4.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 Delays in Contractor’s Progress

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor’s performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor’s sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. abnormal weather conditions;
3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
4. acts of war or terrorism.

D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 Availability of Lands

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

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor’s operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part
by, or based upon, Contractor’s performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. **Removal of Debris During Performance of the Work**: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. **Cleaning**: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.03 **Subsurface and Physical Conditions**

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

1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
3. Technical Data contained in such reports and drawings.

B. **Reliance by Contractor on Technical Data Authorized**: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

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

A. Notice by Contractor: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. Engineer’s Review: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner’s obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor’s resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer’s findings, conclusions, and recommendations.

C. Owner’s Statement to Contractor Regarding Site Condition: After receipt of Engineer’s written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer’s written findings, conclusions, and recommendations, in whole or in part.

D. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

   a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

   b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
c. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
   a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
   b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor’s making such commitment; or
   c. Contractor failed to give the written notice as required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor’s entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner’s issuance of the Owner’s written statement to Contractor regarding the subsurface or physical condition in question.

5.05 Underground Facilities

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

B. Notice by Contractor: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after
becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

C. **Engineer’s Review:** Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor’s resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer’s findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. **Owner’s Statement to Contractor Regarding Underground Facility:** After receipt of Engineer’s written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer’s written findings, conclusions, and recommendations in whole or in part.

E. **Possible Price and Times Adjustments:**

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
   a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
   b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
   c. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times; and
   d. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor’s entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner’s issuance of the Owner’s written statement to Contractor regarding the Underground Facility in question.
5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

2. Technical Data contained in such reports and drawings.

B. Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner’s written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.

H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.
ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor’s obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.

F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 Insurance—General Provisions

A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is
maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.

F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner’s termination rights under Article 16.

H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party’s interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor’s interests.

J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor’s Insurance

A. Workers’ Compensation: Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance for:

1. claims under workers’ compensation, disability benefits, and other similar employee benefit acts.

2. United States Longshoreman and Harbor Workers’ Compensation Act and Jones Act coverage (if applicable).

3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor’s employees (by stop-gap endorsement in monopolist worker’s compensation states).
4. Foreign voluntary worker compensation (if applicable).

B. Commercial General Liability—Claims Covered: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:

1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees.
2. claims for damages insured by reasonably available personal injury liability coverage.
3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

C. Commercial General Liability—Form and Content: Contractor’s commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
   a. Such insurance shall be maintained for three years after final payment.
   b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
3. Broad form property damage coverage.
4. Severability of interest.
5. Underground, explosion, and collapse coverage.
6. Personal injury coverage.
7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 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 considered 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.
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, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 **Delegation of Professional Design Services**

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.

B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop
Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this paragraph, Engineer’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer’s review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner’s employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner’s employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner’s employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

D. If the proper execution or results of any part of Contractor’s Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor’s Work. Contractor’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor’s Work except for latent defects and deficiencies in such other work.
8.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner’s employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. an itemization of the specific matters to be covered by such authority and responsibility; and

3. the extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 Legal Relationships

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

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner’s contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.

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

**ARTICLE 9 – OWNER’S RESPONSIBILITIES**

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

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

9.03 **Furnish Data**
A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 **Pay When Due**
A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

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

9.06 **Insurance**
A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 **Change Orders**
A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.
9.08 Inspections, Tests, and Approvals
   A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

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

9.10 Undisclosed Hazardous Environmental Condition
   A. Owner’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

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

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

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

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

10.02 Visits to Site
   A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
   B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during
or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Project Representative

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

10.04 Rejecting Defective Work

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

10.05 Shop Drawings, Change Orders and Payments

A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.

B. Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.

C. Engineer’s authority as to Change Orders is set forth in Article 11.

D. Engineer’s authority as to Applications for Payment is set forth in Article 15.

10.06 Determinations for Unit Price Work

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

10.07 Decisions on Requirements of Contract Documents and Acceptability of Work

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

10.08 Limitations on Engineer’s Authority and Responsibilities

A. Neither Engineer’s authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

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

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

E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

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

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

11.01 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. Change Orders:
   a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
   b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. Work Change Directives: A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive’s effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an
adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 **Owner-Authorized Changes in the Work**

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

11.03 **Unauthorized Changes in the Work**

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

11.04 **Change of Contract Price**

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on
the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor’s fee for overhead and profit (determined as provided in Paragraph 11.04.C).

C. Contractor’s Fee: When applicable, the Contractor’s fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

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

11.05 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.

B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor’s progress.

11.06 Change Proposals

A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under
the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. Procedures: Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. Engineer’s Action: Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor’s supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer’s inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. Binding Decision: Engineer’s decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

B. Resolution of Certain Change Proposals: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner’s acceptance of defective Work under Paragraph 14.04 or Owner’s correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer’s recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 Notification to Surety

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

ARTICLE 12 – CLAIMS

12.01 Claims

A. Claims Process: The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:

1. Appeals by Owner or Contractor of Engineer’s decisions regarding Change Proposals;
2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

B. Submittal of Claim: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor’s knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. Review and Resolution: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

D. Mediation:

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim
submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator’s fees and costs.

E. Partial Approval: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. Denial of Claim: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. Final and Binding Results: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 Cost of the Work

A. Purposes for Determination of Cost of the Work: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. Costs Included: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable
thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor’s Cost of the Work and fee shall be determined in the same manner as Contractor’s Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:
   a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor’s employees incurred in discharge of duties connected with the Work.
   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
   c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
   d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
   e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
   f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes
other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor’s fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor’s officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor’s fee.

2. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.

3. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

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

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

13.02 Allowances

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

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor’s costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. **Contingency Allowance**: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 **Unit Price Work**

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor’s overhead and profit for each separately identified item.

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

E. Within 30 days of Engineer’s written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.
ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

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

14.02 Tests, Inspections, and Approvals

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
2. to attain Owner’s and Engineer’s acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor’s purchase thereof for incorporation in the Work.

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

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor’s expense unless Contractor had given Engineer timely notice of Contractor’s intention to
cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 **Defective Work**

A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.

B. *Engineer’s Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Work.

F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 **Acceptance of Defective Work**

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

14.05 **Uncovering Work**

A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer’s observation, and then replace the covering, all at Contractor’s expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer’s request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor’s full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

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

14.07 Owner May Correct Defective Work

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

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor’s services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner’s representatives, agents and employees, Owner’s other contractors, and Engineer and Engineer’s consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will
include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor’s defective Work.

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

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

15.01 Progress Payments

A. Basis for Progress Payments: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner’s interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor’s legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer’s reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer’s recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer’s observations of the executed Work as an experienced and qualified design professional, and on Engineer’s review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer’s knowledge, information and belief:
a. the Work has progressed to the point indicated;
b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
c. the conditions precedent to Contractor’s being entitled to such payment appear to have been fulfilled in so far as it is Engineer’s responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer’s review of Contractor’s Work for the purposes of recommending payments nor Engineer’s recommendation of any payment, including final payment, will impose responsibility on Engineer:
   a. to supervise, direct, or control the Work, or
   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
   c. for Contractor’s failure to comply with Laws and Regulations applicable to Contractor’s performance of the Work, or
   d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer’s opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer’s opinion to protect Owner from loss because:
   a. the Work is defective, requiring correction or replacement;
   b. the Contract Price has been reduced by Change Orders;
   c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
   d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. **Payment Becomes Due:**

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

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

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

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount
remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

15.02 Contractor’s Warranty of Title

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

15.03 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor’s notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner’s objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner’s use or occupancy of the Work following Substantial Completion, review the builder’s risk insurance policy with respect to the end of the builder’s risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner’s use or occupancy of the Work.
E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.

2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder’s risk or other property insurance.

15.05 Final Inspection

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

15.06 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of
inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
   a. all documentation called for in the Contract Documents;
   b. consent of the surety, if any, to final payment;
   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
   d. a list of all disputes that Contractor believes are unsettled; and
   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. Engineer’s Review of Application and Acceptance:

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

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

D. Payment Becomes Due: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer’s recommendation,
including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor’s failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor’s continuing obligations under the Contract Documents.

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

15.08 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

1. correct the defective repairs to the Site or such other adjacent areas;

2. correct such defective Work;

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner’s written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
E. Contractor’s obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

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

16.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor’s disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor’s repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,
and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for
expenses or damage directly attributable to Contractor’s stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

A. Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this Article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

B. Final Resolution of Disputes: For any dispute subject to resolution under this Article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
2. agree with the other party to submit the dispute to another dispute resolution process; or
3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

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

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

18.02 Computation of Times

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

18.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.
18.04 Limitation of Damages
   A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 No Waiver
   A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

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

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

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

for

Edition C-700 EJCDC\textsuperscript{®} - 2013

Cattle Crossing

Prairie Island Indian Community

Welch, MN
SECTION 00800 - SUPPLEMENTARY CONDITIONS
TO THE STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT
SUPPLEMENTARY CONDITIONS - GENERAL COMMENTS

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

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

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

SC-4.03 REFERENCE POINTS

Delete Paragraph 4.03.A of the General Conditions in its entirety and insert the following Paragraph 4.03.A in its place:

4.03.A. The OWNER will provide engineering surveys to establish reference points for construction as described in Section 01720, Field Engineering, of the Specifications.

SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS

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

5.03.A. The following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner:

1. Soil borings and geotechnical reports:
   a. Report dated September 20, 2017, prepared by Braun Intertec entitled: Geotechnical Evaluation Report, consisting of 21 pages. The “technical data” contained in such report upon which Contractor may rely are those indicated in the definition of Technical Data in the General Conditions.
   b. The subsurface conditions and ground water levels (or lack thereof) indicated in any soil boring log is only representative of the conditions present at the time the soil borings were taken and at the location of the respective soil boring. The soil conditions can be expected to vary in areas away from the soil boring locations and the ground water levels can be expected to vary in different location and seasonally.

SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS

Delete subparagraphs 5.06.A.1 and 5.06.A.2 in their entirety and insert the following:

5.06.A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

SC-6.02 INSURANCE – GENERAL PROVISIONS

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

6.02.B.1. Contractor may obtain worker’s compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker’s compensation insurance provider by the appropriate state agency, and (c) has
been accepted to provide worker’s compensation insurance for similar projects by the state within the last 12 months.

**SC-6.03 CONTRACTOR’S INSURANCE**

Delete paragraph SC-6.03.J in its entirety and insert the following:

6.03.J. The coverage requirements for specific policies of insurance, including the requirements of SC 6.03.K.2.a, must be met by such policies, with exception that an Excess or Umbrella Liability insurance policy may be used to supplement Contractor’s policy limits on a follow-form basis to satisfy the full policy limits required by this Contract.

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

6.03.K. The limits of liability for the 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:

1. Workers’ Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

<table>
<thead>
<tr>
<th>State: Federal, if applicable (e.g., Longshoreman’s):</th>
<th>Statutory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jones Act coverage, if applicable:</td>
<td></td>
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<tr>
<td>Bodily injury by accident, each accident $</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Bodily injury by disease, aggregate $</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>

   | Employer’s Liability:                                 |          |
   | Bodily injury, each accident $                        | 1,000,000.00 |
   | Bodily injury by disease, each employee $             | 1,000,000.00 |
   | Bodily injury/disease aggregate $                     | 1,000,000.00 |

   For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker’s compensation or commercial general liability policy with a minimum limit of: $ Not Applicable

   | Foreign voluntary worker compensation                | Statutory |

2. Contractor’s Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

   | General Aggregate                                   | 2,000,000.00 |
   | Products - Completed Operations Aggregate $          | 2,000,000.00 |
   | Each Occurrence (Bodily Injury and Property Damage) | 1,500,000.00 |
   | Personal and Advertising Injury                    | 1,500,000.00 |

   a. The aggregate limits under SC-6.03.K.2 (Commercial General Liability) be maintained fully available for this Contract by obtaining and maintaining a Designated Construction Project General Aggregate Limit endorsement, or equivalent

3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:

   | Bodily Injury:                                       |          |
   | Each person                                         | 1,000,000.00 |
   | Each accident                                       | 1,000,000.00 |
Property Damage:
   Each accident $ 1,000,000.00
OR
   Combined Single Limit of $ 1,000,000.00

4. Excess or Umbrella Liability:
   Per Occurrence $ Not Applicable
   General Aggregate $ Not Applicable

5. Contractor’s Pollution Liability:
   Per Occurrence $ Not Applicable
   General Aggregate $ Not Applicable

☑ If box is checked, Contractor is not required to provide Contractor’s Pollution Liability insurance under this Contract

6. Additional Insureds: Owner and Engineer.

SC-6.05 PROPERTY INSURANCE

Add the following to the list of requirements in Paragraph 6.05.A, after item 13, as numbered items:

   14. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorney’s fees and engineering or other consultants’ fees, if not otherwise covered;

SC-7.08 PERMITS

The following Paragraph 7.08.B shall be added immediately after Paragraph 7.08.A:

7.08.B. If the OWNER has obtained, or has applied for, the necessary construction permits from any regulatory agencies, they will be addressed in Section 01410, Regulatory Requirements, of the Specifications. CONTRACTOR shall obtain and pay for all construction permits, licenses and bonds, not specifically highlighted as previously obtained, or applied for, in the referenced Section.

SC-7.11 RECORD DOCUMENTS

The following Paragraphs 7.11.B through 7.11.C shall be added immediately after Paragraph 7.11.A:

7.11.B. The purpose of the final Project Record Documents is to provide factual information regarding all aspects of the work, both concealed and visible, to enable future modification of the work to proceed without lengthy and expensive site measurement, investigation, and examination.

7.11.C. Prior to submitting a request for final payment, submit the final Project Record Documents to the Engineer and/or Owner for approval. Approval of the Record Documents shall not constitute final acceptance of the completed project.

SC-7.12 SAFETY AND PROTECTION

The following Paragraph 7.12.A.4 shall be added immediately after Paragraph 7.12.A.3:
7.12.A.4. The OWNER, ENGINEER or their representatives may indicate potential safety hazards noticed at the construction site. However, the CONTRACTOR shall remain the only party liable for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

**SC-7.20** PROGRESS PAYMENTS TO SUBCONTRACTORS

Add the following Paragraph 7.20 immediately after Paragraph 7.19

7.20 Progress Payments to Subcontractors

A. For contracts involving payment with public funds within the State of Minnesota, including but not limited to cities, counties, towns, school districts, political subdivisions or agencies of local government, within ten days after receipt of payment has been made to the Prime Contractor, the Prime Contractor shall make payment to all Subcontractors for undisputed services provided by the Subcontractor. The Prime Contractor shall pay interest of 1.5% per month or for any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100.00 or more is $10.00 for an unpaid balance of less than $100.00, the Prime Contractor shall pay the actual penalty due to the subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney’s fees, incurred in bringing the action.

**SC-8.02** COORDINATION

Delete Paragraph 8.02.A and 8.02.B in its entirety and replace with the following:

8.02.A. Owner does not intend to contract with others for the performance of other work on the Project at the Site.

a. Fencing and gate installation work to be performed by the Owner will occur after the Work of this Contract.

**SC-8.04** CLAIMS BETWEEN CONTRACTORS

Add the following new paragraphs immediately after paragraph 8.03:

8.04 Claims Between Contractors

8.04.A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor’s performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.

8.04.B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor’s performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and
continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.

8.04.C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor’s exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

**SC-10.03 PROJECT REPRESENTATIVE**

Add the following new paragraphs immediately after Paragraph 10.03.A:

10.03.B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. Liaison:
   a. Serve as Engineer’s liaison with Contractor. Working principally through Contractor’s authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
   b. Assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s on-Site operations.
   c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. Shop Drawings and Samples:
   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
   b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. Modifications: Consider and evaluate Contractor’s suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR’s recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. **Review of Work and Rejection of Defective Work:**
   a. Conduct on-Site observations of Contractor’s work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
   b. Report to Engineer whenever RPR believes that any part of Contractor’s work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

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

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

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

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

13. **Certificates, Operation and Maintenance Manuals:** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable.
to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

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

10.03.C. The RPR shall not:
   1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
   2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.
   3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
   4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work.
   5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
   6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
   7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
   8. Authorize Owner to occupy the Project in whole or in part.

SC-13.03. UNIT PRICE WORK

Delete Paragraph 13.03.E. in its entirety and insert the following in its place:

13.03.E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
   1. if the original bid amount of a particular item of Unit Price Work amounts to five (5) percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than twenty (20) percent from the estimated quantity of such item indicated in the Agreement; and
   2. if there is no corresponding adjustment with respect to any other item of Work; and
   3. if Contractor believes that Contractor has incurred additional expense as a result thereof or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.
SC-15.01.B.1  APPLICATION FOR PAYMENTS

Replace Paragraph 15.01.B.1 with the following:

15.01.B.1. The ENGINEER shall, in communication with Contractor, prepare a draft partial payment estimate on or about the day as specified in Paragraph 5.1 of the Agreement in any given month where significant work has been completed. The Pay Estimate shall then be forwarded to the Contractor for its review, approval, and submittal. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the OWNER's interest therein, all of which must be satisfactory to OWNER.

SC-15.01.B.4  APPLICATIONS FOR PAYMENT

Add the following Paragraph 15.01.B.4 immediately after Paragraph 15.01.B.3.

15.01.B.4. All out-of-state contractors shall comply with all State of Minnesota surety deposit requirements. The OWNER may withhold an additional sum of 8 percent of the amount due the CONTRACTOR from each payment and forward it to the Department of Revenue until the CONTRACTOR's state tax obligations are considered fulfilled unless the CONTRACTOR can show reason for exemption. Exemption will be granted provided the out-of-state CONTRACTOR meets the exemption guidelines established for the Minnesota Department of Revenue. All necessary forms may be obtained from the Minnesota Department of Revenue, Mail Station 4450, St. Paul, Minnesota 55146-4450, or phone 1-800-657-3777 or online at:
http://www.revenue.state.mn.us/businesses/withholding/Pages/Forms.aspx.

SC-15.01.D.1  PAYMENT BECOMES DUE

Delete Paragraph 15.01.D.1 in its entirety and replace with the following:

15.01.D.1 The time period for payment shall be in accordance with the Agreement.

SC-15.04  PARTIAL UTILIZATION


15.04.B. Nothing in Paragraph 15.04.A shall obligate the CONTRACTOR to apply for a Certificate of Substantial Completion for any part of this Project. The provisions for partial utilization of the Project, if any, are established by the Specifications and no Certificate of Substantial Completion will be issued for partial utilization occurring within the terms of the Specifications. Partial utilization of the Project not covered by the Specifications shall be in accordance with Paragraph 15.04.A and its sub-paragraphs. If a Certificate of Substantial Completion is not issued, Substantial Completion shall be when final payment is due in accordance with Paragraph 15.06.D.

SC-15.06.A.4. WITHHOLDING OF INCOME TAX AT SOURCE

Add the following Paragraph 15.06.A.4. Immediately following Paragraph 15.06.A.3 of the General Conditions and immediately before 15.06.B:

15.06.A.4. "Final payment will not be made to the CONTRACTOR until a certificate showing that the CONTRACTOR has complied with the provisions of M.S.A. 290.92 requiring withholding of income tax on wages at the source. Said certificate shall be executed by the Commissioner of Revenue. Forms for certification may be obtained from the Commissioner of Revenue, Centennial Building, St. Paul, Minnesota 55145."
SC-15.08  CORRECTION PERIOD

Modify Paragraphs 15.08.A of the General Conditions to change all references for the correction period length from one year to two years, except for luminaries, which is five years.

Add the following Paragraph 15.08.F immediately after Paragraph 15.08.E:

15.08.F.  For purposes of this Paragraph 15.08, the date of Substantial Completion shall be interpreted as the date when final payment is due in accordance with Paragraph 15.06.B and 15.06.C, and the two year correction period shall commence on the date when final payment is due in accordance with Paragraph 15.06.B and 15.06.C, unless otherwise modified by the Specifications or by Written Agreement.

SC-18.09  AGREEMENT

The Agreement shall be deemed fully executed and performed on the Prairie Island Indian Community reservation and shall be governed by and construed in accordance with the laws thereof. Any dispute between the parties of this Agreement shall first be attempted to be resolved amicably or through mediation if both parties consent. The Prairie Island Indian Community Tribal Court shall have exclusive jurisdiction over the Agreement. Any legal proceeding shall only be brought before the Prairie Island Indian Community Tribal Court. Both parties agree that no action shall be brought in any other state or federal jurisdiction. If an action is brought in another jurisdiction, then the defending party can use this provision to dismiss any such action and obtain any costs, disbursements and attorneys’ fees from the party bringing the action. Both parties agree to execute any documents necessary to dismiss such action. Notwithstanding the above-stated provisions, a party may enforce an order, judgment or verdict of the Prairie Island Indian Community Tribal Court in a state, federal, or other tribal court. Nothing in the Agreement shall be construed or interpreted to affect a waiver of the Prairie Island Indian Community’s sovereign immunity. No waiver of the Prairie Island Indian Community’s sovereign immunity from suit may be implied from any action or document.

SC-18.10  EMPLOYMENT PREFERENCE

SC-18.10  Add the following new paragraph 18.10 immediately after Paragraph 18.09.

SC-18.10  The Prairie Island Indian Community gives employment preference, to the greatest extent feasible, to Indians (including but not limited to members of the Prairie Island Indian Community). The Community also gives preference in the award of contracts and subcontracts and in the procurement of services, materials, supplies and equipment, to the greatest extent feasible, to Indian organizations and Indian-owned economic enterprises. The Contractor agrees to comply with the laws established by the Community in connection with Indian Preference, including the Prairie Island Indian Community Equal Employment and Indian Preference Ordinance No. 94-8-16-1. In connection with this Agreement, the Contractor agrees, to the greatest extent feasible: (1) to give preference and opportunities for employment to Indians; and (2) to give preference in the award of any subcontracts and in the procurement of services, materials, supplies and equipment to Indian organizations and Indian-owned economic enterprises. Indians seeking to qualify for Indian Preference shall submit tribal certification that the individual applicant is an enrolled member. Indian organizations and Indian enterprises seeking to qualify for Indian Preference shall submit evidence of at least 51% Indian ownership and control of the bidding entity.

****END OF SECTION****
CONDITIONS OF THE CONTRACT

for

Cattle Crossing

Prairie Island Indian Community

Welch, MN
SECTION 01110 - SUMMARY OF WORK

PART 1 -- GENERAL
1.1 PROJECT LOCATION
   A. The project is located in Welch Township. The project location is shown on the vicinity map in the Appendix.

1.2 PROJECT DESCRIPTION
   A. The project involves but is not limited to the construction of an aggregate base cattle crossing. Individual elements of work shall include, but are not limited to:
      1. Roadside excavation.
      2. Turf restoration and erosion control construction
      3. Traffic Control.
      4. Other miscellaneous work shown on the plans or specified herein.

1.3 CONTRACTOR USE OF PROJECT SITE
   A. The Contractor’s use of the project site shall be limited to its construction operations, including on-site storage of materials and field offices. No materials shall be stored in a location as to limit access to the affected public. Any damage caused by Contractor operations to property, including but not limited to, streets, trees, shrubs, material spatter, etc. shall promptly be corrected at the Contractor’s expense.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION
3.1 OPERATIONAL LIMITATIONS AND REQUIREMENTS
   A. The Contractor shall confine its work within the limits of the easements, public rights-of-way, and/or construction limits as shown on the plans. If the Contractor desires additional space, it shall be the Contractor’s responsibility to acquire easements and/or permission, as desired.

3.2 BARRICADES
   A. The Contractor shall furnish and install any necessary barricades to protect the public or workers during the project. Barricades to keep public out of construction areas shall be left in place until removed by Contractor after they are no longer required for protection. The Contractor is responsible to secure the site at all times during the demolition.
   B. The Contractor shall furnish names, addresses, and phone numbers of at least two (2) local individuals capable of immediate response who will be responsible for the site security and traffic control devices to:
      The Engineer
      The Owner
      Local Law Enforcement Agencies
   C. The Contractor shall respond with sufficient personnel, equipment and/or materials and conduct the required work or be subject to a $100 per hour deduction from the time of notification for non-attention to project security and safety.

3.3 SAFETY HAZARDS
   A. The Owner, Engineer or their representatives may indicate potential safety hazards noticed at the Construction site. However, the Contractor shall remain the only party liable for the maintenance of safe construction practices.

****END OF SECTION****
PART 1 -- GENERAL

1.1 SUMMARY

A. Methods of measurement and payment for all items not individually specified shall be according to the appropriate referenced specification standard.

1.2 MEASUREMENT & PAYMENT

A. Payment for Plan Quantity (P) Items: Items designated as Plan Quantity (P) shall be measured and paid based on the quantity listed in the plans and no field measurement shall be made. The Engineer will only adjust the quantities on Plan Quantity (P) designated Contract items when the Engineer authorizes changes to the dimensions of that work (in which case only the affected portion will be re-determined) or when the Engineer determines that the quantity designated as a Plan Quantity (P) is incorrect.

B. Payment for Hauled Materials: No compensation will be paid for any weigh ticket received after the date shown on the ticket unless prior arrangements are made with the Engineer.

C. No compensation will be paid for materials delivered to the site and not incorporated into the project.

D. Payment for Major Lump Sum Items: The Contractor shall submit a schedule of values for major items of construction that are bid as lump sum. The schedule shall identify major sections of work and the percentage of the bid price applied to each. Payment shall be made according to the percentage complete of each major section of work.

1.3 SUBMITTALS

A. The Contractor shall submit to the Engineer a “Certificate of Conformance” statement stating that the scale used to weigh hauled materials has been tested and calibrated for the current construction season. This Certificate shall be from MnDOT or other reliable scale servicing company. Providing a certified scale and obtaining such “Certificate of Conformance” is the sole responsibility of the Contractor and all costs associated are considered incidental to the materials being supplied.

B. Hauled Materials: The Contractor shall furnish numbered weigh tickets which list the Date, Project, Type of Material, Gross Weight, Tare Weight, Material Weight in tons, and Truck Number for each load brought to the construction site. If the individual pay items are identified on a unit weight basis, the Contractor shall provide the Engineer with a summary type spreadsheet which provides accumulative job totals of all aggregate and bituminous materials hauled to the project. This spreadsheet shall be submitted to the Engineer on a weekly basis.

C. Procured Materials: The Contractor shall furnish an insurance bond showing the type of material, the amount of material, the valuation of the material, the stored location, the project, the date, the name and address of the surety.

D. Compacted Volume Materials: When measurement is specified by the CUBIC YARD, (CY) COMPACTED VOLUME (CV), will be determined by length, width and depth measurements of the material in its placed and compacted position, according to the placement dimensions as shown in the Contract or as designated by the Engineer.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

****END OF SECTION****
SECTION 01330 - SUBMITTALS

PART 1 -- GENERAL

1.1 SUMMARY

A. The Contractor shall submit all required submittals and sample items as noted below. The Engineer will review them with reasonable promptness. The Contractor shall make all required corrections and file with the Engineer for final review.

B. The responsibility for completeness of submittals lies with the Contractor. If the Engineer and/or Owner sign the submittal with no exception taken, such action shall not absolve the responsibilities of the Contractor in any way.

C. Emailed submittals to the Engineer in pdf format will be accepted.

1.2 ITEMS TO BE SUBMITTED

A. Gradation Test Results from 2 separate tests, as required in Source Quality Control provisions of individual sections contained herein, from material stockpiles of aggregates to be used on this project. These tests may be run by the Contractor or its supplier during aggregate production.

B. Storm Sewer

1. Piping and fittings - Certificates of Compliance.

C. Seeding - Certificates of Compliance for seed mixture.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 SUBMITTAL ROUTING

A. All submittals shall be approved by the Contractor prior to submission to the Engineer.

B. A Letter of Transmittal that identifies the submitted item and the review action required shall accompany all submittals.

1. The Contractor shall be responsible for filling in the following information on the Letter of Transmittal:

   (a) Date.
   (b) Submittal No.
   (c) Identify what is being sent checking the appropriate box.
   (d) No. Copies Submitted.
   (e) Identify the Specification Section the attached information relates to.
   (f) Subject of Shop Drawing or Other Submittal.
   (g) Check whether the Shop Drawings are or are not in compliance.

      (1) If not in compliance, list the features which are not.
   (h) Sign and Date.

3.2 RESPONSIBILITY

A. The Engineer’s review of a submittal shall not relieve the Contractor from the responsibility for deviation from the drawings and specifications unless the Contractor has, in writing, called the Engineer’s attention to the deviations at the time of submission; nor shall it relieve the Contractor from the responsibility of errors in the submittals.
B. All submittals shall be reviewed by the Engineer prior to their incorporation into the project. If materials are installed without prior review, they will be subject to removal, at the Contractor's expense, if the material is found to be non-conforming to the Specifications.

**** END OF SECTION ****
SECTION 01500 – MOBILIZATION

PART 1 -- GENERAL

1.1 SUMMARY
A. This section covers the mobilization of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to construct the project, including but not limited to, the demobilization associated with closing the project, removing all equipment, removing excess materials, and general clean-up.

1.2 METHOD OF MEASUREMENT AND PAYMENT
A. Mobilization shall be measured by the LUMP SUM (LS) and paid in accordance with the following schedule.
   1. On the first partial estimate that shows work performed on at least one major contract item, 25 percent of the amount bid for Mobilization will be paid, but not more that 3 percent of the original Contract amount.
   2. On subsequent partial estimates, payment shall be made at the same percentage as the value of work completed to date relative to the original Contract amount, except that payment shall not be reduced from the original 25 percent. Materials on hand shall be excluded from the payment ratio computation.
   3. At such time that 95 percent of the original Contract amount is earned, full payment for Mobilization shall be made.

1.3 SPECIFICATION REFERENCES
A. MnDOT Specification Section 2021 shall apply to mobilization.
B. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

****END OF SECTION****
SECTION 01555 - MAINTENANCE AND CONTROL OF TRAFFIC

PART 1 -- GENERAL

1.1 SUMMARY

A. Traffic Control


2. The Contractor shall furnish, install, maintain and remove all traffic control devices including, but not limited to, construction signs, barricades and barricade weights, traffic marking tape, and warning lights which are needed for the guidance, warning and control of traffic adjacent to and through this project.

3. The Contractor shall provide sufficient surveillance of the traffic control devices to insure compliance during the entire construction period. The Contractor shall furnish names, addresses, and phone numbers of at least two (2) local individuals capable of immediate response who will be responsible for the site security and traffic control devices to:

   The Engineer
   The Owner
   Local Law Enforcement Agencies

4. The Contractor shall respond with sufficient personnel, equipment and/or materials and conduct the required work or be subject to a $ 100 per hour deduction from the time of notification for non-attention to project security and safety.

5. The Contractor shall schedule the work to cooperate fully with residential and business property owners abutting the project to minimize the time of restricted access to their property during the construction period. Driveway access to any property adjacent to the construction zone shall be restricted no more than seven days to allow for curing of the concrete curb and driveway pavement.

6. If it is necessary to enter upon a right-of-way controlled by the County or Minnesota Department of Transportation, the Contractor shall notify the appropriate agency before commencing construction within the right-of-way.

7. The Contractor shall be responsible for securing a site for storage of construction equipment and materials.

B. General Construction and Traffic Requirements

1. The parking of Contractor's Vehicles that obstruct any traffic control devices will not be permitted.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Traffic Control shall be measured by the LUMP SUM (LS) and paid in accordance with the following schedule.

1. On the first partial estimate that shows work performed on at least one major contract item, 25 percent of the amount bid for Traffic Control will be paid, but not more that 3 percent of the original Contract amount.

2. On subsequent partial estimates, payment shall be made at the same percentage as the value of work completed to date relative to the original Contract amount, except that payment shall not be reduced from the original 25 percent. Materials on hand shall be excluded from the payment ratio computation.
3. At such time that 95 percent of the original Contract amount is earned, full payment for Traffic Control shall be made.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. The Contractor shall notify the Engineer in writing at least 72 hours prior to the start of any construction operation that will necessitate lane closure or internal traffic control signing.

B. The traffic control devices required along the project corridor shall be delivered and installed prior to the start-up of the work.

C. The Contractor shall maintain traffic through the intersections whenever possible.

D. The Contractor shall monitor and maintain all traffic control devices.

****END OF SECTION****
TECHNICAL SPECIFICATIONS

for

Cattle Crossing

Prairie Island Indian Community

Welch, MN
PART 1 -- GENERAL

1.1 SUMMARY
A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the excavation and embankment of the site improvements as indicated on the drawings or as specified herein.

1.2 DEFINITIONS
A. Compacted Volume (CV) – The volume of material actually placed as determined by computing the difference between original and final cross-sections by the average end area method.
B. Excess Material - Material that is not needed to complete the earthwork balance.
C. Subcut - Excavation performed below the proposed subgrade or building pad hold-down elevation shown on the plans for the purposes of removing unsuitable material.
D. Subgrade - The top surface of a roadbed upon which the pavement structure (including aggregate base and/or granular subbase) is to be constructed. This is also a general term denoting the soil foundation upon which a proposed improvement is to be placed.
E. Suitable Material - Sand, silty sand or low plasticity clay soils with no organic content. The Engineer shall make the final determination as to what material will be considered suitable.
F. Topsoil - Any soil, generally black in color, containing organic material.
G. Unsuitable Material - Soil with organic content including topsoil, swamp deposits, peat, muck, or other material deemed by the Engineer to be unsuitable for fill or embankment construction.

1.3 METHOD OF MEASUREMENT AND PAYMENT
A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:
   1. Measurement and payment for Common Excavation shall be based upon the CUBIC YARD - PLANNED QUANTITY - CY (P), included in the Proposal. Common excavation is computed to the face of any retaining walls. Excavation required for construction of the wall shall be incidental to the unit price bid for retaining wall.
   2. Measurement and payment for Select Granular Borrow shall be based upon the CUBIC YARD – COMPACTED VOLUME INPLACE QUANTITY - CY (CV), included in the Proposal.
B. The furnishing and installing of specific items and/or the performance of work under certain circumstances shall not be individually paid in the absence of a specific bid item for the work. The costs shall be included in the unit price bid for the associated excavation items. Such items of work include but are not limited to:
   1. Unless itemized in the Schedule of Prices, separating, salvaging, stockpiling, and spreading of topsoil, include in the price bid for common excavation.
   2. Unless itemized in the Schedule of Prices, subcutting the existing topsoil prior to placing embankment in all areas with proposed structural improvements, include in the price bid for common excavation.
   3. Salvaging and separately stockpiling suitable aggregate base material, as determined by the Engineer, include in the price bid for common excavation.
   4. Separating, salvaging, stockpiling and placing suitable material for use in embankment areas, include in the price bid for common excavation.
   5. Over-excavation in cut areas to provide room for placement of topsoil, include in the price bid for common excavation.
6. Earthwork balancing including adjustments for shrinkage loss, and excess materials resulting from the additional volume created from pipe bedding, utility pipe, and/or underground structures shall be included in the unit price bid for common excavation.

7. Protecting existing improvements and previously accepted in-process improvements from damage include in the price bid for common excavation.

8. Farming, disking and/or drying suitable wet materials, include in the price bid for common excavation.

1.4 SPECIFICATION REFERENCES
A. MnDOT Specification No. 2105 shall apply to the excavation and embankment for the site improvements, except as modified herein.
B. MnDOT Specification Section 2574 shall apply to the excavation and embankment for the site improvements, except as modified herein.
C. Section 01270 - Measurement and Payment of these Specifications, if included, except as modified herein.
D. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS
2.1 MATERIALS
A. All excess excavated material shall become the property of the Contractor and shall be removed from the site and disposed of at a location secured by the Contractor.

PART 3 -- EXECUTION
3.1 GENERAL
A. Excavated topsoil and suitable material for reuse in the project shall be segregated and stockpiled at a site selected by the Contractor.
B. All excavations shall be kept free of water during the placement of fill.
C. The Contractor shall utilize methods and equipment for excavating that will minimize the disturbance to the subgrade. The use of backhoes rather than scrapers or front-end loaders may be required to minimize repeated passes of equipment over wet subgrade soils.
D. At the end of each day the Contractor shall eliminate surface indentations, including those caused by sheeps foot rollers, tractor tires and tracked equipment, and roll the surface with a steel wheel or rubber tired roller.
E. Sufficient common excavation shall be utilized by the Contractor to replace the soil shrinkage from excavation which occurs through the course of construction handling and compaction. The Contractor shall make his own estimate of the amount of shrinkage that will occur.
F. Topsoil
   1. Topsoil shall be salvaged and stockpiled in areas requiring final turf establishment, as approved by the Engineer.
   2. Once the salvaged topsoil is stockpiled, the Contractor shall make an estimate of any potential shortage or surplus of topsoil possible in meeting the other provision of this Contract and notify the Engineer of the estimate.
   3. The first priority in re-distributing the topsoil on site shall be to meet the minimum depths required over the entire project area.
   4. In areas requiring final turf establishment with no proposed or anticipated structural improvements (building pads, etc.), topsoil shall be spread uniformly to a minimum depth of 6-inches, unless otherwise indicated in the plans.
G. In areas where filling above the existing grade is necessary to establish the final designed elevation, the Contractor shall fully remove the topsoil and organic material to the level of stable underlying sand or clay prior to backfilling with suitable embankment material.

H. The Contractor shall make his own determination as to whether the proposed grading has been completed according to the plans. When the Contractor determines that the grading has been completed, he will notify the Engineer. Neither the Owner nor the Engineer will provide any intermediate acceptance of the grading improvements until all of the grading has been completed and all topsoil has been spread.

3.2 EXCAVATION AND EMBANKMENT IN AREAS WITH NO PROPOSED STRUCTURAL IMPROVEMENTS

A. Topsoil or unsuitable material may be used to construct embankments in areas with no structural improvements.

3.3 COMPACtion

A. All embankment grading shall be compacted using the Quality Compaction Method.

3.4 SOURCE QUALITY CONTROL

A. The Owner may arrange for having the following testing performed:
   1. One (1) gradation test per each 500 tons or 275 cubic yards (CV) of select granular borrow.
   2. One (1) gradation test per each 500 tons or 275 cubic yards (CV) of stabilizing aggregate.

B. All testing shall be performed by an independent testing laboratory approved by the Engineer.

3.5 FIELD QUALITY CONTROL

A. Required Inspections:
   1. Areas with Proposed Structural Improvements:
      (a) Inspection following the removal of unsuitable material and prior to placement of embankment material to insure that all topsoil and unsuitable material has been removed, and that the exposed subgrade has sufficient bearing capacity for the anticipated structural improvement.

B. The Contractor shall notify the Engineer 24 hours prior to completing the removal of topsoil and unsuitable material in areas with proposed structural improvements to insure that appropriate inspection may be performed.

C. Samples for testing shall be taken from material at locations approved by the Engineer. All sampling methods shall be approved by the Engineer.

D. Should any of the specified tests or inspections fail, the Contractor may arrange and pay for additional tests or inspections as may be necessary to satisfy the Engineer that the specified requirements have been met.

***END OF SECTION***
PART 1 -- GENERAL

1.1 SUMMARY
A. This section covers the furnishing of all labor, materials, tools, equipment and performance of all work and services necessary or incidental to the subgrade preparation as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT
A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:
   1. Subgrade Preparation shall be measured and paid by the SQUARE YARD (SY). The unit price bid shall be compensation in full for all labor, materials, equipment, and tools to complete the work as specified.
   2. No exception to the referenced specification is made.
B. The furnishing and installing of specific items and/or the performance of work under certain circumstances shall not be individually paid in the absence of a specific bid item for the work. The costs shall be included in the unit price bid for the various excavation items. Such items of work include but are not limited to:
   1. Drying and adding water to the subgrade.
   2. Subgrade excavation, furnishing stabilizing aggregate, geotextile fabric installation, compaction, regrading and/or other efforts necessary to repair the subgrade after satisfying the rolling test and failing to protect the integrity of the subgrade.

1.3 SPECIFICATION REFERENCES
A. MnDOT Specification Section 2112 shall apply to the subgrade preparation, except as modified herein.
B. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 NO EXCEPTION TO THE REFERENCED SPECIFICATION IS MADE.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS
A. If the subgrade is unstable and the instability is due to excessive moisture, the subgrade shall be scarified and dried over a reasonable time period. When the material has reached acceptable moisture limits, the material shall be returned and compacted into place to the proper elevation. If the material continues to be unstable, the Engineer may authorize the removal of the undesirable material as subgrade excavation.
B. Once the subgrade has been accepted by the Engineer, no traffic or construction equipment shall be permitted to operate directly on the subgrade without the prior approval of the Engineer. All equipment shall be restricted to operating only in areas where the aggregate base has been installed to its full design depth.
C. The subgrade shall be compacted in accordance with the Quality Compaction Method.

****END OF SECTION****
SECTION 02370 - EROSION & SEDIMENT CONTROL (LESS THAN ONE ACRE DISTURBANCE)

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to storm water management as indicated on the plans, as specified herein or as directed by the Engineer.

B. The Contractor and Owner shall identify a person(s) knowledgeable and experienced in the application of erosion and sediment control BMP’s who will oversee the site erosion and sediment control.

C. Minnesota Pollution Control Agency (MPCA) - General Storm Water Permit for Construction Activity (MN R100001)

1. This site as designed will disturb less than 1.0 acres, therefore a NPDES permit is not required.

2. The Contractor shall contact the Owner if it is determined that additional work is required which will increase the total disturbance area to 1.0 acres or more.

   (a) The Contractor shall provide recommendations for an updated erosion and sediment control showing the increased disturbance limits and the necessary BMPs. No increase in disturbance limits shall occur until:

      (1) A Storm Water Pollution Prevention Plan has been prepared and incorporated into the project by change order.

      (2) The Contractor applies for a NPDES permit from the MPCA.

      (3) A copy of the active permit has been posted on the site.

   (b) The Contractor shall be responsible for all costs associated with increasing the total disturbance area to 1.0 acres or more except where the change is due to a work change that is directed by the Owner and not a result of recommendations made by the Contractor to accommodate changed work means or methods.

D. The Owner has included erosion and sediment Best Management Practices (BMP’s) in the project.

1. The Contractor shall implement and/or adjust the BMP’s utilized on this project to fit the actual field conditions as the project progresses.

2. The Contractor shall phase construction to minimize erosion and sediment potential during the project.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for erosion and sediment control shall be paid according to the referenced specification or as modified below:

1. Payment for Silt Fence shall be at the contract price per LINEAR FOOT (LF) and shall be considered full compensation for furnishing, installing, maintaining, removing the sediment control devices, and removing accumulated sediment. Eighty percent (80%) of payment shall be made upon installation. The remaining 20% shall be made upon complete removal of the control measure, removal of any accumulated sediment and surface restoration.

B. The furnishing and installing specific items and/or the performance of work under certain circumstances shall not be individually paid in the absence of a specific bid item for the work. The costs shall be included in the unit price bid for the associated erosion control and excavation items. Such items of work include but are not limited to:

   1. Maintaining clean exit areas or roads from the site.

   2. Sweeping adjacent streets clean of excess soil.
3. Emergency erosion control mobilization.

C. No additional payment shall be made for Erosion Control BMP’s necessary to accommodate Contractor phasing or work methods including increased quantities, alternative methods, and turf restoration impacts.

1.3 SPECIFICATION REFERENCES

A. MnDOT Specification Section 2573 – Stormwater Management.
B. MnDOT Specification Section 2574 – Soil Preparation
C. MnDOT Specification Section 2575 – Establishing Turf and Controlling Erosion
D. MnDOT Specification Section1717 – Air, Land and Water Pollution
E. Section 02920 of these specifications shall apply to Rapid Stabilization. In the absence of Section 02920, MnDOT 2575, method 3 shall apply.
F. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS

A. For all materials not specifically discussed below, no exceptions to the reference specifications are made.
B. Bale checks shall not be used.

PART 3 -- EXECUTION

3.1 GENERAL

A. Construction and/or installation of all appropriate erosion & sediment control devices shall be completed prior to any soil disturbing activities.
B. Exit areas and connected roads shall be kept clean of tracking and sediment release from the site. All material shall be cleaned up the sooner of within 24-hours of discovery or the end of each business day. Washing or sweeping of material into the storm sewer system shall not be allowed.

3.2 CONSTRUCTION REQUIREMENTS

A. The Contractor shall control drainage, erosion, and sediment on the project including: haul roads, temporary construction, waste disposal sites, plant and storage locations, and borrow pits, other than commercially operated sources.
B. If Contractor fails to install, maintain, and/or perform the appropriate erosion and sediment control practices, as determined by the Engineer, the Engineer may issue a written notice to the Contractor. Contractor shall correct the cause and alleviate all sediment deposition to the fullest extent possible within the timeframe in the written notice.
C. Contractor shall be responsible for removing all sediment deposits including, but not limited to, drainage ways, stormwater basins, or catch basins and re-stabilize the areas where sediment removal results in exposed soil. The removal and stabilization shall take place within 7 calendar days of discovery unless precluded by legal, regulatory, or physical access restraints, regardless if a written notice has been issued by the Engineer. If precluded, removal and stabilization must take place within 7 calendar days of obtaining access. The Contractor is responsible for contacting all local, regional, State, and Federal authorities and property owners and obtaining applicable rights of entry, approvals, and/or permits.
D. A contract deduction shall be made equal to the total of all costs incurred by the Owner due to failure of the Contractor to take corrective action within the required timeframe(s). Such costs include but are not limited to: labor, materials, equipment and administrative costs.

****END OF SECTION****
SECTION 02610 - PIPE CULVERTS

PART 1 -- GENERAL

1.1 SUMMARY
A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary to construct pipe culverts as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT
A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:
   1. 8" Pipe Culvert shall be measured and paid by the LINEAL FOOT (LF) of pipe furnished and installed regardless of depth.
   2. No exception to the referenced specification is made.
B. The furnishing and installing of specific items and/or the performance of work under certain circumstances shall not be individually paid in the absence of a specific bid item for the work. The costs shall be included in the unit price bid for the associated pipe culvert items, as indicated. Such items of work include but are not limited to:
   1. Maintenance of an appropriate storm water outlet during construction, include in the price bid for pipe culvert.

1.3 SPECIFICATION REFERENCES
A. Reference Section 02320 of these Specifications for trench excavation, bedding and backfill, except as modified herein.
B. MnDOT Specification Section 2501 shall apply to the construction of pipe culvert and appurtenance items, except as modified herein.
C. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 CULVERT PIPE AND FITTINGS
   1. No exception to the referenced specification is made.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS
A. The Contractor shall install pipe culverts within existing ditch to maintain existing drainage patterns on either side of the aggregate crossing.

****END OF SECTION****
SECTION 02730 - AGGREGATE SURFACING

PART 1 -- GENERAL

1.1 SUMMARY
A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to construct the aggregate surfacing / shouldering as indicated on the drawings or as specified herein.

1.2 METHODS OF MEASUREMENT AND PAYMENT
A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:
   1. Aggregate Base, Class 5 shall be measured by TONS (TN) of material compacted in place as determined from weight tickets delivered to the Engineer.
   2. No exception to the referenced specification is made.
B. The furnishing and installing of specific items and/or the performance of work under certain circumstances shall not be individually paid in the absence of a specific bid item for the work. The costs shall be included in the unit price bid for the associated aggregate surfacing items. Such items of work include but are not limited to:
   1. Protecting existing improvements and previously accepted in-process improvements from damage.
   2. Subgrade excavation, furnishing stabilizing aggregate, geotextile fabric installation, compaction, regrading and/or other efforts necessary to repair the subgrade after satisfying the rolling test and failing to protect the integrity of the subgrade.
   3. The cost of all labor, equipment and materials necessary for meeting the testing requirements of field quality control, if required.

1.3 SPECIFICATION REFERENCES
A. MnDOT Specification Section 2118 shall apply to the construction of aggregate surfacing, except as modified herein.
B. MnDOT Specification Section 2221 shall apply to the construction of aggregate shouldering, except as modified herein.
C. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS
A. Materials included here consist of new aggregate surfacing, Class 2 or Class 5. If additional rock is used to provide a coarser Class 2 or Class 5 gradation, the added materials must pass the Los Angeles Rattler (L.A.R.) test. The percent crushed shall also be tested on the materials.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS
A. At the end of each day the Contractor shall eliminate surface indentations, including those caused by sheeps foot rollers, tractor tires and tracked equipment, and roll the surface with a steel wheel or rubber tired roller.
B. The depth and class of aggregate surfacing to be constructed shall be as shown on the plans. Aggregate surfacing construction shall take place only after the subgrade or aggregate base condition and grade has been examined by the Engineer.
C. Compaction of the aggregate surfacing courses shall be by the Quality Compaction Method.

3.2 SOURCE QUALITY CONTROL

A. The Owner may shall arrange for and pay all costs associated with having the following testing performed:
   1. One (1) gradation test for each 500 tons or 275 cubic yards (CV) of each class of aggregate.
   2. One (1) percent crushing test (if required by the Engineer).
   3. One (1) aggregate quality test (if required by the Engineer).

B. Samples for testing shall be taken from material in stock at locations approved by the Engineer. All sampling methods shall be approved by the Engineer.

C. The Contractor shall cooperate fully with the individuals performing the tests.

****END OF SECTION****
PART 1 -- GENERAL

1.1 SUMMARY
A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to turf restoration as indicated on the drawings or as specified herein.
B. A variety of different seeding mixtures may be utilized on this project.

1.2 METHOD OF MEASUREMENT AND PAYMENT
A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:
   1. Restoration (Including Fertilizer, Seed, Mulch) shall be paid by the LUMP SUM (LS). This bid item is intended for the reestablishment of vegetation in the area of the Work including the slopes of the aggregate crossings (from the crossing surface to existing ground).
B. The furnishing and installing specific items and/or the performance of work under certain circumstances shall not be individually paid in the absence of a specific bid item for the work. The costs shall be included in the unit price bid for the associated seeding and sodding items. Such items of work include but are not limited to:
   1. Subgrade preparation and topsoil placement as required on all areas to be seeded.
   2. Maintenance of newly seeded areas, as specified, include in the unit price for the associated items.

1.3 SPECIFICATION REFERENCES
A. MnDOT Specification Section 2574 – Soil Preparation
B. MnDOT Specification Section 2575 - Establishing Turf and Controlling Erosion
C. MnDOT Specification Section 3876 – Seed
D. MnDOT Specification Section 3877 - Topsoil
E. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS
A. Seeding
   1. The seed mixture to be used shall be: MnDOT seed mix 25-141, General Roadside
   2. Unless otherwise specified on the plans, all application rates for MnDOT mixes, except temporary seed, are 150% the specified rate.
   3. Type 1 mulch shall consist of clean straw with no pasture hay.
   4. Seed must be obtained from as close to the project site as reasonably possible with an emphasis on obtaining seed from the local ecotype region.
   5. Source identified (Yellow tag) seed through the Minnesota Crop Improvement Association (MCIA) unless otherwise approved by the Engineer.
   6. All seed shall be supplied as pure-live seed (PLS)
   7. All seed and seed mixes shall conform to State seed requirements for noxious weed content.
   8. All seed and seed mixes shall conform to State labeling requirements. For all species in the mix, the label and or invoice shall include the county of origin, and if from Canada, the province.
B. Imported Topsoil
   1. Unless otherwise indicated on the plans, imported topsoil borrow for general use as a turf growing medium shall comply with MnDOT 3877.2.A.
   2. Unless otherwise indicated on the plans, imported topsoil borrow for use as a plant growing medium in designated areas such as landscape beds shall meet the requirements of 3877.2.B.
C. Fertilizer
   1. The fertilizer used for this project shall be a commercial grade of Type 3 slow release complete fertilizer applied at a rate of 60 lbs/acre at the time of preparing the seed bed for seeding. The fertilizer shall contain a 10-10-10 (NPK) analysis.
D. Hydraulic Matrix
   1. Hydraulic Matrix shall be MnDOT Type 5 Hydraulic Soil Stabilizer.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. GENERAL
   1. The subgrade shall be shaped to the approximate contour of the finished surface. All construction debris shall be removed from the area prior to the placement of the topsoil. The subgrade shall be loosened with a disc or harrow to a depth of six-inches prior to application of the topsoil.
   2. The topsoil shall be shaped to the approximate contour of the finished surface, with a minimum depth of 6-inches, unless otherwise shown on the plan. All construction debris, rocks and trash shall be removed from the area prior to seeding or sodding. The topsoil shall be loosened with a disc or harrow to its full depth prior to seeding or sodding.
   3. The Contractor shall be responsible for providing water and maintenance for a period of 30 calendar days, or until final acceptance by the Engineer or Owner, to firmly establish the seed or sod. The term maintenance shall include mowing, weed control and watering, as necessary. Failure to perform this work within 24 hours of notification of non-compliance may result in the Owner or Engineer arranging for completion of the work by others. A contract deduction shall be made equal to the total of all costs to perform such work so arranged, including but not limited to, labor, materials, equipment and administrative costs.
   4. Where dormant seeding is authorized by the Engineer the maintenance period shall be extended to include the first 30 calendar days after the beginning of the growing season. The beginning of growing season shall be defined as bud burst.

B. SEEDING REQUIREMENTS
   1. Turf establishment by seeding shall be done utilizing the various combinations of seed mixtures (including aquatic plants), fertilizing and mulching at disturbed areas.
   2. Areas prepared for seeding shall be free of rocks, debris and clumps of soil. The areas shall be graded uniformly and vegetated areas shall be raked free of chunks exceeding ½ inch diameter.
   3. Seed shall be applied with a drill seeder, unless otherwise approved in writing by the Engineer.
   4. Dormant seeding and snow seeding may be utilized in accordance with the referenced specification and technical memorandum, provided the final acceptance standards are met.
   5. Use of seed mix carriers: In some cases it can be beneficial to add seed mix carriers to mixes such as cracked corn, vermiculite or sand, the choice often depends on the type of seeder used. Manufacturers of seeding equipment should be consulting about carrier recommendations. The material used and rate applied must be approved by the Engineer prior to use. The cost of seed mix carriers shall be incidental to the unit price bid for the seed.
6. Final acceptance of seeding shall be based on an established growth of 6-inches with a uniform density to cover 70% of the designated area, free of weeds and bare spots. Any re-seeding necessary shall be performed at the Contractor's expense.

****END OF SECTION****
General Decision Number: MN170006 06/23/2017  MN6

Superseded General Decision Number: MN20160006

State: Minnesota

Construction Type: Highway

Counties: Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha and Winona Counties in Minnesota.

HIGHPWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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PILEDRIVERMAN $ 31.68 17.06

POWER EQUIPMENT OPERATOR:
GROUP 2 $ 31.73 18.90
GROUP 3 $ 31.28 18.90
GROUP 4 $ 30.98 18.90
GROUP 5 $ 28.41 18.90
GROUP 6 $ 27.54 18.90

Special Equipment
Articulated Hauler $ 30.98 18.90
Boom Truck $ 30.98 18.90

Landscaping Equipment
(includes hydro seeder or mulcher, sod roller, farm tractor with attachment specifically seeding, sodding, or plant, and two-framed forklift (excluding front, posit-track, and skid steer loaders) no earthwork or grading for elevations) $ 25.00 0.00
Off-Road Truck $ 28.61 16.60

Pavement Marking or Marking Removal Equipment
Operator (one or two person operators), Self-Propelled Truck or Trailer Mounted Units $ 35.00 1.48

OPERATING ENGINEER CLASSIFICATIONS

GROUP 2: Helicopter Pilot; Concrete Pump; Cranes over 135 ft boom excluding jib; Dragline, Crawler, Hydraulic Backhoe and other similar equipment with shovel-type controls including attachments 3 cu yd & over; Grader or Motor Patrol; Pile Driving

GROUP 3: Asphalt Bituminous Stabilizer Plant; Cableway; Concrete Mixer, Stationary Plant; Derrick (guy or stiff leg)(power)(skids or stationary); Dragline, Crawler, Hydraulic Backhoe and other similar equipment with shovel-type controls including attachments up to 3 cu yd; Dredge or Engineers Dredge (Power); Front end loader 5 cu yd & over including attachments; Locomotive Crane Operator; Mixer (paving) concrete paving, Road Mole including Mucking operations, Conway or similar type; Mechanic, Welder; Tractor, Boom type. Tandem Scraper; Truck Crane, Crawler Crane; Tugboat 100 H.P. & over.

GROUP 4: Air Track Rock Drill; Automatic Road Machine CMI or similar; Backfiller; Concrete Batch Plant; Bituminous Roller Rubber Tire or Steel Drum 8 tons & over; Bituminous Spreader & Finishing Machine (power), including pavers, Macro Surfacing & Micro Surfacing or similar types (Operator & Screed person); Brokk or RTC remote control or similar type with attachments; Cat Challenger Tractor or similar types pulling Rock Wagons; Bulldozer & Scraper; Chip Harvester & Tree Cutter; Concrete Distributor & Spreader Finishing Machine, Longitudinal Float, Joint Machine, Spray Machine; Concrete Mixer on jobsite; Concrete Mixer; Crusing Plant (gravel, stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Directional Boring Machine; Drill Rigs, Heavy Rotary or Churn or Cable Drill; Dual Tractor; Elevating Grader; Fork Lift; Front End, Skid Steer 1 to 5 cu yd; GPS Remote Operating of equipment;
Hoist Engineer (power); Hydraulic Tree Planter; Launcher Person; Locomotive; Milling, Grinding, Planing, Fine Grade, or Trimmer Machine; Multiple Machines such as Air Compressors, Welding Machines, Generators, Pumps; Pavement Breaker or Tamping Machine, Mighty Mite or similar type; Pickup Sweeper 1 cu yd & over hopper capacity; Horizontal Boring Machine power actuated over 6 inches; Pugmill; Pumpcrete; Rubber Tired Farm Tractor with Backhoe attachment; Scraper; Self-Propelled Soil Stabilizer; Slip Form (power driven) paving; Tractor, Bulldozer; Wheel type Tractor over 50 hp with PTO; Trenching Machine excludes walk behind trencher; Tub Grinder, Morbark or similar type; Well Point installation or Dismantling.

GROUP 5: Air Compressor 600 cfm or over; Bituminous Roller under 8 tons; Concrete Saw multiple blade; Form Tench Digger (power); Front End Skid Steer up to 1 cu yd; Gunite Gunall; Hydraulic Log Splitter; Loader, Barber Greene or similar; Post Hole Driving Machine/Post Hole Auger; Power Actuated Auger & Boring Machine; Power Actuated Jack; Pump; Self-Propelled Chip Spreader (Flaherty or similar); Sheep Foot Compactor with blade 200 hp & over; Shouldering Machine (Power) APSCO or similar type including self-propelled Sand and Chip Spreader; Stump Chipper and Tree Chipper; Tree Farmer (Machine).

GROUP 6: Cat, Challenger or sillar tractor when pulling Disk or Roller; Conveyor; Dredge Deck Hand; Fire Person or Tank Car Heater; Gravel Screening Plant (portable, not crushing or washing); Greaser (tractor); Lever Person; Oiler (Power Shovel, Truck Crane, Dragline, Crusher and Milling Machine; Power Sweeper; Sheep Foot Roller & Rollers on Gravel Compaction including vibrating rollers; Wheel type Tractor over 50 hp.

Survey Field Technician...........$ 29.35 17.05

TRUCK DRIVER

GROUP 1..............$ 25.05 14.40
GROUP 2.................$ 27.80 15.20
GROUP 3..................$ 27.70 15.20
GROUP 4..................$ 27.50 15.20

TRUCK DRIVER CLASSIFICATIONS:

GROUP 1: Mechanic, Welder; Tractor Trailer; Truck hauling machinery including operation of hand and power operated winches.

GROUP 2: Four or more axle unit straight body truck.

GROUP 3: Bituminous Distributor driver; Bituminous Distributor (one person operation); Three Axle units.

GROUP 4: Bituminous Distributor Spray operator (rear and oiler); Dump Person; Greaser; Pilot Car; Rubber Tire self-propelled Packer under 8 tons; Two Axle unit; Slurry Operator; Tank Truck Tender (gas, road oil, water); Tractor under 50 hp.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which
these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=================================

END OF GENERAL DECISION
Geotechnical Evaluation Report

Cattle Pass
1 ¼ Mile NW of the Intersection of Prairie Island Blvd & County 18 Blvd
Welch, Minnesota

Prepared for

Bolton & Menk, Inc.

Professional Certification:
I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Bryan C. Field, PE
Principal – Senior Engineer
License Number: 49128
September 20, 2017

Project B1707275

Braun Intertec Corporation
September 20, 2017

Cristina Mlejnek, PE
Bolton & Menk, Inc.
2035 County Road D East
Maplewood, MN 55109
cristinaml@bolton-menk.com

Re: Geotechnical Evaluation
Cattle Pass
1 1/4 Mile NW of the Intersection of Prairie Island Blvd and County 18 Boulevard
Welch, Minnesota

Dear Ms. Mlejnek:

We are pleased to present this Geotechnical Evaluation Report for the proposed cattle pass located 1 1/4 miles northwest of the intersection of Prairie Island Blvd and County 18 Boulevard.

Thank you for making Braun Intertec your geotechnical consultant for this project. If you have questions about this report, or if there are other services that we can provide in support of our work to date, please contact Amy Kreofsky at 507.317.9983 or akreofsky@brauintertec.com.

Sincerely,

BRAUN INTERTEC CORPORATION

Amy R. Kreofsky, PE
Staff Engineer

Bryan C. Field, PE
Principal – Senior Engineer

AA/EOE
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<td></td>
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</table>
A. Introduction

A.1. Project Description

This Geotechnical Evaluation Report addresses the proposed design and construction of a cattle pass, located approximately 1 ¼ mile northwest of the intersection of Prairie Island Boulevard and County 18 Boulevard in Welch, Minnesota. The project will include construction of an 8-foot by 16-foot concrete box culvert to be used as a cattle pass beneath County 18 Boulevard. The box culvert will be approximately 120 feet in length with an invert elevation of 707.00 feet above Mean Sea Level (MSL).

A.2. Purpose

The purpose of our geotechnical evaluation will be to characterize subsurface geologic conditions at selected exploration locations and evaluate their impact on the design and construction of the box culvert.

A.3. Background Information and Reference Documents

We reviewed the following information:

- Aerial photographs of the site.
- Surficial Geology Maps of Goodhue County prepared by the University of Minnesota, Minnesota Geological Survey. The map is denoted as Atlas C-12, Plates 3 of 9, dated 1998.
- Correspondences with Cristina Mlejnek.

We have described our understanding of the proposed construction and site to the extent others reported it to us. Depending on the extent of available information, we may have made assumptions based on our experience with similar projects. If we have not correctly recorded or interpreted the project details, the project team should notify us. New or changed information could require additional evaluation, analyses and/or recommendations.
A.4. Scope of Services

We performed our scope of services for the project in accordance with our Proposal for Geotechnical Evaluation to Cristina Mlejnek, dated July 20, 2017, and authorized on July 27, 2017. The following list describes the geotechnical tasks completed in accordance with our authorized scope of services.

- Reviewing the background information and reference documents previously cited.
- Clearing the exploration location of underground utilities. Bolton and Menk, Inc. selected and staked the exploration locations.
- Performing two (2) standard penetration test (SPT) borings, denoted as ST-1 and ST-2, to nominal depths of 25 feet below existing grade across the site.
- Performing laboratory testing on select samples to aid in soil classification and engineering analysis.
- Preparing this report containing a boring location sketch (provided by Bolton & Menk, Inc.), logs of soil borings, a summary of the soils encountered, results of laboratory tests, and recommendations for preparing culvert subgrades.

Our scope of services did not include environmental services or testing, and we did not train the personnel performing this evaluation to provide environmental services or testing. We can provide these services or testing at your request.

B. Results

B.1. Geologic Overview

Based on the sources cited above, the site soils were expected to consist of terrace deposits. The terrace deposits in this area typically range from fine-grained silts and clays to coarse-grained sands and gravels.

We based the geologic origins used in this report on the soil types, laboratory testing, and available common knowledge of the geological history of the site. Because of the complex depositional history, geologic origins can be difficult to ascertain. We did not perform a detailed investigation of the geologic history for the site.
B.2. Boring Results

Table 1 provides a summary of the soil boring results, in the general order we encountered the strata. Please refer to the Log of Boring sheets in the Appendix for additional details. The Descriptive Terminology sheets in the Appendix include definitions of abbreviations used in Table 1.

Table 1. Subsurface Profile Summary*

<table>
<thead>
<tr>
<th>Strata</th>
<th>Soil Type - ASTM Classification</th>
<th>Range of Penetration Resistances</th>
<th>Commentary and Details</th>
</tr>
</thead>
</table>
| Pavement section   | -                               | -                                | ● Present in ST-1  
                       |                                  | ● 8 inches of Aggregate Surfacing                                    |
| Topsoil            | SM*                             | -                                | ● Present in ST-2  
                       |                                  | ● Thickness of 8 inches                                        |
| Fill               | SM                              | 5 blow per foot (BPF)            | ● Present in ST-1  
                       |                                  | ● Moisture condition generally moist                           
                       |                                  | ● Thickness of approximately 4 feet                             
                       |                                  | ● Generally dark brown in color                                |
| Terrace deposits   | SP, SP-SM, SM, ML, GP           | 3 to 41 BPF                      | ● Variable amounts of gravel; may contain cobbles and boulders.  
                       |                                  | ● Moisture content ranged from dry to moist.                    
                       |                                  | ● Generally brown in color                                     
                       |                                  | ● Penetration resistances were generally very loose to loose in the upper 15 feet of the borings.  
                       |                                  | ● Present at termination depth of each boring                  |

*Abbreviations defined in the attached Descriptive Terminology sheets.

For simplicity in this report, we define existing fill to mean existing, uncontrolled or undocumented fill.

B.3. Groundwater

We did not observe groundwater while advancing our borings. Therefore, it appears that groundwater is below the depths explored. Project planning should anticipate seasonal and annual fluctuations of groundwater.
B.4. Laboratory Test Results

The boring logs show the results of the classification testing we performed, in accordance with ASTM standards, next to the tested sample depth. We also performed sieve analysis testing on bag samples obtained from auger cuttings. The Appendix contains the results of these tests. Table 2 present the results of our laboratory tests.

Table 2. Laboratory Classification Test Results

<table>
<thead>
<tr>
<th>Location</th>
<th>Sample Depth (ft)</th>
<th>Classification</th>
<th>Moisture Content (w, %)</th>
<th>Percent Passing a #200 Sieve</th>
</tr>
</thead>
<tbody>
<tr>
<td>ST-1</td>
<td>5</td>
<td>SP-SM</td>
<td>6</td>
<td>5.0</td>
</tr>
<tr>
<td>ST-1</td>
<td>10</td>
<td>SM</td>
<td>10</td>
<td>23</td>
</tr>
<tr>
<td>ST-1</td>
<td>15</td>
<td>SP</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>ST-2</td>
<td>5</td>
<td>SP</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>ST-2</td>
<td>10</td>
<td>ML</td>
<td>28</td>
<td>52</td>
</tr>
<tr>
<td>ST-2</td>
<td>15</td>
<td>SP</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>ST-2</td>
<td>20</td>
<td>SP</td>
<td>4</td>
<td>-</td>
</tr>
</tbody>
</table>

C. Recommendations

C.1. Design and Construction Considerations

From a design and construction perspective, it is our opinion the proposed structure can be grade-supported. However, the following should be considered during design and construction:

- Very loose terrace deposits are unsuitable for structural fill and for the support of the proposed structure. These soils should be re-engineered or removed from below the proposed structure and associated oversize area.
Onsite soils appear suitable for reuse as backfill. Organic soils (topsoil) or debris that may be encountered during construction should not be reused as backfill. The onsite soils also appear to have variable moisture contents and will require moisture conditioning (drying or wetting) prior to reuse as backfill or fill to achieve the desired compaction.

C.2. Culvert Support

C.2.a. Excavations and Improvements
Based on the boring logs, very loose sands were encountered to approximately 4 feet below the planned culvert invert elevation of 707 feet MSL. For culvert support, we recommended moisture conditioning and densifying the very loose to loose sands prior to placement of an aggregate bedding layer or culvert structure. If the encountered loose sands cannot be densified, we recommend they be removed and replaced with engineered granular fill. In addition to re-engineering or removal of loose soils, we recommend the culvert treatment include a 1 1/2-foot subcut and placement of Fine Aggregate Bedding meeting the requirements of MnDOT 3149.2.G.1 to provide a uniform platform and stable subbase for support. Alternatively, a drainable base material may be used which meets the requirements of MnDOT 3136. We anticipate these materials will need to be imported.

To provide lateral support to replacement backfill, additional required fill and the structural loads they will support, we recommend oversizing (widening) the excavations 1-foot horizontally beyond the outer edges of the culvert footings for each foot the excavations extend below bottom-of-foothing elevations.

C.2.b. Excavation Backfill
We recommend backfilling the culvert in accordance with Section 360 of the MnDOT Pavement Manual. Please refer specifically to Figure 360.2, Treatment #1, for rigid culverts with existing granular soil. We recommend utilizing Select Granular Material (MnDOT Standard 3149.2.B.2) behind and adjacent to the culvert, as required by the referenced MnDOT Standard. Below the treatment support zone if groundwater is not present, we recommend using a material that meets MnDOT Specification 3149.2.B.1 for Granular Material. If groundwater is encountered, we recommend using Select Granular Material (Super Sand) meeting specification 3149.2.B.2.

In addition to the risk of settlement, frost heave of the pavements adjacent to the culvert could occur if fine-grained soils are used as backfill. The use of granular backfill in accordance with the referenced MnDOT Standard will also help reduce the risk for differential surface frost heave.
C.2.c. Excavated Slopes

Based on the borings, we anticipate on-site fill and glacially deposited soils will primarily consist of granular soil. These soils are typically considered Type C Soil under OSHA (Occupational Safety and Health Administration) guidelines. OSHA guidelines indicate unsupported excavations in Type C soils should have a gradient no steeper than 1H:1-1/2V. Slopes constructed in this manner may still exhibit surface sloughing. OSHA requires an engineer to evaluate slopes or excavations over 20 feet in depth.

An OSHA-approved qualified person should review the soil classification in the field. Excavations must comply with the requirements of OSHA 29 CFR, Part 1926, Subpart P, “Excavations and Trenches.” This document states excavation safety is the responsibility of the contractor. The project specifications should reference these OSHA requirements.

C.2.d. Excavation Dewatering

Although not anticipated during construction, we recommend removing groundwater or surface runoff from the excavation. Project planning should include temporary sumps and pumps for excavations in low-permeability soils, such as clays. Dewatering of high permeability soils (e.g., sands) from within the excavation with conventional pumps has the potential to loosen the soils, due to upward flow. A well contractor should develop a dewatering plan; the design team should review this plan.

C.2.e. Placement and Compaction of Backfill and Fill

We recommend spreading backfill and fill in loose lifts of approximately 6 to 8 inches. We recommend compacting backfill and fill in accordance with MnDOT 2105 or as presented below in Table 3.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Relative Compaction, percent (ASTM D 698 – standard Proctor)</th>
<th>Moisture Content Variance from Optimum, percentage points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below culvert and oversized areas, foundations</td>
<td>100</td>
<td>+/- 3</td>
</tr>
<tr>
<td>Below pavements, within 3 feet of subgrade elevations</td>
<td>100</td>
<td>+/- 3</td>
</tr>
<tr>
<td>Below pavements, more than 3 feet below subgrade elevations</td>
<td>95</td>
<td>+/- 3</td>
</tr>
</tbody>
</table>
C.2.f. Bearing Pressure and Settlement

Based on the conditions encountered in the borings and the foundation preparation and improvements discussed above, we recommend using a net allowable bearing pressure of 3,000 pounds per square foot (psf). This value includes a minimum factor of safety of 3 against bearing capacity failure. At this recommended bearing pressure, we estimate total and differential settlement to be less than 1 inch or 1/2-inch, respectively.

C.3. Construction Quality Control

C.3.a. Excavation Observations

We recommend having a geotechnical engineer observe all excavations related to subgrade preparation and culvert construction. The purpose of the observations is to evaluate the competence of the geologic materials exposed in the excavations, and the adequacy of required excavation oversizing.

C.3.b. Materials Testing

We recommend density tests be taken in all soil backfill. For the culvert backfill, we recommend tests be conducted at a minimum frequency of at least every 2 feet vertically on each side of the culvert for the entire backfill height. We also recommend grain size analysis tests be performed on materials with specified grain size properties.

C.3.c. Cold Weather Precautions

If site grading and construction is anticipated during cold weather, all snow and ice should be removed from cut and fill areas prior to additional grading. No fill should be placed on frozen subgrades. No frozen soils should be used as fill.

D. Procedures

D.1. Penetration Test Borings

We drilled the penetration test borings with an ATV-mounted auger drill equipped with hollow-stem auger. We performed the borings in general accordance with ASTM D6151 taking penetration test samples at 2 1/2-foot intervals in general accordance to ASTM D1586. The boring logs show the actual sample intervals and corresponding depths. We also collected bulk samples of auger cuttings at selected locations for laboratory testing.
We sealed penetration test boreholes meeting the Minnesota Department of Health (MDH) Environmental Borehole criteria with an MDH-approved grout.

D.2. Exploration Logs

D.2.a. Log of Boring Sheets
The Appendix includes Log of Boring sheets for our penetration test borings. The logs identify and describe the penetrated geologic materials, and present the results of penetration resistance and other in-situ tests performed. The logs also present the results of laboratory tests performed on penetration test samples, and groundwater measurements.

We inferred strata boundaries from changes in the penetration test samples and the auger cuttings. Because we did not perform continuous sampling, the strata boundary depths are only approximate. The boundary depths likely vary away from the boring locations, and the boundaries themselves may occur as gradual rather than abrupt transitions.

D.2.b. Geologic Origins
We assigned geologic origins to the materials shown on the logs and referenced within this report, based on: (1) a review of the background information and reference documents cited above, (2) visual classification of the various geologic material samples retrieved during the course of our subsurface exploration, (3) penetration resistance testing performed for the project, (4) laboratory test results, and (5) available common knowledge of the geologic processes and environments that have impacted the site and surrounding area in the past.

D.3. Material Classification and Testing

D.3.a. Visual and Manual Classification
We visually and manually classified the geologic materials encountered based on ASTM D2488. When we performed laboratory classification tests, we used the results to classify the geologic materials in accordance with ASTM D2487. The Appendix includes a chart explaining the classification system we used.
D.3.b. Laboratory Testing

The exploration logs in the Appendix note most of the results of the laboratory tests performed on geologic material samples. The remaining laboratory test results follow the exploration logs. We performed the tests in general accordance with ASTM procedures.

D.4. Groundwater Measurements

The drillers checked for groundwater while advancing the penetration test borings, and again after auger withdrawal. We then backfilled the boreholes with a Minnesota Department of Health (MDH) approved grout.

E. Qualifications

E.1. Variations in Subsurface Conditions

E.1.a. Material Strata

We developed our evaluation, analyses and recommendations from a limited amount of site and subsurface information. It is not standard engineering practice to retrieve material samples from exploration locations continuously with depth. Therefore, we must infer strata boundaries and thicknesses to some extent. Strata boundaries may also be gradual transitions, and project planning should expect the strata to vary in depth, elevation and thickness, away from the exploration locations.

Variations in subsurface conditions present between exploration locations may not be revealed until performing additional exploration work, or starting construction. If future activity for this project reveals any such variations, you should notify us so that we may reevaluate our recommendations. Such variations could increase construction costs, and we recommend including a contingency to accommodate them.

E.1.b. Groundwater Levels

We made groundwater measurements under the conditions reported herein and shown on the exploration logs, and interpreted in the text of this report. Note that the observation periods were relatively short, and project planning can expect groundwater levels to fluctuate in response to rainfall, flooding, irrigation, seasonal freezing and thawing, surface drainage modifications and other seasonal and annual factors.
E.2. Continuity of Professional Responsibility

E.2.a. Plan Review
We based this report on a limited amount of information, and we made a number of assumptions to help us develop our recommendations. We should be retained to review the geotechnical aspects of the designs and specifications. This review will allow us to evaluate whether we anticipated the design correctly, if any design changes affect the validity of our recommendations, and if the design and specifications correctly interpret and implement our recommendations.

E.2.b. Construction Observations and Testing
We recommend retaining us to perform the required observations and testing during construction as part of the ongoing geotechnical evaluation. This will allow us to correlate the subsurface conditions exposed during construction with those encountered by the borings and provide professional continuity from the design phase to the construction phase. If we do not perform observations and testing during construction, it becomes the responsibility of others to validate the assumption made during the preparation of this report and to accept the construction-related geotechnical engineer-of-record responsibilities.

E.3. Use of Report

This report is for the exclusive use of the addressed parties. Without written approval, we assume no responsibility to other parties regarding this report. Our evaluation, analyses and recommendations may not be appropriate for other parties or projects.

E.4. Standard of Care

In performing its services, Braun Intertec used that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession currently practicing in the same locality. No warranty, express or implied, is made.
Appendix
**BORING: ST-1**

**LOCATION:** See attached sketch.

**METHOD:** 3 1/4" HSA, Autohammer

**DATE:** 7/28/17  
**SCALE:** 1" = 4'

**Description of Materials**  
(Soil-ASTM D2488 or D2487, Rock-USACE EM1110-1-2908)

<table>
<thead>
<tr>
<th>Elev. feet</th>
<th>Depth feet</th>
<th>Symbol</th>
<th>Description of Materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>719.9</td>
<td>0.0</td>
<td>AGG</td>
<td>8 inches of Aggregate Shouldering.</td>
</tr>
<tr>
<td>719.2</td>
<td>0.7</td>
<td>FILL</td>
<td>FILL: Silty Sand, dark brown, moist.</td>
</tr>
<tr>
<td>715.9</td>
<td>4.0</td>
<td>SP-SM</td>
<td>POORLY GRADED SAND with SILT, fine-grained, brown, moist to wet, very loose. <em>(Terrace Deposit)</em></td>
</tr>
<tr>
<td>710.9</td>
<td>9.0</td>
<td>SM</td>
<td>SILTY SAND, fine-grained, brown, wet, very loose. <em>(Terrace Deposit)</em></td>
</tr>
<tr>
<td>705.9</td>
<td>14.0</td>
<td>SP</td>
<td>POORLY GRADED SAND, trace Gravel, fine- to medium-grained, brown, moist, loose. <em>(Terrace Deposit)</em></td>
</tr>
<tr>
<td>697.9</td>
<td>22.0</td>
<td>SP</td>
<td>POORLY GRADED SAND with GRAVEL, fine- to coarse-grained, brown, moist, medium dense to dense. <em>(Terrace Deposit)</em></td>
</tr>
<tr>
<td>693.9</td>
<td>26.0</td>
<td>END OF BORING.</td>
<td></td>
</tr>
</tbody>
</table>

Water not observed while drilling.

Water not observed to cave-in depth of 18 feet immediately after withdrawal of auger.

Boring then grouted.

*See attached grain size accumulation curve.*
**LOG OF BORING**

**Boring:** ST-2  
**Location:** See attached sketch.

**Driller:** M. Nolden  
**Method:** 3 1/4” HSA, Autohammer  
**Date:** 7/28/17  
**Scale:** 1” = 4’

### Description of Materials

<table>
<thead>
<tr>
<th>Elev. feet</th>
<th>Depth feet</th>
<th>Symbol</th>
<th>Description of Materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>721.0</td>
<td>0.0</td>
<td>TS</td>
<td>SILTY SAND, trace roots, fine-grained, dark brown, moist. (Topsoil)</td>
</tr>
<tr>
<td>720.2</td>
<td>0.8</td>
<td>SP-SM</td>
<td>POORLY GRADED SAND with SILT, fine-grained, brown, moist, loose. (Terrace Deposit)</td>
</tr>
<tr>
<td>717.0</td>
<td>4.0</td>
<td>SP</td>
<td>POORLY GRADED SAND, fine-grained, brown, wet, very loose. (Terrace Deposit)</td>
</tr>
<tr>
<td>712.0</td>
<td>9.0</td>
<td>ML</td>
<td>SANDY SILT, brown, wet, very loose. (Terrace Deposit)</td>
</tr>
<tr>
<td>708.0</td>
<td>13.0</td>
<td>SP</td>
<td>POORLY GRADED SAND, trace Gravel, fine- to medium-grained, brown, moist, very loose to medium dense. (Terrace Deposit)</td>
</tr>
<tr>
<td>699.0</td>
<td>22.0</td>
<td>GP</td>
<td>POORLY GRADED GRAVEL with SAND, fine- to coarse-grained, brown, moist, dense. (Terrace Deposit)</td>
</tr>
<tr>
<td>695.0</td>
<td>26.0</td>
<td></td>
<td>END OF BORING.</td>
</tr>
</tbody>
</table>

**Tests or Notes**

- Water not observed while drilling.
- Water not observed to cave-in depth of 17 1/2 feet immediately after withdrawal of auger.
- Boring then grouted.
**GRAIN SIZE ACCUMULATION CURVE (ASTM)**

<table>
<thead>
<tr>
<th>GRAVEL</th>
<th>SAND</th>
<th>FINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COARSE</td>
<td>FINE</td>
<td>COARSE</td>
</tr>
</tbody>
</table>

- **Particle Diameter, mm**
  - U.S. Sieve Sizes: 3", 1", 3/4", 1/2", 3/8".
  - Percent Passing: 100, 90, 80, 70, 60, 50, 40, 30, 20, 10, 5, 1, 0.1, 0.01, 0.001.

- **Particle Size Distribution**
  - **D60 = 0.183**
  - **D30 = 0.092**
  - **D10 = 0.024**

- **Classification**: Silty Sand (SM)

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**Braun Project B1707275**

Geotechnical Evaluation
Cattle Pass - 1 1/4 mile NW of the Intersection of Prairie Island Blvd. & Cty 18 Blvd.
Welch, Minnesota

BORING: ST-1  DEPTH: 10.0'

- **Granular Materials**:
  - **Gravel**: 0.2%
  - **SAND**: 77.0%
  - **SILT**: 15.4%
  - **CLAY**: 7.4%
- **Particle Size Distribution**:
  - **D60 = 0.183**
  - **D30 = 0.092**
  - **D10 = 0.024**
- **Consistency**:
  - **Cu = 7.6**
  - **Cc = 1.9**

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Braun Intertec Corporation
Braun Project B1707275
Geotechnical Evaluation
Cattle Pass - 1 1/4 mile NW of the Intersection of Prairie Island Blvd. & Cty 18 Blvd.
Welch, Minnesota
BORING: ST-2 DEPTH: 10.0'

GRAVEL: 0.0%
SAND: 48.3%
SILT: 40.9%
CLAY: 10.7%
D60=0.088
D30=0.041
D10=0.004

Cu=22.2
Cc=4.7

CLASSIFICATION: SANDY SILT (ML)
**Descriptive Terminology of Soil**

**Classification of Soils for Engineering Purposes**

(Unified Soil Classification System)

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### Particle Size Identification

- **Boulders**: over 12"
- **Cobbles**: 3" to 12"
- **Gravel**: 3/4" to 3"
- **Fine**: No. 4 to 3/4"

### Sand

- **Coarse**: No. 4 to No. 10
- **Medium**: No. 10 to No. 40
- **Fine**: No. 4 to No. 200

### Silt

- **Coarse**: <No. 200, PI< 4 or below
- **Medium**: <No. 200, PI> 4 and on or about "A" line

### Clay

- **<No. 200, PI\> 4 and on or about "A" line

### Relative Density of Cohesionless Soils

- **Very Loose**: 0 to 4 BPF
- **Loose**: 5 to 10 BPF
- **Medium dense**: 11 to 30 PPF
- **Dense**: 31 to 50 BPF
- **Very dense**: over 50 BPF

### Consistency of Cohesive Soils

- **Very soft**: 0 to 1 BPF
- **Soft**: 2 to 3 BPF
- **Rather soft**: 4 to 5 BPF
- **Medium**: 6 to 8 BPF
- **Rather stiff**: 9 to 12 BPF
- **Stiff**: 13 to 16 BPF
- **Very stiff**: 17 to 30 BPF
- **Hard**: over 30 BPF

### Drilling Notes

Standard penetration test borings were advanced by 3 1/4" or 6 1/4" ID hollow-stem augers, unless noted otherwise. Jetting water was used to clean out auger prior to sampling only where indicated on logs. All samples were taken with the standard 2" OD split-tube samples, except where noted.

Power auger borings were advanced by 4" or 6" diameter continuous flight, solid-stem augers. Soil classifications and strata depths were inferred from disturbed samples augered to the surface, and are therefore, somewhat approximate.

Hand auger borings were advanced manually with a 1 1/2" or 3 1/4" diameter auger and were limited to the depth from which the auger could be manually withdrawn.

**BPF**: Numbers indicate blows per foot recorded in standard penetration test, also known as "N" value. The sampler was set 6" into undisturbed soil below the hollow-stem auger. Driving resistances were then counted for second and third 6" increments, and added to get BPF. Where they differed significantly, they are reported in the following form: 2/12 for the second and third 6" increments, respectively.

**WH**: WH indicates the sampler penetrated soil under weight of hammer and rods alone; driving not required.

**WR**: WR indicates the sampler penetrated soil under weight of rods alone; hammer weight, and driving not required.

**TW**: TW indicates thin-walled (undisturbed) tube sample.

**Note**: All tests were run in general accordance with applicable ASTM standards.

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**Laboratory Tests**

- **DD**: Dry density, pcf
- **WD**: Wet density, pcf
- **MC**: Natural moisture content, %
- **LL**: Liquid limit, %
- **PL**: Plastic limit, %
- **PI**: Plasticity index, %
- **P200**: % passing 200 sieve
- **GC**: Organic content, %
- **SG**: Specific gravity
- **C**: Cohesion, psi
- **G**: Angle of internal friction
- **qu**: Unconfined compressive strength, psi
- **qp**: Pocket penetrometer strength, tfsf
MINNESOTA • REVENUE

Certificate of Exemption

Purchaser: Complete this certificate and give it to the seller.
Seller: If this certificate is not fully completed, you must charge sales tax. Keep this certificate as part of your records.

This is a blanket certificate, unless one of the boxes below is checked, and remains in force as long as the purchaser continues making purchases, or until otherwise cancelled by the purchaser.

☐ Check if this certificate is for a single purchase and enter the related invoice/purchase order # ________________________________.

☐ If you are a contractor and have a purchasing agent agreement with an exempt organization, check the box to make multiple purchases for a specific job. Enter the exempt entity name and specific project:

Exempt entity name ________________________________ Project description ________________________________

Name of purchaser

Prairie Island Indian Community

Business address

5636 Sturgeon Lake Road

City ____________________________________________ StateMN Zip code 55089

Purchaser's tax ID number

6596864

State of issue MN

If no tax ID number, enter one of the following:

FEIN ________________________________ Driver's license number/State issued ID number ________________________________ state of issue number ____________________________________________

Name of seller from whom you are purchasing, leasing or renting

Seller's address ____________________________________________ City ____________________________________________ State ____________________________________________ Zip code ________________________________

Type of business. Circle the number that describes your business.

01 Accommodation and food services
02 Agricultural, forestry, fishing, hunting
03 Construction
04 Finance and insurance
05 Information, publishing and communications
06 Manufacturing
07 Mining
08 Real estate
09 Rental and leasing
10 Retail trade
11 Transportation and warehousing
12 Utilities
13 Wholesale trade
14 Business services
15 Professional services
16 Education and health-care services
17 Nonprofit organization
18 Government
19 Not a business (explain) ________________________________
20 Other (explain) ________________________________

Reason for exemption. Circle the letter that identifies the reason for the exemption.

A Federal government (department) ________________________________
B Specific government exemption (from list on back) ________________________________
C Tribal government (name) Prairie Island Indian Community ________________________________
D Foreign diplomat # ________________________________
E Charitable organization # ________________________________
F Educational organization # ________________________________
G Religious organization # ________________________________
H Resale ________________________________
I Capital Equipment ________________________________

J Agricultural production ________________________________
K Industrial production/manufacturing ________________________________
L Direct pay authorization ________________________________
M Multiple points of use (services, digital goods, or computer software delivered electronically) ________________________________
N Direct mail ________________________________
O Other (enter number from back page) ________________________________
P Percentage exemption ________________________________
☐ Advertising (enter percentage) ________________________________
☐ Utilities (enter percentage) ________________________________
☐ Electricity (enter percentage) ________________________________

I declare that the information on this certificate is correct and complete to the best of my knowledge and belief. (PENALTY: If you try to evade paying sales tax by using an exemption certificate for items or services that will be used for purposes other than those being claimed, you may be fined $100 under Minnesota law for each transaction for which the certificate is used.)

Signature of authorized purchaser ________________________________
Print name here Karen Wohlers ________________________________
Title Accounting Manager ________________________________
Date 8/29/15 ________________________________

Rev. 8/15

Forms and fact sheets are available on our website at www.revenue.state.mn.us