

**TOWN OF NEWMARKET, NEW HAMPSHIRE**



**BIDDING REQUIREMENTS, CONTRACT DOCUMENTS AND  
TECHNICAL SPECIFICATIONS FOR:**

**MACALLEN DAM – DES DAM NO. D177.01  
ABUTMENTS AND OUTLET STRUCTURE  
REHABILITATION PROJECT**

**NEWMARKET  
NEW HAMPSHIRE**

**MARCH 2019**

**Owner:     The Town of Newmarket  
              186 Main Street  
              Newmarket, NH 03857**

**Engineer:   GZA GeoEnvironmental, Inc.  
              249 Vanderbilt Drive  
              Norwood, MA 02062**



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\* Included as part of the contractor's work scope and bid price, the contractor shall coordinate with their pneumatic crest gate manufacturer to develop additional final design/installation drawings for town/engineer review and approval.

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**SECTION 00030  
INVITATION TO BID**

Town of Newmarket  
Town Hall  
186 Main Street  
Newmarket, New Hampshire 03857

Attention: Greg Marles, CPM, LEED-GA  
603-659-3617 Ext 1325

The Town of Newmarket, New Hampshire (Owner, Project Owner, Town) is accepting sealed bids for the Work titled “Macallen Dam Abutment and Outlet Structure Rehabilitation” located at Main Street, Newmarket, New Hampshire. Macallen Dam NID # NH00365 and State of New Hampshire ID # D177.01.

Bids shall be received no later than **April 22, 2019 at 10:00am EST**, Town of Newmarket, Town Hall, Facilities Office, and 186 Main Street, Newmarket, New Hampshire 03857. A public bid opening will be conducted April 22, 2019 at 10:00am EST in the Newmarket Town Hall auditorium at which time they will be read publicly and recorded. Any bids received after the time and date specified will not be considered.

The purpose of the Work of this Contract is to complete certain repairs as part of an overall program to address dam safety deficiencies at the right and left abutments and training walls and the existing concrete gate structure, and to improve overall dam safety at the Macallen Dam. The primary Work of this Contract shall include the repair and rehabilitation of the left and right abutments and training walls, removal of the existing concrete gate structure and timber sluice gates and replacement with a new concrete gate structure supporting a pneumatic-operated crest gate, installation of a new gate control house and associated works, raising of the right abutment, and placement of new riprap at the toe of the right abutment. These improvements are intended to improve the structural integrity of the abutments and concrete gate structure and increase discharge capacity of the dam. The work does not include modifications or rehabilitation to the existing spillway.

The Work of this Contract will occur at the Macallen Dam, owned and operated by the Town of Newmarket, NH, and within existing temporary and permanent easements granted to the Town at the Bryant Rock Condominium located at 8 Bay Road, Newmarket, NH and the parcel of land located along the bank of the Lamprey River and a retaining wall next to the current Durham Book Exchange off of Main Street in downtown Newmarket, NH (the “Parcel”), which is subject to rights of access and ownership of various easement holders including the State of New Hampshire Department of Fish and Game (“NHFG”) and B&N Investors Limited Partnership (“B&N”), the Newmarket Community Development Corporation (“NCDC”) and the Town of Newmarket.

The Contract Documents (including specifications and drawings) and bid forms are available electronically (free of charge) at [www.newmarket.k12.nh.us](http://www.newmarket.k12.nh.us) and [www.newmarketnh.gov](http://www.newmarketnh.gov).

The Contract Documents and other related reference materials may be examined in person at the Town of Newmarket Town Hall, Department of Zoning and Planning, 186 Main Street, Newmarket, New Hampshire 03857 on Monday - Thursday: 7:00 am to 4:15 pm and Friday: 7:00 am to 12:00 pm after March 15, 2019. Contract Documents (including specifications and drawings) and bid forms will also be available in hard copy at the office of GZA GeoEnvironmental Inc., 5 Commerce Park North, Bedford, New Hampshire for a non-refundable fee of \$500.00. The office hours are M-F 8:30 a.m.-5:00 p.m. Call first for availability,

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

(603) 623-3600. Documents will be sent by US Mail and the Owner and GZA make no guarantee regarding delivery.

A mandatory pre-bid conference will be conducted on site **March 28, 2019 at 11:00am** at the Newmarket Town Hall auditorium, 186 Main Street, Newmarket, New Hampshire with on-site Macallen Dam meeting conducted directly after the Town Hall meeting. Parking is very limited at the dam site; on-site meeting parking will be across the street at the Newmarket Public Library lots. During this meeting, potential bidders will have an opportunity to visit and examine the work site. Potential bidders may request an appointment to make further examination of the facilities by contacting Greg Marles, Director of Facilities, who may be reached at [gmarles@newmarketnh.gov](mailto:gmarles@newmarketnh.gov) or at 603-659-3617 Ext 1325. Appointments will be scheduled at the sole convenience of the Owner.

Complete instructions for filing Bids are included in the Instructions to Bidders. Every Bid shall be submitted in full accordance with those Instruction to Bidders. NOTE: All potential proposers are reminded that information contained in submitted material will become public record. The Town of Newmarket is subject to the New Hampshire “Right to Know” law (R.S.A. Ch. 91-A).

The Town of Newmarket reserves the right to immediately remove contractor's employees from the work site if, in its judgment, they are damaging or misusing Town property, working under the influence of drugs or alcohol, or otherwise causing harm to the wellbeing of the general public or Town personnel.

The Owner reserves the right to reject any or all bids and to waive such informalities as may be allowed by law.

**SECTION 00100  
INSTRUCTIONS TO BIDDERS**

**1.0 SUBMISSION OF BID**

This project covers the execution of the “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project located at Route 108, Main Street, Newmarket, New Hampshire.

Sealed bids must be submitted by **April 22, 2019 at 10:00am EST** to:

Town of Newmarket  
Town Hall  
186 Main Street  
Newmarket, New Hampshire 03857

Attention: Facilities Office

Bidders must send the Bid Form and all other Bid Documents in hard copy form with original signatures in a SEALED envelope to the Facilities Office by the above deadline.

*The Owner shall not be responsible for proposals arriving late due to couriers, deliveries to wrong locations, express mailing services, or any other reason.*

**2.0 BID PROPOSAL FORM**

Bids shall be completed in ink or typed on the Bid Form and Attachments thereto to avoid errors, misconceptions and ambiguities. The Bid Form shall not be altered by the Bidder in any way. Bids submitted on forms other than these may be rejected at the discretion of the Owner.

The Bid Price must be stated in numerals where indicated. Discrepancies between the indicated sum of any column of figures and the correct sum thereof, or between the indicated multiple of a unit price and the correct multiple thereof, will be resolved in favor of the correct sum or multiple.

**3.0 BID AND CONTRACT DOCUMENTS**

The bidding and contract documents are comprised of three sections, Bid Documents, Contract Documents, and Technical Specifications, contained in this volume. The Contract Drawings are provided under separate cover.

3.1 The Bid Documents for the “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project include the following:

1. 00030 – Invitation to Bid
2. 00100 – Instructions to Bidders
3. 00300 – Bid Form
4. 00340 – Required Bidder Information
5. 00340 – Bidder’s Proposed Schedule Form
6. 00340 – Bidder’s Equipment List
7. 00340 – Bidder’s Water Control Plan Summary



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8. 00340 – Bidder's Pneumatic Crest Gate Manufacturer Form
9. 00340 – Bidder Checklist
10. 00350 – Bid Bond

**NOTE THAT ALL BID DOCUMENTS MUST BE SUBMITTED TO CONSTITUTE A COMPLETE BID PACKAGE. BID PACKAGES WHICH ARE NOT COMPLETE MAY BE REJECTED AS NON-RESPONSIVE.**

- 3.2 The Contract Documents for the “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project were prepared, in part, using the Standard Engineers Joint Contract Documents Committee (EJCDC) Contract Documents which comprise the front-end “boiler plate” portion of the Contract Documents and which the Owner will utilize to finalize the official Contract with the Winning Bidder. The Contract documents include the following:
  1. Form of Agreement Between Owner and Contractor, including Schedule of Values
  3. Performance Bond (Example per the EJCDC - C-610).
  4. Payment Bond (Example per the EJCDC - C-615).
  5. Contractors Application for Payment (EJCDC Document C-620).
  6. Certificate of Substantial Completion (EJCDC Document C-625).
  7. Standard Conditions of the Construction Contract (EJCDC Document C-700).
  8. Change Order (EJCDC Document C-941).
  9. 00710 – Supplemental General Conditions
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  11. 00810 – Documents and Permits Issued for Project
- 3.3 The Technical Specifications for the “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project are listed in the Table of Contents.
- 3.4 The Contract Drawings for the “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project are listed in the Table of Contents.
- 3.5 The Contract Documents (including specifications and drawings) and bid forms are available electronically (free of charge) at [www.newmarket.k12.nh.us](http://www.newmarket.k12.nh.us) and [www.newmarketnh.gov](http://www.newmarketnh.gov).

The Contract Documents and other related reference materials may be examined in person at the Town of Newmarket Town Hall, Department of Zoning and Planning, 186 Main Street, Newmarket, New Hampshire 03857 on Monday - Thursday: 7:00 am to 4:15 pm and Friday: 7:00 am to 12:00 pm after March 15, 2019. Contract Documents (including specifications and drawings) and bid forms will also be available in hard copy at the office of GZA GeoEnvironmental Inc., 5 Commerce Park North, Bedford, New Hampshire for a non-refundable fee of \$500.00. The office hours are M-F 8:30 a.m.-5:00 p.m. Call first for availability, (603) 623-3600. Documents will be sent by US Mail and the Owner and GZA make no guarantee regarding delivery.

#### **4.0 DEFINITIONS**

The following definitions shall hold for the “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project Contract Documents:

1. "Awarding Authority" as used herein shall refer to the Town of Newmarket, New Hampshire.
2. "CONTRACTOR" as used herein, shall refer to the firm to be retained by the Town of Newmarket, New Hampshire to complete the work.
2. "TOWN, PROJECT OWNER, OWNER" as used herein shall refer to the Town of Newmarket, New Hampshire or Town.
3. “ABUTTING SITE OWNER 1” as used herein shall refer to B&N Investors Lmt'd Partners c/o Durham Book Exchange at 53 Main Street, Newmarket, New Hampshire.
4. “ABUTTING SITE OWNER 2” as used herein shall refer to New Hampshire Fish & Game owner of the “Parcel” located adjacent to the Macallen Dam and Durham Book Exchange Building near 53 Main Street, Newmarket, New Hampshire.
5. “ABUTTING SITE OWNER 3” as used herein shall refer to Lamprey Falls LLC at 4 Bay Road, Newmarket, New Hampshire.
6. “ABUTTING SITE OWNER 4” as used herein shall refer to Association of Bryant Rock LLC at 6 Bay Road, Newmarket, New Hampshire.
5. "RESIDENT ENGINEER, CONSTRUCTION ENGINEER, OWNER’S CONSULTANT, CONSULTANT, and/or ENGINEER" as used herein refers to GZA GeoEnvironmental, Inc.
6. “SITE” as used herein refers to the Macallen Dam situated on the Lamprey River on Main Street, Newmarket, New Hampshire.
7. “Macallen Dam Abutment and Outlet Structure Rehabilitation” Project as used herein refers to and consists of the title of the Contract work described herein these Contract Documents.

#### **5.0 DATA TO BE FURNISHED BY BIDDER**

The Bid Form must be completed with no item left blank including acknowledgement of Addenda (if any).

Bidders shall also include with their proposals the following documents:

1. Signed Bidder Experience and Reference Form with references from (at least 2) projects with similar type of construction work. Provide Owner’s name, telephone number and address for each project listed as past relevant experience.
2. Each Bid shall be accompanied by a certified check, bank money order, or a Bid Bond in an amount not less than five (5) percent of the Bid total (Base Bid), payable to the Owner. Bid Bonds will be returned in an expedient manner after the Owner has chosen the winning Bid.
3. Schedule.

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4. Equipment list (provide list of equipment bidder intends to use to complete the work).
5. Summary of proposed water control methodology
6. Bidder Checklist which by completion acknowledges the Bidder's receipt and inclusion of the project plans, documents, and technical specifications plus any addenda issued.

Requirements for Schedule are described in subsequent paragraphs of these Instructions to Bidders. Representation and certifications must be provided by the successful bidder upon contract award.

### **6.0 SCHEDULE**

The anticipated date for Notice-to-Proceed as issued from the Owner is expected to be on or about **May 15, 2019**. Time is of the Essence with regard to the completion of the work. Work on the "Macallen Dam Abutment and Outlet Structure Rehabilitation" Project shall be worked on continuously and Substantially Completed before **December 15, 2019**.

Prospective Bidders shall submit a schedule of construction with their bid. The schedule shall demonstrate in detail how the bidder proposes to meet the General Schedule for completion of the various aspects of the work contained in the Technical Specifications. Prospective Bidders are advised that the submitted schedule or a modified version thereof will become a contractual commitment if they are successful in procuring the contract. Bidders are also advised that their ability to meet the General Schedule will be one of the criteria the Owner will consider in selecting the successful bidder.

### **7.0 EXAMINATION OF DOCUMENTS AND SITE**

Bidder is responsible, prior to submitting a Bid, for having: examined the Bid Documents, Addenda (if any), and responses to inquiries thoroughly; familiarized themselves with the site and with local conditions that may in any manner affect cost, progress, or performance of the Work; familiarize themselves with Federal, State, and local laws, ordinances, rules and regulations that may affect the Work; and studied and carefully correlated their observations with the Bid Documents.

### **8.0 MANDATORY PRE-BID CONFERENCE**

A mandatory pre-bid conference will be conducted on site **March 28, 2019 at 11:00am** at the Newmarket Town Hall auditorium, 186 Main Street, Newmarket, New Hampshire with on-site Macallen Dam meeting conducted directly after the Town Hall meeting. Parking is very limited at the dam site; on-site meeting parking will be across the street at the Newmarket Public Library lots. During this meeting, potential bidders will have an opportunity to visit and examine the work site. Potential bidders may request an appointment to make further examination of the facilities by contacting Greg Marles, Director of Facilities, who may be reached at [gmarles@newmarketnh.gov](mailto:gmarles@newmarketnh.gov) or at 603-659-3617 Ext 1325. Appointments will be scheduled at the sole convenience of the Owner.

Contract Documents require that all bidders shall have properly familiarized themselves with the site and scope of work so as to ensure the bid submitted is responsive. Bids failing in this regard may potentially be judged as non-responsive by the Owner and therefore disqualified from further consideration.

### **9.0 INTERPRETATIONS AND ADDENDA**

All questions pertaining to the meaning or the intent of the technical specifications or contract documents contained in the Bid Documents shall be submitted in writing or via electronic correspondence to GZA GeoEnvironmental, Inc., 249 Vanderbilt Avenue, Norwood, Massachusetts, attention Todd E. Monson, P.E.,

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[todd.monson@gza.com](mailto:todd.monson@gza.com), and copied to [chad.cox@gza.com](mailto:chad.cox@gza.com) and [james.guarente@gza.com](mailto:james.guarente@gza.com). Replies will be issued by the Owner in the form of an Addendum to the Invitation for Bid and shall be electronically mailed to all bidders. Questions regarding contractual terms shall be electronically submitted directly to Greg Marles, Director of Facilities, who may be reached at [gmarles@newmarketnh.gov](mailto:gmarles@newmarketnh.gov) or at 603-659-3617 Ext 1325 with a copy to Mr. Monson, Mr. Cox and Mr. Guarente at GZA. Only responses or clarifications provided by written Addendum will be binding. Oral or other interpretations shall be without legal effect. Questions submitted after **5pm April 3, 2019** may not be answered.

In the event of any conflict among the Contract Documents, resolution shall be as per terms set out in the General Conditions.

### 10.0 EVALUATION OF BIDS

Evaluation of the bids shall be on the basis of the total cost of all work items included in the Base Bid.

The Bidder shall not submit unbalanced prices for any of the bid items on the Bid Form. All prices shall be reasonable for the Work entailed. The Owner reserves the right to reject any Bid which contains unbalanced prices, considering Bid as non-responsive to the Instructions to Bidders, and consider same as reason for rejecting bid.

Prospective Bidders are referred to the Bidder Experience and Reference Form which provides detail of required bidder qualifications.

Qualifications for a responsible and eligible bidder will be judged by the Owner on the basis of factors with include, but are not limited to, the following:

1. Past experience with successfully completing similar projects, with preference given to projects that specifically involve dam construction/rehabilitation. Demonstration of the successful completion of multiple similar projects within the project budget will be considered advantageous. The minimum requirements for Bidders are set out in Section 00340, where space is also provided for the bidder to describe his / her qualifications and experience.
2. Favorable recommendations from References and others familiar with the Bidder's past work.
3. Demonstration of an understanding of the requirement for water control as part of the Work of the Project and presentation of a viable and well-reasoned plan for water control.
4. Demonstration of the ability to meet the Project Schedule through the presentation of a viable and well-reasoned schedule document.
5. Experience and qualifications of Contractor's key personnel.
6. Minimal or no Exceptions to Contract Terms.
7. Demonstration that the Contractor has adequate financial resources, experienced personnel, and expertise to perform the work of this Contract.

**The Owner reserves the right, at its option, to waive any and all informalities, defects, errors or omissions in any or all Bids and to disregard all nonconforming, non-responsive, or conditional bid documents. The Owner may reject Bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities, or the Owner may waive such omissions, conditions, or irregularities. The Owner reserves the right to accept or reject any and/or all Bids.**

## **11.0 MODIFICATION OR WITHDRAWAL OF BID**

A Bidder may withdraw his / her Bid before the time fixed for the opening of Bids by communicating his/her purpose in writing to the Owner. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.

If a Bidder wishes to modify his Bid, he/she must withdraw his/her initial Bid in the manner specified above and submit a new Bid.

## **12.0 DISQUALIFICATION OF BIDDERS**

More than one Bid for the same Work from an individual, or a firm, partnership, corporation, or an association under the same or different names will not be considered. Reasonable grounds for believing that any Bidder is interested in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder is interested.

## **13.0 TERMINATION**

If the successful bidder fails to complete the contract as specified, the Owner reserves the right to terminate the Contract and enter into other agreements to complete the contract. In such an event, the Owner shall have the right to recover damages for breach of contract or on the bond securing it.

## **14.0 PERMITS, LICENSES, AND INDEMNIFICATION**

The Owner will have secured prior to Notice to Proceed the following permits for the work:

- Application for Permit to Construct or Reconstruct a Dam – New Hampshire Department of Environmental Services, Water Division/Dam Bureau
- Section 404 New Hampshire Programmatic General Permit (PGP) – United States Army Corps of Engineers
- NHDES Wetlands Permit - New Hampshire Department of Environmental Services, Wetlands Division

The permits listed above are incorporated into the Contract Documents and the successful Bidder shall be responsible for complying with the conditions of all permits.

The successful bidder shall secure at its own expense all other necessary permits and licenses, pay all necessary charges and provide all notices, that are required for the performance of the contract, if any.

The successful bidder and its employees shall not be considered employees of the Owner for any purpose. The successful bidder shall indemnify, hold harmless and defend the Owner, its agents, officers, employees and volunteers from and against any and all liabilities, claims, penalties, fines, forfeitures, suits, administrative proceedings and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable legal fees) which may be alleged against the Owner or which the Owner may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction of any property, contamination of or any adverse effects on the environment, or any violation or alleged violation of governmental laws, regulations or orders caused by or resulting from the successful bidder's activities or from the failure or inadequacy of any equipment of the successful bidder.

An insurance certificate must be submitted by the successful bidder prior to issuance of the Notice to Proceed

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and demonstrating insurance coverage in the amounts required. Additional insured shall include the Owner and GZA GeoEnvironmental, Inc. Insurance limits shall be as per the requirements of those stipulated in the Supplemental General and Special Conditions to the Contract.

The successful bidder shall comply with all federal, state and local laws and regulations pertaining to the performance of the contract.

### **15.0 REPRESENTATIONS AND CERTIFICATIONS**

In submitting this Bid, Bidder represents that he has examined and understands all Bid Documents, Addenda, and responses to inquiries. The Bidder has examined or is familiar with the Site and locality where the Work is to be performed; the federal, state, and local laws and ordinances, rules and regulations; the conditions affecting cost, progress or performance of the work; and has made such independent investigations as the Bidder deems necessary.

The bidder has made an assessment of their resources and agrees to be contractually bound to deliver their portion of the work on the schedule submitted with their bid.

The Bid Price stated herein includes the cost of all of the Work which is required or implied by the scope of services and contract specifications or drawings or which may be inferred there from, and which is customarily provided in furnishing a complete and finished work of its kind. Further, any and all alterations, modifications, and adjustments to the Work which are reasonably foreseeable or customarily encountered in providing services of the kind required by the Contract, will be performed without additional compensation.

### **16.0 DETERMINATION OF FINAL SCOPE OF WORK**

The Owner shall make a final determination of the ultimate scope of the Work of the Contract after the Successful Bidder has been selected on the basis of the total price of the Base Bid and the cost has been evaluated against the total funds available to the Owner.

### **17.0 AWARD OF CONTRACT**

Within 30 days of the opening of bids, the Owner shall either reject all bids or award the contract to the bidder that best meets the specified need, price and other factors considered. Bidders will be required to hold firm their respective bids for thirty (30) days after the opening of the Bids. The Owner reserves the right to reject any or all bids and to waive such informalities as may be allowed by law. "Award" means the determination, selection, and notification of the eligible and responsive Bidder judged to have submitted the bid which is most advantageous to the Owner. The Bidder to whom the Contract is awarded shall be termed the "Successful Bidder" until such time as the Contract is executed or negotiations for execution of the Contract are terminated.

### **18.0 ACCEPTANCE OF CONTRACT**

The Bidder understands and accepts all Terms and Conditions and Insurance coverage requirements as specified in the Standard Conditions of the General Contract, Supplemental General Conditions and Special Conditions. The Bidder proposes and agrees, if this Bid is accepted, to enter into a contract with the Owner in the form included hereto in the Contract Documents and to perform and complete all tasks specified in the Scope of Work as outlined in the Construction Drawings of these Bid Documents for the Bid Price and within the Schedule specified. Bidder offers no commercial or technical terms of conditions with its Bid in lieu of the terms specified herein. Any of Bidder's terms and conditions which may be submitted with this Bid shall have no effect.

## **19.0 LIQUIDATED DAMAGES**

The Bidder understands and accepts that liquidated damages in the sum of **One Thousand Dollars (\$1,000)** shall be paid by the Contractor to the Owner for each and every **calendar day** beyond the date of Substantial Completion of **December 15, 2019**.

Completion for the purposes of liquidated damage is defined as achievement of substantial completion, including rehabilitation of the right embankment and abutment, left abutment, and gate structure.

## **20.0 CONTRACT SECURITIES**

A Performance Bond and a Labor and Materials (Payment) Bond shall be furnished by the Successful Bidder. The amounts of and other requirements for Performance and Payment Bonds are stated in Article 5 of the Standard General Conditions of the Construction Contract. Performance and payment bonds submitted shall be posted by a recognized surety company having a place of business in the State of New Hampshire. All Performance and Payment Bonds signed by an agent must be accompanied by a certified copy of the Owner to act. Additional requirements may be stated in the Standard General Conditions of the Construction Contract.

Soon after they have been informed by the Owner's that they are the Successful Bidder, the Successful Bidder shall deliver to Owner, for review and approval, the Performance Bond and the Payment Bond he/she proposes to furnish at the time of the execution of the Agreement. When the Successful Bidder delivers the executed Agreement to the Owner, it shall be accompanied by the required contract securities.

## **21.0 CONTRACT INSURANCE**

A. The Contractor shall procure and maintain at least the following insurance in such form and with such carriers as are satisfactory to the Owner, covering the Services thereof:

1. Commercial General Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit. The Owner and Engineer shall be named as an "Additional Insured". Products and Completed Operations shall be maintained for up to 3 years after the completion of the project.
2. Automobile Liability of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Project Owner and Engineer shall be named as an "Additional Insured".
3. Workers' Compensation Insurance as required by law.
4. Project Owner's Protective Liability Insurance, with the Project Owner, Site Owner and Engineer only as insured. Provide \$1,000,000 per Occurrence and \$2,000,000 General Aggregate limits. A Rider clause to the Contractor's Liability Insurance will not be acceptable.
5. Property Coverage for materials and supplies being transported by the contractor, as the Owner's Property Contract provides coverage for personal property within 1,000 feet of the premises.
6. Umbrella Liability of at least \$5,000,000/occurrence, \$5,000,000/aggregate. The Project Owner, Site Owner and Engineer shall be named as an Additional Insured.

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

7. Builders Risk Insurance of at least \$1,000,000. The Project Owner and the Engineer shall be named as additional Insured.
8. Waiver of Subrogation language will be deleted in its entirety from any contract the Owner enters into.

Contractor awarded the Bid shall be prepared to coordinate with the Owner to finalize insurance requirements to be required in the Contract.

- B. All premium cost shall be borne by the Contractor.
- C. Carriers must have an A.M. Best rating of A-VII or better.
- D. All insurance policies shall be issued by companies authorized to do business under the laws of the State of New Hampshire and shall be in a form satisfactory to the Owner. Waiver of Subrogation language will be deleted in its entirety from any contract the Town of Newmarket enters into. All policies, with the exception of the Professional Liability Policy, shall name the Project Owner and the Owner's Consultant/Engineer as "additional insured" and shall contain a complete waiver by the insurer of subrogation against the Project Owner, Site Owner and the Owner's Consultant. Information on the Certificate Holder and additional insureds is listed below.

Certificate Holder:                      Town of Newmarket  
                                                      Town Hall  
                                                      186 Main Street  
                                                      Newmarket, New Hampshire 03857

Additional Insured 1:                    GZA GeoEnvironmental, Inc.,  
                                                      249 Vanderbilt Avenue  
                                                      Norwood, Massachusetts 02062

Additional Insured 2:

All such insurance policies shall contain a provision prohibiting cancellation except upon at least thirty (30) days prior notice to the Certificate Holder and Additional Insureds and will be primary in the event of a loss arising out of Contractor's performance and shall provide that where there is more than one insured, the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured. Certified copies of said policies or certificates evidencing such insurance shall be filed with the Owner and Additional Insureds before Work is started.

- E. Failure of the Contractor to keep the required minimum insurance policies in full force and effect during the Work covered under the contract and during any extensions, extra or additional Work agreed to by the Contractor, shall constitute a material breach of the Contract and the Owner shall have the right, in addition to any others, to purchase the required insurances, the costs of which shall be for the Contractor's account or to immediately cancel and terminate this Contract without further cost to the Owner or the Owner's Consultant.



## **22.0 PAYMENT AND PERFORMANCE BONDS**

The Contractor shall be required to secure and pay for Payment and Performance Bonds (each in the amount of 100% of the Contract price) for the Work of this Contract. Form of said bonds shall be as approved by the Owner. Examples of suitable forms as prepared by the Engineer's Joint Contract Documents Committee (EJCDC) are presented as part of these Contract Documents.

## **23.0 EXECUTION OF CONTRACT AGREEMENT**

Within 15 days of the being informed as the Successful Bidder by the Owner, the Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to the Owner. Within ten (10) working days thereafter, the Owner shall deliver one fully signed counterpart to the Successful Bidder with a complete set of the Drawings with appropriate identification.

## **24.0 BID SECURITY**

Each Bid must be accompanied by Bid security in the form of a Bid Bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the Owner. A Bid Bond shall be: (a) in a form satisfactory to Owner; (b) with a surety company qualified to do business in the State of New Hampshire and satisfactory to Owner; and (c) conditional upon the faithful performance by the principal of the agreements contained in the Bid. The amount of the Bid Security shall be five percent (5%) of the Base Bid.

## **25.0 RETURN OF BID DEPOSITS**

All Bid deposits of Bidders, except those of the three (3) lowest responsive and eligible general Bidders, shall be returned within 3 working days after the opening of the Bids. The Bid deposits of the three (3) lowest responsive and eligible Bidders shall be returned upon the execution and delivery of the Contract, or if no award is made. Except that, if any Bidder fails to perform its agreement to execute the Contract and furnish performance and payment bonds as stated in its Bid, then said Bidder's Bid deposit shall become the property of the Owner as liquidated damages; provided that the amount of the Bid deposit that becomes property of the Owner shall not exceed the difference between the Contractor's Bid price and the Bid Price of the next lowest responsive and eligible Bidder; and provided further than, in the case of death, disability, bona fide clerical or mechanical error of a substantive nature, or other similar unforeseen circumstances affecting the Bidder, the Bidder's Bid deposit shall be returned.

## **26.0 GUARANTEE**

All Bids shall include the cost to provide all necessary provisions to warrant and guarantee to Owner and Engineer that all Work will be in accordance with the Contract Documents and will not be defective. This guarantee shall be for a period of one (1) year from the date of Final Payment and shall be as further described in the General Conditions and the Supplementary Conditions. Warranties for specific products used as a part of the Work shall be in accordance with policies of the specific product manufacturer and may extend beyond the guarantee period of one (1) year required of the Contractor.

Name of Bidder: \_\_\_\_\_

**BID FORM  
SHEET 1 OF 6  
MACALLEN DAM – ABUTMENTS AND OUTLET STRUCTURE REHABILITATION  
TOWN OF NEWMARKET, NEW HAMPSHIRE**

NAME OF BIDDER: \_\_\_\_\_

COMPANY ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

DATE SUBMITTED: \_\_\_\_\_

Sealed bids must be submitted on this form and the following table. Bids submitted on any other form will not be considered valid. This Bid and the attached Contract Documents is submitted to:

Town of Newmarket  
Attention: Greg Marles  
Town Hall, Facilities Department  
186 Main Street  
Newmarket, New Hampshire 03857

Sealed bids must be received by **Monday, April 22, 2019 at 10:00am EST**. Postmarks will not be considered. All bids will be publicly opened and read at the above address, date and time. Prices are to include any delivery charges unless otherwise specified. All offers are subject to the Specifications of this Contract. This bid may be extended for up to an additional thirty (30) calendar days (beyond the period set forth below) at the request of the Town.

Does the ownership or stock holders have relatives currently employed by the Town of Newmarket or the Newmarket School District?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes: please indicate the Relationship \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

**BID FORM  
SHEET 2 OF 6  
MACALLEN DAM – ABUTMENTS AND OUTLET STRUCTURE REHABILITATION  
TOWN OF NEWMARKET, NEW HAMPSHIRE**

Bidder proposes to furnish all materials and complete the Scope of Work described in general in these Bid Documents and more specifically as described in the Technical Specifications and as illustrated on the Contract Drawings for the sum of:

Total Base Bid Price Items 1 through XX:

\_\_\_\_\_  
(Words)

\_\_\_\_\_  
(Numerals)

The following Addenda have been issued and acknowledged (please check all that apply):

☐ None    ☐ No. 1 ☐ No. 2 ☐ No. 3 ☐ No. 4 ☐ No. 5 ☐ No. 6

Bidder hereby agrees that requests for progress payments will be made on the basis of unit quantity or percentage of work complete by item for the items listed on the Schedule of Values, which follow on the proceeding pages of this Bid Form. Bidder shall complete the Schedule of Values as part of the bid process. Bidder agrees that percentages of work completed are subject to approval by the Owner or his authorized representative and that the decision of the Owner regarding the percentage completed will be the sole basis for progress payments.

Bidder hereby agrees that the Terms and Conditions of the Agreement under which the work will be executed will be those as specified and agreed to in the Contract Documents and the Form of Agreement between the Town of Newmarket, New Hampshire (Owner, Project Owner, Town) and the Contractor.

The Bidder acknowledges that the Owner may, at its sole discretion, elect to direct the implementation of the Optional Items.

\_\_\_\_\_  
Signature of  
Person Legally Authorized  
to Enter into Contractual  
Agreement For Bidder

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Printed or Typed Name  
of Company  
or Corporation

Name of Bidder: \_\_\_\_\_

**BID FORM  
SHEET 3 OF 6  
MACALLEN DAM – ABUTMENTS AND OUTLET STRUCTURE REHABILITATION  
TOWN OF NEWMARKET, NEW HAMPSHIRE**

Date Signed \_\_\_\_\_

<b>Bid Item Description – BASE BID</b>	<u>Technical Specification Reference</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price (\$)</u>	<u>Extended Price (\$)</u>
For more complete description see: Summary of Work (Section 01010), Technical Specifications, & Drawings and Details					
1.					\$
2					\$
3.					\$
4.					\$
5.					\$
6.					\$
7.					\$
8.					\$
9.					\$
10.					\$
11.					
12.					
13.					
14.					
15.					
BASE BID TOTAL			\$		
BASE BID TOTAL (IN WORDS):					

Name of Bidder: \_\_\_\_\_

**BID FORM  
SHEET 4 OF 6  
MACALLEN DAM – ABUTMENTS AND OUTLET STRUCTURE REHABILITATION  
TOWN OF NEWMARKET, NEW HAMPSHIRE**

**REPRESENTATIONS AND CERTIFICATIONS**

In submitting this Bid, Bidder represents that Bidder has examined or is familiar with the Site and locality where the Work is to be performed; the federal, state, county, and local laws, project permits and ordinances, rules and regulations; the conditions affecting cost, progress or performance of the work; and has made such independent investigations as the Bidder deems necessary.

The bidder has made an assessment of his/her resources and agrees to be contractually bound to deliver his/her portion of the work on the schedule submitted with his/her bid.

This Bid is genuine and not made in the interest of, or on behalf of any undisclosed person, firm, or corporation.

The Bid Price stated herein includes the cost of all of the Work, including labor, equipment, and materials, which is required or implied by the scope of services and contract specifications or drawings or which may be inferred therefrom, and which is customarily provided in furnishing a complete and finished work of its kind. Further, any and all alterations, modifications, and adjustments to the Work that are reasonably foreseeable or customarily encountered in providing services of the kind required by the Contract, will be performed without additional compensation.

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

\_\_\_\_\_  
(Name and Title of person signing bid)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(phone number)

\_\_\_\_\_  
(e-mail)

(Company Seal)      Attest:\_\_\_\_\_

Name of Bidder: \_\_\_\_\_

**BID FORM  
SHEET 5 OF 6  
MACALLEN DAM – ABUTMENTS AND OUTLET STRUCTURE REHABILITATION  
TOWN OF NEWMARKET, NEW HAMPSHIRE**

**CERTIFICATE OF NON-COLLUSION**

The undersigned as Bidder certifies under penalties of perjury that this Bid has been made and submitted good faith and without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, business, joint ventures, partnership, corporation or other organization, entity or group of individuals.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Name of Business

**CERTIFICATE OF DEBARMENT**

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the state.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Name of Business

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION CERTIFICATION**

The undersigned agrees that if he/she is selected as the contractor, he/she will comply with the provisions of all relevant occupational safety and health laws and regulations. The undersigned certifies, under penalties of perjury, that he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Name of Business

Name of Bidder: \_\_\_\_\_

**BID FORM  
SHEET 6 OF 6**

**MACALLEN DAM – ABUTMENTS AND OUTLET STRUCTURE REHABILITATION  
TOWN OF NEWMARKET, NEW HAMPSHIRE**

**CERTIFICATE AS TO CORPORATE BIDDER**

At a meeting of the Board of Directors of the \_\_\_\_\_ (Name of Corporation) duly called and held on \_\_\_\_\_ (Date) at which a quorum was present, and acting throughout, the following vote was duly adopted:

VOTED: That \_\_\_\_\_ (Name of Individual)

the \_\_\_\_\_ (Title) of the Corporation, hereby is authorized to affix the Corporate Seal, sign and deliver in the name and on behalf of the Corporation, bids, proposals, contracts, bills of sale, conditional sale agreements, chattel mortgages, leases, bonds, applications, affidavits, certificates, and any other similar documents required in connection with the sale of the Corporation's products to any purchaser, including assignments and satisfactions of any such documents.

Any and all applications, affidavits, statements, certificates, and similar documents required by law in connection with the licensing of the Corporation or its representatives for the sale, distribution, and servicing of its commercial products.

The authority is hereby delegated and shall be exercised by the aforesaid person in connection with the duties as

\_\_\_\_\_ of \_\_\_\_\_  
(Title) (Name of Corporation)

and not otherwise.

ATTEST: \_\_\_\_\_ DATE: \_\_\_\_\_

NOTE: This form must be completed if the Contractor is a corporation.

**DOCUMENT 00340**

**BIDDER EXPERIENCE AND REFERENCE FORM**

**Macallen Dam – Abutments and Outlet Structure Rehabilitation  
Project Location: Route 108, Main Street, Newmarket, New Hampshire**

**Town of Newmarket, New Hampshire**

**QUALIFICATION OF BIDDERS**

- A. Bidders must complete and submit this Bidder Experience and Reference Form as part of the bidding package. The information entered on the form must demonstrate the General Contractor's recent experience with work of a similar nature and scope to the work of this Contract.

Bidders must show adequate minimum qualifications, as defined below, with respect to the general and specialty work to be considered as "qualified." The Bidder may provide additional and supplemental information in addition to the minimum required herein to demonstrate his or her qualifications.

- B. The Bidder (Contractor) and/or the subcontractor(s)/supplier(s) providing and/or performing the work tasks outlined above must be identified in the bid. A statement of qualifications must be submitted for each of the above entities with the bid.
- C. Bidders and subcontractors outlined above shall provide at least two (2) references for which they have completed similar dam rehabilitation projects, all of which may be subject to verification by the Owner's Consultant in order to help evaluate the ability of the Bidder to perform the work. All bidders shall be required to demonstrate to the satisfaction of the Owner that they have adequate financial resources, experienced personnel, and expertise to perform the work of this Contract and shall furnish such information and/or proof of these qualifications upon request.
- D. No contract will be awarded to any bidder who, as determined by the Owner, is not qualified to perform satisfactory service due to an unsatisfactory record or inadequate experience or who lacks the necessary capital, organization and equipment to conduct and complete the work in strict accordance with the Contract Documents.
- E. Provide the following relating to the Firm's proposed Construction Personnel:
- The name and resume of the person(s) who will manage/direct the overall course of work for the entire project and the name/resume of the person(s) who will have full-time charge of the entire course of the work conducted at the site.
- F. Minimum Desired General Contractor and/or Specialty Subcontractor Qualifications
1. The firm proposing to serve as General Contractor should have a minimum of five (5) years of recent and continuous demonstrable experience as a General



## Macallen Dam – Abutments and Outlet Structure Rehabilitation

Contractor in construction work similar to that proposed under the Scope of Work of this Contract.

2. The Contractor shall submit a list of all proposed sub-contractors to be involved in the conduct of any of the specialty work items listed herein above. A summary description of the Contractor's (if undertaking the work himself) or each proposed sub-contractor's qualifications for the respective specialty work items shall also be included under this item. Note the Contractor awarded the work shall submit additional and full task specific submittal packages as required in the individual specification sections prior to initiating any work at the site.
  3. The Bidder's overall project site manager should have a minimum of five (5) years' experience in a supervisory capacity with similar projects.
  4. The site superintendent for each of the specialty Subcontractors tasked to perform specialty work items as defined above should also have a minimum of five (5) years' experience in a supervisory capacity with similar projects concerning their respective specialty.
  5. The firm proposing to serve as General Contractor must list and describe below a minimum of two (2) projects completed by them (or their Sub-contractors in the case of specialty work items) within the last ten (10) years which involve elements similar to that proposed under the Scope of Work of this Contract. Project experience should demonstrate experience with the following types of construction activities:
    - a. Work on dams;
    - b. Ability to execute associated water control work associated with the work of the Contract;
    - c. Support of excavation;
    - d. Concrete and stone masonry repair and rehabilitation;
    - e. Riprap installation;
    - f. Mechanical and electrical work; and
    - g. Ability to supply and mobilize equipment into restricted work areas.
- G. The Owner may make such investigations as it deems necessary to determine the ability of any bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as it may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

The Bidder shall provide and certify as accurate to the best of his/her knowledge, the following information about his/her experience with public or private projects of a similar nature to the Work of the Contract.

I, \_\_\_\_\_, certify the following information is, to the best of my knowledge, true and accurate.

\_\_\_\_\_  
Signature

**Note:**

- Bid packages which do not include this completed form will be considered as unresponsive.
- Alternative and/or additional forms containing the required information may be submitted under separate cover. Bidders are encouraged to provide such information as they deem to be useful in conveying their qualifications.

Number of years of Bidder's experience with similar projects: \_\_\_\_\_

Number of years of experience of Bidder's proposed Site  
Superintendent – supervisory experience with similar projects: \_\_\_\_\_

Name of Bidder's proposed Site Superintendent: \_\_\_\_\_

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

### **Representative Similar Project Experience**

Bidder must list a minimum of two (2) projects for which the bidder or their specialty sub-contractor(s) were the General Contractor, and which were completed in the last ten (10) years. Projects should be of a similar nature to the proposed Project and demonstrate experience with similar work, specifically related to work on dams, the ability to execute associated water control associated with the Work of the Contract, support of excavation, concrete and stone masonry repair and rehabilitation, riprap installation, mechanical and electrical work, and the ability to supply and mobilize equipment into restricted work areas. It is hereby reiterated that while said projects do not necessarily have to be associated specifically with a Dam, the Owner will assign priority to Contractors and Subcontractors who can demonstrate experience in (and provide references for) the completion of a minimum of two (2) projects actually involving dams or waterfront projects.

### **PROJECT 1**

1. Project Name: \_\_\_\_\_
2. Project Location: \_\_\_\_\_
3. Owner Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Contract Price: \_\_\_\_\_
5. Start Date: \_\_\_\_\_ 6. Completion Date: \_\_\_\_\_
7. Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Contact Person and Telephone Number: \_\_\_\_\_

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

### **PROJECT 2**

1. Project Name: \_\_\_\_\_
2. Project Location: \_\_\_\_\_
3. Owner Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Contract Price: \_\_\_\_\_
5. Start Date: \_\_\_\_\_
6. Completion Date: \_\_\_\_\_
7. Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Contact Person and Telephone Number: \_\_\_\_\_

### **PROJECT 3**

1. Project Name: \_\_\_\_\_
2. Project Location: \_\_\_\_\_
3. Owner Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Contract Price: \_\_\_\_\_
5. Start Date: \_\_\_\_\_
6. Completion Date: \_\_\_\_\_
7. Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Contact Person and Telephone Number: \_\_\_\_\_

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**BIDDER'S PROPOSED SCHEDULE FORM**

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**  
**Project Location: Route 108, Main Street, Newmarket, New Hampshire**

**Town of Newmarket, New Hampshire**

Bidder shall describe herein his or her proposed schedule for completing the Work of the Contract within the required Contract Period and within the required Schedule. List the expected start, finish, and duration of all major work items in the proper sequence. The Bidder may attach a separate bar chart or similar format submittal depicting the general overall work schedule.

Notice-to-Proceed:      Assumed May 16, 2019

Mobilize to Site:      \_\_\_\_\_

Demobilization:      \_\_\_\_\_

Substantial Completion: No Later than December 15, 2019

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**BIDDER EQUIPMENT LIST**

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**  
**Project Location: Route 108, Main Street, Newmarket, New Hampshire**

**Town of Newmarket, New Hampshire**

The Bidder shall provide and certify as accurate to the best of his/her knowledge, the following information about the equipment intended for use in constructing this project. The list shall specify the current Blue Book operating rates and standing rates (exclusive of operator) for each piece of equipment listed.

The rates listed below are for informational purposes only and shall not modify the Contractor's base bid.

I, \_\_\_\_\_, certify the following information is, to the best of my knowledge, true and accurate.

\_\_\_\_\_  
Signature

Description of Equipment	Age of Unit	Number of Units	Hourly Rate - Operating	Hourly Rate - Standing

**BIDDER'S WATER CONTROL PLAN SUMMARY**

**Macallen Dam – Abutments and Outlet Structure Rehabilitation  
Project Location: Route 108, Main Street, Newmarket, New Hampshire**

**Town of Newmarket, New Hampshire**

The Bidder shall provide herein a narrative description of the means and methods which he or she intends to use to provide the control of water during the Work of this Contract. Information provided shall include any materials or systems to be used as cofferdam and/or for the bypass of flow. The Bidder shall describe how he or she will monitor flow and weather conditions for the potential for adverse conditions. Supplemental sheets may be attached as needed.

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**BIDDER’S PNEUMATIC CREST GATE MANUFACTURER FORM**

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**  
**Project Location: Route 108, Main Street, Newmarket, New Hampshire**

**Town of Newmarket, New Hampshire**

The Bidder shall provide the name of the manufacturer for the pneumatic crest gate for which he or she intends to use to complete the Work of this Contract. Information provided shall include the sizing and type of gate used, and all associated components and appurtenances for the system. Supplemental sheets may be attached as needed.



**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**BIDDER CHECKLIST**

**Macallen Dam – Abutments and Outlet Structure Rehabilitation  
Project Location: Route 108, Main Street, Newmarket, New Hampshire**

**Town of Newmarket, New Hampshire**

It is hereby noted that submission of the items listed herein acknowledges the Bidder's receipt and inclusion of the project plans, documents, and technical specifications, including any addenda. Each Bid submitted shall include the following items:

- \_\_\_\_\_ The first page of the Bid Package shall be the first page of the Bid Form with all information completed.
- \_\_\_\_\_ The Completed and Signed Bid Form (with the appropriate box checked acknowledging Addenda).
- \_\_\_\_\_ All Signed Representations, including Non-Collusion, Debarment, Tax Compliance, Occupational Safety and Health, and Corporate Bidder.
- \_\_\_\_\_ Signed Bidder Experience and Reference Form with references from (at least 2) projects demonstrating the Contractor's (or their subcontractor's) experience with work of a similar nature and scope to the work of this Contract including "specialty items." Provide name, telephone number and address for a Reference for each project.
- \_\_\_\_\_ A Bid Bond, Certified Check, or Bank Money Order for 5% of the Amount Bid.
- \_\_\_\_\_ A Schedule to complete the Work of the Contract.
- \_\_\_\_\_ Equipment List (provide list of equipment bidder intends to use to complete the work).
- \_\_\_\_\_ Water Control Plan Summary (provide information on proposed means to control water).
- \_\_\_\_\_ Pneumatic Crest Gate Manufacturer Form (provide manufacturer for proposed crest gate).
- \_\_\_\_\_ This Checklist completed and signed.
- \_\_\_\_\_ The Invitation to Bid.
- \_\_\_\_\_ The Instructions to Bidders.
- \_\_\_\_\_ The Bid Package shall be bound with a binder clip, in a three-ring binder, or similar manner which firmly binds the documents but is easily disassembled.
- \_\_\_\_\_ Write the Bidder's Name on all sheets where space is provided.
- \_\_\_\_\_ Bidder may provide supplemental information as needed.

\_\_\_\_\_  
Authorized Representative Signature

**DOCUMENT 00350**

**BID BOND**  
**(EJCDC Form C-430, modified)**

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

---

BIDDER (Name and Address):

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

OWNER (Name and Address):

\_\_\_\_\_  
\_\_\_\_\_

BID

Bid Due Date: \_\_\_\_\_

Description (*Project Name and Include Location*)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BOND

Bond Number: \_\_\_\_\_

Date: \_\_\_\_\_

Penal Sum \_\_\_\_\_ \$ \_\_\_\_\_

(Words)

(Figures)

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

BIDDER

SURETY

\_\_\_\_\_(Seal)  
(Seal) Bidder's Name and Corporate Seal

\_\_\_\_\_

Surety's Name and Corporate Seal

By: \_\_\_\_\_

\_\_\_\_\_

Signature

Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_

\_\_\_\_\_

Signature and Title

Signature and Title

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

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

11. The term “Bid” as used herein includes a Bid, offer, or proposal as applicable.

END OF SECTION

NOTICE OF AWARD

**Date of Issuance:**

**Owner:** Town of Newmarket, New Hampshire

**Owner's Contract No.:**

**Engineer:** GZA GeoEnvironmental, Inc.

**Engineer's Project No.:** 173346.10

**Project:** Macallen Dam – Abutments and Outlet Structure Rehabilitation **Contract Name:**

**Bidder:**

**Bidder's Address:**

**TO BIDDER:**

You are notified that Owner has accepted your Bid dated \_\_\_\_\_ for the above Contract, and that you are the Successful Bidder and are awarded a Contract for Macallen Dam – Abutments and Outlet Structure Rehabilitation Project in Newmarket, New Hampshire.

The Contract Price of the awarded Contract is: \$ \_\_\_\_\_

[ ] 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.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

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

Owner:

\_\_\_\_\_  
Authorized Signature

By:

Title:

Copy: GZA GeoEnvironmental, Inc.

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

### NOTICE TO PROCEED

Date: To Be Determined

Project: Macallen Dam – Abutments and Outlet Structure Rehabilitation

Owner: Town of Newmarket, New Hampshire

Owner's Contract No.: 2019 / 2020-1

Contract:

Engineer's Project No.: 173346.10

Contractor:

Contractor's

You are notified that the Contract Times under the above Contract will commence to run on or about May 16, 2019. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is December 15, 2019, and the date of readiness for final payment is December 30, 2019. Your attention is drawn to the provision for Liquidated Damages as described in Article 4 of the Agreement.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents. In addition, you are hereby made aware that certain notifications are required to local, state and federal permitting agencies prior to start of work as detailed in the permits included in the Bid Documents.

Town of Newmarket, New Hampshire

Owner

Given by:

Authorized Signature

Title

Date

Copy to Engineer

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

Owner and Contractor hereby agree as follows:

Contractor shall complete all Work as specified or indicated in the Contract Documents, including technical specifications and contract drawings. The Work of this Contract shall include, but not be limited to, the following major work items:

- These improvements and rehabilitation are intended to address certain identified dam safety deficiencies and to bring the dam into compliance with New Hampshire Department of Environmental Services Dam Bureau requirements.

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Macallen Dam – Abutments and Outlet Structure Rehabilitation, Main Street, Newmarket, New Hampshire.

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

### **ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by GZA GeoEnvironmental, Inc. (Engineer), which may act as Owner's representative on-Site under certain circumstances, and have the rights and authority assigned to the 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 Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed by December 15, 2019 as in Paragraph 2.03 of the General Conditions and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions by December 30, 2019 when the Contract Times commence to run.

#### *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 loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), Contractor shall pay Owner One Thousand Dollars (**\$1,000.00**) for each calendar day that expires after the time specified in Paragraph 4.02 above for Substantial Completion.

### **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Project Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts indicated on the attached Schedule of Values.

### **ARTICLE 6 – PAYMENT PROCEDURES**

#### *6.01 Submittal and Processing of Payments*

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

#### *6.02 Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.05.A of the General Conditions (and in the case of Unit Price Work



## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to 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 Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 of the General Conditions.
  - a. 95 percent of Work completed (with the balance being retainage). and
  - b. 95 percent of cost of materials and equipment delivered to the project site but not incorporated in the Work (with the balance being retainage).

Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 15.01.C.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### **6.03 Final Payment**

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

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of 0.5 percent per annum.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (including Underground Facilities), if any, that have been provided with these Contract.
  - E. Contractor has considered the information known to Contractor; 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

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has 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.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement, including the Schedule of Values
  - 2. Performance bond.
  - 3. Payment bond.
  - 4. Other bonds - none
  - 5. Standard Conditions of the Construction Contract (EJCDC Document C-700)
  - 6. Supplemental General Conditions
  - 7. Special Conditions.
  - 8. Specifications as listed in the table of contents of the Project Manual.
  - 9. Drawings consisting of thirty-six (36) sheets with each sheet bearing the following general title: Macallen Dam – Abutments and Outlet Structure Rehabilitation, Newmarket, New Hampshire prepared by GZA GeoEnvironmental, Inc. and dated March 2019.
  - 10. Addenda (if/as are issued inclusive).
  - 11. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid.

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

- b. Documentation submitted by Contractor prior to Notice of Award
  - c. Forms:
    - 1) Advertisement for Bids
    - 2) Instruction to Bidders
    - 3) Bid Form with Representations and Certifications
12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are hereby incorporated into this agreement
- 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 Paragraph 11.01 of 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. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **10.03 Successors and Assigns**

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

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

Town of Newmarket, New Hampshire

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(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.)

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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

(Where applicable)

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

Agent for service of process:

\_\_\_\_\_

I hereby certify that an appropriation in the following amount has been made and is available for this contract, and that the following officer or agent of the Chester Water Authority has been authorized to execute said contract and to approve all requisitions and change orders:

Appropriation: \$ \_\_\_\_\_

Officer/agent: \_\_\_\_\_

\_\_\_\_\_

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**SCHEDULE OF VALUES**

Pay Item Description – BASE BID	<u>Technical Specification Reference</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price (\$)</u>	<u>Extended Price (\$)</u>
For more complete description see: Summary of Work (Section 01010), Technical Specifications, & Drawings and Details					
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
BASE BID TOTAL			\$		
BASE BID TOTAL (IN WORDS):					

**MAXIMUM OBLIGATED CONTRACT PRICE:**

\$ \_\_\_\_\_

**(in words):** \_\_\_\_\_

## PERFORMANCE BOND

CONTRACTOR *(name and address):*

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

OWNER *(name and address):*

Town of Newmarket  
186 Main Street  
Newmarket, New Hampshire 03857

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

### BOND

Bond Number:

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

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

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

### CONTRACTOR AS PRINCIPAL

### SURETY

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

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

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner 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):*

Town of Newmarket  
186 Main Street  
Newmarket, New Hampshire 03857

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

### BOND

Bond Number:

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

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

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

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
*(seal)*

Contractor's Name and Corporate Seal

\_\_\_\_\_  
*(seal)*

Surety's Name and Corporate Seal

By: \_\_\_\_\_

Signature

By: \_\_\_\_\_

Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_

Signature

Attest: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
1. The name of the Claimant;
  2. The name of the person for whom the labor was done, or materials or equipment furnished;
  3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
  4. A brief description of the labor, materials, or equipment furnished;
  5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  7. The total amount of previous payments received by the Claimant; and
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:



### Change Order Summary

Payment of: \$ \_\_\_\_\_  
 (Line 8 or other - attach explanation of the other amount)

is recommended by: \_\_\_\_\_ (Engineer) \_\_\_\_\_ (Date)

Payment of: \$ \_\_\_\_\_  
 (Line 8 or other - attach explanation of the other amount)

is approved by: \_\_\_\_\_ (Owner) \_\_\_\_\_ (Date)

Approved by: \_\_\_\_\_  
 Funding or Financing Entity (if applicable) (Date)

### Progress Estimate - Lump Sum Work

## Contractor's Application

For (Contract):						Application Number:			
Application Period:						Application Date:			
			B	Work Completed		E	F		G
A			B	C	D	Materials Presently Stored (not in C or D)	Total Completed and Stored to Date (C + D + E)	% (F / B)	Balance to Finish (B - F)
Specification Section No.	Description	Scheduled Value (\$)	From Previous Application (C+D)	This Period					
	Totals								

### Progress Estimate - Unit Price Work

## Contractor's Application

[illegible]

## Stored Material Summary

## Contractor's Application

[illegible]



Certificate of Substantial Completion

Project: Macallen Dam – Abutments and Outlet Structure Rehabilitation

Owner: Town of Newmarket, New Hampshire

Owner's Contract No.:

Contract: Macallen Dam – Abutments and Outlet Structure  
Rehabilitation

Engineer's Project No.: 173346.10

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

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

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\_\_\_\_\_  
Date of Substantial Completion

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

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

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

☐ Amended Responsibilities ☐ Not Amended

Owner's Amended Responsibilities:

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Contractor's Amended Responsibilities:

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**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

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

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

---

Executed by Engineer

---

Date

---

Accepted by Contractor

---

Date

---

Accepted by Owner

---

Date

Change Order No. \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Project: Macallen Dam – Abutments and Outlet Structure Rehabilitation	Owner: Town of Newmarket, NH	Owner's Contract No.:
Contract:	Date of Contract:	
Contractor:	Engineer's Project No.: 173346.10	

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description:

Attachments (list documents supporting change):

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$ \_\_\_\_\_

[Increase] [Decrease] from previously approved Change Orders No. \_\_\_\_\_ to No. \_\_\_\_\_

\$ \_\_\_\_\_

Contract Price prior to this Change Order:

\$ \_\_\_\_\_

[Increase] [Decrease] of this Change Order:

\$ \_\_\_\_\_

Contract Price incorporating this Change Order:

\$ \_\_\_\_\_

**CHANGE IN CONTRACT TIMES:**Original Contract Times: ☐ Working ☐ Calendar days

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

[Increase] [Decrease] from previously approved Change Orders No. \_\_\_\_\_ to No. \_\_\_\_\_:

Substantial completion (days): \_\_\_\_\_

Ready for final payment (days): \_\_\_\_\_

Contract Times prior to this Change Order:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

Contract Times with all approved Change Orders:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

**Macallen Dam – Abutments and Outlet Structure Rehabilitation**

<b>RECOMMENDED:</b>	<b>ACCEPTED:</b>	<b>ACCEPTED:</b>
By: _____ Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Date: _____	Date: _____	Date: _____
Approved by Funding Agency (if applicable):		Date: _____

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

**STANDARD GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT**

Prepared by



Issued and Published Jointly by



Supplemental General Conditions (Section 00710) and Special Conditions (Section 00800) have been included in this Bid Package and shall be considered, along with the Drawings and Technical Specifications, to be part of the Contract Documents.

## **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

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

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Engineer*—The individual or entity named as such in the Agreement. In terms of this Contract, the term “Engineer” shall also be synonymous with the Construction Engineer, Owner’s Consultant, or GZA GeoEnvironmental, Inc.
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. In terms of this Contract, the term “Owner”, “Project Owner” and “Town” shall also be synonymous with the Town of Newmarket, New Hampshire.
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 and Special Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-



insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:

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

above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

- F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
  - 1. include at least the specific coverages provided in this Article.
  - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting,

removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

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

#### 6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary or Special 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.
- O. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other

individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

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

#### 7.08 *Permits*

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

#### 7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. The Town of Newmarket, NH is a tax-exempt organization.

#### 7.10 *Laws and Regulations*

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

#### 7.11 *Record Documents*

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

## 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner



and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 *Safety Representative*

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

#### 7.14 *Hazard Communication Programs*

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

#### 7.15 *Emergencies*

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

#### 7.16 *Shop Drawings, Samples, and Other Submittals*

##### A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
  3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
  1. *Shop Drawings:*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
  2. *Samples:*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

*D. Engineer's Review:*

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

*E. Resubmittal Procedures:*

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

2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

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

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

#### 7.18 *Indemnification*

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

#### 7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance

information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.

- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 8.02 *Coordination*

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

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract

Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

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



## **ARTICLE 9 – OWNER’S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

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

### **9.02 *Replacement of Engineer***

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

### **9.03 *Furnish Data***

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

### **9.04 *Pay When Due***

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

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

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

### **9.06 *Insurance***

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

### **9.07 *Change Orders***

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

### **9.08 *Inspections, Tests, and Approvals***

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

### **9.09 *Limitations on Owner’s Responsibilities***

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any

failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise,

or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

#### 10.09 *Compliance with Safety Program*

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

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

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

- b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive. The Contractor shall immediately perform any change order work that is ordered in writing by the Town. **The Town is not obligated to pay for change orders that are not approved in writing and signed by an Authorized Town Representative prior to the work being performed.**
3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

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

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction

activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

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

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

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

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
  - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto,

or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 *Execution of Change Orders*

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



the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

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

#### 11.08 *Notification to Surety*

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

### **ARTICLE 12 – CLAIMS**

#### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through

the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

**D. *Mediation:***

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

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

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

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

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

### **13.01 *Cost of the Work***

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

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

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

- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded*: The term Cost of the Work shall not include any of the following items:
  1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 13.02 Allowances

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

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

### 13.03 *Unit Price Work*

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

3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

##### **14.01 Access to Work**

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

##### **14.02 Tests, Inspections, and Approvals**

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

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

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



#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

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

#### 14.06 *Owner May Stop the Work*

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

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

#### 15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a

form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

**B. *Applications for Payments:***

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

**C. *Review of Applications:***

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;

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

- c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

*D. Payment Becomes Due:*

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

*E. Reductions in Payment by Owner:*

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

- j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  - 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

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

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days

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

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

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.

2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and



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

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

- 1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

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

#### 15.08 *Correction Period*

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

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

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

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

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.

- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

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

### **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

#### 17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
  1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
  2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

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

### **18.02 *Computation of Times***

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

### **18.03 *Cumulative Remedies***

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

### **18.04 *Limitation of Damages***

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

### **18.05 *No Waiver***

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

#### 18.06 *Survival of Obligations*

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

#### 18.07 *Controlling Law*

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

#### 18.08 *Headings*

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

**SECTION 00710  
SUPPLEMENTAL GENERAL CONDITIONS**

**PART 1 - GENERAL**

The following supplemental general conditions are hereby incorporated into the contract documents. This Section supplements the EDJC C-700 Standard General Conditions of the Construction Contract. Where a portion of the General Conditions is modified or deleted by these Supplemental Conditions, the unaltered portions of the General Conditions shall remain in effect. In such cases as there is disagreement between the Supplemental General Conditions and the General Conditions, the more restrictive Condition shall apply to the benefit of the Owner.

**1.01    GENERAL WORK STATEMENT**

The Contractor shall furnish all labor, materials, plant, power, light, heat, fuel, water, tools, appliances, equipment, supplies and other means of construction necessary or proper for performing and completing the work; obtain and pay for all required permits other than those previously obtained by the Project Owner; perform and complete the work in the manner best calculated to promote rapid execution and completion of the proposed repairs and improvements, consistent with safety of life and property, to the satisfaction of the Engineer and in strict accordance with the Contract Documents; protect the work during construction, clean up the work and maintain it during and after construction; do all work and pay all costs incidental thereto.

**1.02    INCIDENTAL WORK**

The Contractor shall do all work and pay all costs of cutting, protecting, supporting, maintaining, relocating and restoring all surface, sub-surface, or overhead structures, and all other property, including pipes, conduits, ducts, tubes, channels and appurtenances, public or private, in the vicinity and at the site of the work (except such which by law, franchise, permit, contract, consent or agreement the owner thereof is required to protect, support, maintain, relocate or restore), repairing the same if damaged and restoring to their original condition all areas disturbed. The Contractor shall do all work and pay all costs of protecting, supporting, maintaining, relocating, replacing and restoring all property and equipment owned by the Project Owner and Site Owner and/or adjacent public and private properties, roads, and structures.

The Contractor shall do all extra and additional work and bear all losses due to the nature of the work, costs incidental to suspension or discontinuance of the work and take all risks of whatever nature at no additional cost to the Engineer or the Project Owner.

**1.03    WORK, MATERIALS, SPECIFICATIONS AND DRAWINGS**

All work and materials mentioned in the Specifications and not shown on the Contract Drawings, and all work and materials shown on the Contract Drawings and not mentioned in the Specifications, are to be furnished, performed and done as if the same were both mentioned in the Specifications and shown on the Contract Drawings.

**1.04    NECESSARY AND ESSENTIAL WORK DEEMED INCLUDED**

In case any work or materials shall be required to be done or furnished in or for the more perfect performance of the work herein contemplated, which are not specifically mentioned, specified or indicated on the Contract Drawings, or in the Specifications and other parts of this Contract and which in the opinion of the Project Owner or Engineer are necessary and essential to a complete performance of this Contract, the same shall be and be deemed included within the requirements of this Contract and the Specifications



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and Contract Drawings; and the Contractor hereby specifically promises, covenants and agrees to do and perform any and all such work and to supply any and all such materials the same as if herein or therein specifically enumerated.

### **1.05 PURPORT OF SCHEDULES**

All schedules are given for the convenience of the Engineer and the Contractor and are not guaranteed to be complete. The Contractor shall assume all responsibility for the making of estimates of the size, kind and quality of materials and equipment included in work to be done under his Contract.

### **1.06 CONFLICTS**

If, in the opinion of the Project Owner or Engineer, (1) the Contract Drawings and/or the Specifications be in conflict, or (2) if the Contract Drawings or (3) the Specifications, or (4) both the Contract Drawings and the Specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the quantities required, in every such situation the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the manner most expensive and costly to the Contractor. If such conflict and/or ambiguities arise, the Project Owner, through his/her Design Engineer (GZA GeoEnvironmental, Inc.), will furnish and supply the Contractor with supplementary drawings showing the manner in which the work shall be performed and the type or types of materials or equipment that shall be installed.

### **1.07 CONTRACTOR INSURANCE**

Prior to commencement of any Work, the Contractor shall take out and shall thereafter maintain at its expense and shall cause each of its subcontractors to take out and maintain at their expense minimum insurance for the duration of the Contract as stated in the Contractor's Insurance Section of Instructions to Bidders and in accordance the General and Special Conditions.

### **1.08 EXTENSION OF TIME**

Applications for Extension of Time for the completion of the work of this Contract shall be made in writing to both the Project Owner and the Engineer and shall be at the sole discretion of the Project Owner.

### **1.09 PROTECTION OF PROPERTY**

During the performance and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the property of the Project Owner and other property Owners, from loss, damage or destruction resulting from his/her Subcontractor's operations under this Contract. Likewise, the Contractor must take similar precautions to protect adjacent and nearby public and private property.

If the Project Owner's, Private or other Property is lost, damaged or destroyed or Abutter's Private or other Property is lost, damaged or destroyed as a result of the operations of the Contractor or his Subcontractors, in the performance of this Contract, or from his or her failure to comply with any of the provisions of this Contract, or by law, the Contractor shall indemnify and hold the Project Owner and Abutters harmless from any and all costs and expense which Project Owner may be subjected to which it may suffer or incur by reason thereof.

**1.10 CONTRACT DRAWINGS AND SPECIFICATIONS**

- A. The work to be done is shown on a set of Contract Drawings which bear the title: “Macallen Dam Abutment and Outlet Structure Rehabilitation” and is comprised of thirty-six (36) drawings. The technical specifications are presented as - Technical Specification of the Contract Documents.
- B. Drawings and Specifications Furnished to Contractor. After the Contract has been executed, the Contractor will be furnished with one hard copy and a CD with the Conformed Contract Documents and Specifications in PDF format.
- C. Additional Copies. Additional sets of Contract Drawings and Specifications may be issued provided such documents are available in sufficient quantity.
- D. Supplementary Drawings. When, approved by the Project Owner, the Engineer decides to show more fully the work to be done, or to show required changes, or to rectify errors which may have been discovered, drawings to be known as supplementary drawings and revision sheets with specifications pertaining thereto will be prepared by the Engineer and the prints thereof will be provided to the Contractor in PDF format. Changes of a minor nature may be made on the Contract Drawings, in which case two copies of the revised Contract Drawings will be issued to the Contractor. The supplementary drawings and revised Contract Drawings shall be as fully binding as the original Contract Drawings, and if such supplementary or revised Contract Drawings require either less or more than the estimated quantities of work, credit to the Project Owner or compensation therefor to the Contractor shall be subject to the terms of the Agreement.
- E. Information to Subcontractors, Manufacturers and Others. The Contractor shall furnish complete information from the Contract Documents, together with all necessary drawings and copies of these specifications, to subcontractors, manufacturers and others performing work required under the Contract.
- F. Contractor to Check Drawings and Other Data. The Contractor shall verify all dimensions, quantities and details shown on plans, sketches, schedules or other data received from the Engineer and shall notify him of all errors, omissions, conflicts and discrepancies found therein.

Failure to discover or correct errors, conflicts or discrepancies shall not relieve the Contractor of full responsibility for unsatisfactory work, faulty construction or improper operation resulting therefrom nor from rectifying such conditions at his own expense. Figures shall be used in preference to scaled dimensions and large-scale drawings in preference to small-scale drawings.

The Contractor is herein notified that he/she shall be expected and required to verify all dimensions relating to all of the proposed work. Proper dimensioning of these items is critical to the success of the work and it shall be the Contractors responsibility to obtain all measurements in the field for use in fabricating, constructing, and installing said items.

- G. "Directed", etc. Whenever reference is made in the Contract to the work or its performance, the terms "directed", "required", "permitted", "ordered", "designated", "prescribed",

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"determined", and words of similar import shall imply the direction, requirement, permission, order, designation, or prescription of the Project Owner.

- H. "Approved", etc. "Approved", "acceptable", "satisfactory", and words of similar import shall mean and intend approved, acceptable or satisfactory to the Project Owner. Review and approval of submittals is intended only for general conformance to design concept of project and compliance with information given in Contract Documents. Review and approval shall not extend to means, methods, sequences, techniques or procedures of performing the Work or to safety precautions or program incident thereto. Review of a separate item as such will not indicate approval of assembly in which item functions. Review and approval of submittals shall not relieve Contractor from responsibility for any deviations from Contract Documents unless Contractor has, in writing, called attention to such deviation at time of submission and has received written concurrence pursuant to Contract Documents to specific deviation, nor shall any concurrence in submittals.
- I. The Specifications. The contract documents consist of this single volume and are arranged as stated in Table of Contents.
- J. Contractor's Shop Drawings.

The Contractor will be required to submit shop drawings in advance of several important aspects of the work. Contractor Shop Drawings shall be submitted as per Section 01300 – Submittals. Additional shop drawing submittals shall be provided as requested in the individual specification sections and/or as requested by the Project Owner or Engineer. No fabrication or installation shall begin until the appropriate shop drawing has been reviewed by the Engineer and approved by the Project Owner.

- K. Materials and Equipment
  - 1. English Language. All written information, including drawings, computations, lists, descriptions, reports, test data, and correspondence, shall be in the English language. For any submittals which contain metric units, the English system equivalents (e.g. foot, pound, second) shall also be furnished. All communications, both oral and written, between the Engineer (or his representatives or designated inspectors) and the Contractor or his/her agents, shall be in English. All persons employed by the Contractor and his/her agents, who would normally be required to communicate with the Engineer or his/her representatives or designated inspectors, shall have a working knowledge of the English language or have available an approved means of translating communications into English.
  - 2. Direct Attention. The Contractor shall give his/her personal attention constantly to the faithful prosecution of the work, and shall be present, either in person or by a duly authorized representative, on the site of the work during its progress and during times of inspection and testing.
  - 3. Quality of Materials, Equipment and Work. All materials, fixtures, fittings, supplies, and equipment furnished under this contract shall be new of standard first grade quality, of the best workmanship, correctly designed, and be intended for the use for which they are offered. Materials or equipment which, in the opinion of the Engineer, are inferior or of a lower grade than indicated, specified or required, or are obsolete, will not be accepted.

All work of assembly, installation, and construction shall be done in a neat, first class, and workmanlike manner. If the quality of the material, fixtures, fittings, supplies, equipment or work required by the drawings does not agree with that specified in the specifications, the better quality shall be supplied. In asking for prices on, or placing orders for, materials, fixtures, fittings, supplies, and equipment intended for use or installation under this contract, the Contractor shall provide the manufacturer or dealer with such complete information from these specifications as may in any case be necessary. In every case he shall quote in full to each such manufacturer or dealer the text of this paragraph as well as the text of such other portions of the specifications as are appropriate. The chemical and physical tests, including the optional tests, called for in the ASTM, federal and other specifications cited in this contract shall be made as specified, unless otherwise approved.

For items to be inspected, copies of each purchase order shall be submitted to the Engineer at the time of placing the order with the manufacturer or dealer.

4. Approval of Materials and Manufacturers. The names of proposed manufacturers, material, men, and dealers who are to furnish materials, fixtures, equipment, appliances or other fittings shall be submitted to the Project Owner for approval and shall include complete supporting data and be made in ample time to permit proper evaluation by the Engineer and to allow for necessary corrections and resubmissions. The Contractor is advised that approval of foreign manufactured items may take from six to eight weeks. The Contractor shall assume full responsibility for inadequate or delayed submissions.

No manufacturer or dealer will be approved for any materials, fixtures, fittings, supplies, or equipment to be furnished under this contract unless he shall be of good reputation. Except as otherwise approved for items of minor import and standard manufacture, no manufacturer will be approved unless he/she: has a plant of ample capacity with a production force and plant facilities of a type and size suitable to perform the specific work required; has been engaged upon and successfully done similar work for at least three years; and has an operating quality control department with experienced and qualified staff. Approval of any manufacturer, supplier or dealer given under the provisions of this section shall not, however, operate to waive or modify any provision or requirement contained in these specifications. A manufacturer, otherwise acceptable, who fails to satisfy the three years requirement may be approved provided that:

- a. the manufacturer is reputable and has produced similar or related products for at least one year
- b. the manufacturer has sufficient financial capacity to produce the product and can demonstrate financial capacity to meet any product liabilities and contract obligations.

5. Dealings with Manufacturer. All transactions with the manufacturers or subcontractors shall be through the Contractor unless the Contractor shall request in writing to the Project Owner that the manufacturer or subcontractor deal directly

with the Project Owner or Engineer. Any such transaction shall not in any way release the Contractor from his/her full responsibility under the Contract.

Similar materials and equipment of one and the same kind, type or classification and used for identical purpose shall be made by the same manufacturer.

6. Standard References. Whenever reference is made to the furnishing of materials or testing thereof to conform to the standards of any technical society, organization or body, it shall be construed to mean the latest standard, code, specifications or tentative specification adopted and published.
7. Materials. When no reference is made to a code, standard or specification, the standards of the ASTM or the IEEE shall govern. Where an item of equipment is specified to be explosion- proof, it shall be so certified by an independent agency recognized by the insurance industry, namely, UL, FM, etc. In all cases, materials shall be of the quality and character which, in the opinion of the Engineer, are best suited for the purpose for which they are required.
8. Specifying by Name. Whenever an article, material, apparatus, equipment, or process is specified by a trade name or by the name of a patentee, manufacturer or dealer, or by reference to the catalogue of a manufacturer or dealer, it shall be taken as intending to mean and specify the article, material, apparatus, equipment, or process designated, or any other equal thereto in quality, finish and durability and equally serviceable for the purposes for which it is, or they are intended.
9. Approval of "or Equal" Equipment, Etc. Where the Contractor proposes an alternate to a specific manufacturer's equipment or material named in the Specifications that he/she believes to be equal to that specified, the following shall be submitted to the Engineer:

Proof that the equipment and/or material offered as an alternate is equal in quality and efficiency to that named in the Specifications shall be furnished by the Contractor to the Engineer and unless the proof is satisfactory to the Engineer, the proposed alternate will NOT be approved.

Any redesign necessary or resulting from any proposed change shall be submitted to the Engineer for review and to the Project Owner for approval. The cost of such redesign shall be borne by the Contractor.

Any other additional cost incurred by the Project Owner or to any other Contractor as a result of a proposed change of equipment and/or material shall be borne by the Contractor who has proposed the substitution.

10. Written Permission Necessary. Whenever the Contractor intends to furnish an article, material, apparatus, equipment or process as being similar or equal to that article, material, apparatus, equipment or process specifically mentioned on the Contract Drawings or in the Specifications by trade name or otherwise, he/she must first obtain the consent in writing of the Project Owner.

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11. Ample Quantities. The Contractor shall deliver materials in ample quantities to insure speedy and uninterrupted progress of the work in order to complete the work within the Contract time.
12. Coordination. The Contractor shall coordinate deliveries in order to avoid delaying or impeding the progress of the work of any related contractor.
13. Land for Contractor's Use. The Site Owner & Project Owner shall in all cases determine the portion of the site to be used by the Contractor for storage, plant or other purposes. The Town may allow use of possible off-site locations by the Contractor. Possible off-site locations must be approved by the Town prior to use.
14. No Interference. If it becomes necessary to remove and restack materials to avoid impeding the progress of any part of the work or interfering with the work to be done by any other contractor, the Contractor shall remove and restack such materials at no additional cost to the Project Owner.
15. Project Owner to Select Inspectors. Except as specifically provided in the Specifications, the Project Owner will select and designate all persons, firms or corporations to make or witness each and every and all inspections, tests or analyses, with or without reports.

Inspection of the work by the Engineer or his/her authorized representatives is made solely for the benefit of the Project Owner. The inspection of the work shall not relieve the Contractor of any of his/her obligations to fulfill the contract as herein prescribed, and defective work shall be made good. Unsuitable materials and equipment may be rejected, notwithstanding that such defective work, materials and equipment may have been previously overlooked by the Engineer and accepted or estimated for payment. If the work, or any part thereof, shall be found defective at any time before the final acceptance of the whole work, the Contractor shall forthwith make good such defect, without compensation, in a manner satisfactory to the Engineer. If any materials or equipment selected for use in the work shall be condemned by the Engineer as unsuitable or not in conformity with the specifications, the Contractor shall forthwith replace such materials and equipment with acceptable materials and equipment at no additional cost to the Project Owner.

Records of all tests made as provided in the applicable specifications designated in the contract, shall be furnished. The Engineer shall be informed in advance of all times of sampling and testing and shall witness these operations if he so desires. Traceability of plate, forgings, piping, fittings, and all other articles required under this Contract shall be maintained during all stages of fabrication and testing.

Sufficient material shall be available so that, if requested, duplicates of the test specimens used for all physical and mechanical tests, and of drillings, millings, or other materials used for chemical analyses required by these specifications shall be furnished to the Engineer. Such material shall be retained by the Contractor for a period of one year after its manufacture.

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### **1.11 CHANGES IN THE WORK**

The Project Owner reserves the right to reduce, increase or completely eliminate any pay item contained in the contract. The Contractor and the Project Owner may negotiate a change in the price if deemed necessary. The Project Owner will make the final determination if a change in unit price for a given pay item is warranted.

#### **A. Eliminated Contract Items**

The Construction Engineer in coordination with the Project Owner may eliminate any Items of Work or portions of Work from the Contract or adjust quantities of a particular item of Work as deemed to be in the Project Owner's interest. Such action shall in no way invalidate the Contract. No payment shall be made to the Contractor for anticipated profits from Work that is eliminated from the Contract by the Owner or Construction Engineer.

#### **B. Increase or Decrease In Quantities**

Actual quantity of any one unit price item may be above or below that estimated on the Bid Form / Schedule of Values. Final determination will be made in the field by the Construction Engineer in coordination with the Project Owner based on observed conditions and/or as deemed to be in the Owner's interest. Such action shall in no way invalidate the Contract. No payment shall be made to the Contractor for anticipated profits from unit price quantity totals that turn out to be lower than estimated on the Bid Form / Schedule of Values. Compensation for unit price totals in exceedance of that estimated in the Bid Form / Schedule of Values shall be compensated at the unit price given for each respective item.

### **1.12 FAMILIARITY WITH PROPOSED WORK**

A complete understanding of the conditions as they exist requires careful examination of the work at the site. The Contractor shall also examine carefully the plan, specifications and the contract for the work contemplated. The Contractor shall not at any time after execution of this contract set up any claims whatever based upon insufficient data or incorrectly assumed conditions, nor shall claim any misunderstanding in regard to the nature, conditions, or character of the work to be done under this contract, and shall assume all risks resulting from any changes in conditions which may occur during the process of the work.

### **1.13 TEMPORARY STRUCTURES**

Contractor's Field Office. The Contractor may furnish and maintain, at his/her sole discretion, a temporary field office at the site of the work or an off-site location approved by the Owner. A field office is NOT required. However, in all events, the Contractor shall maintain readily accessible copies of both the Contract Documents and the latest approved working drawings, as well as all applicable permits and health and safety documents. The Contractor must maintain his/her own telephone reliable telephone service (cell phone acceptable) at the site during working hours and must have ready access to a fax machine or other means of receiving written communication. The Contractor must also maintain all contract documents, specifications, and the latest approved working drawings at an accessible location on-site during working hours.

Private Property. The work of the project is on public property owned by the Town of Newmarket and adjacent private property owned by abutters. The Owner has maintenance and constructions easements as indicated in the property deeds. The adjacent property owners have granted

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construction easements to the Project Owner for the purposes of the execution of this work. The Contractor may negotiate with the additional property owners for additional or other access, but such access is NOT GUARANTEED by the Project Owner and shall not be assumed by the Contractor. If granted, the Contractor shall provide the Project Owner with written proof of a legal agreement between the Contractor and Site Owner for expanded access. Although not expected, if the Contractor temporarily occupies other property adjacent to the work, he/she shall provide the Engineer with certified copies of agreements which permit the use of such land.

Obstruction, Access. The Contractor shall not obstruct any highway, road, or access thereto from public or private property except as otherwise specified in the Contract Documents. The necessary facilities and safeguards to comply with this requirement shall be provided and maintained at the expense of the Contractor.

Trespassing Prohibited. All employees and subcontractors of the Contractor are prohibited from trespassing on private or public property except where the law permits such entrance for the purpose of underpinning or otherwise protecting adjoining structures. The Contractor shall give ample notice to the owners and users of all such structures before disturbing or using them.

### 1.14 CONTRACTOR'S SUPERINTENDENT

The Contractor shall employ and retain at the site of the work, from the commencement until the completion of the work, a superintendent competent and capable of maintaining proper supervision and care of the work, and acceptable to the Project Owner and Engineer, and who, in the absence of the Contractor, and irrespective of any superintendent or foreman employed by any subcontractor, shall carry out the work.

### 1.15 SURVEYS

- A. Lines and Grades. All work shall be constructed according to the lines and grades shown on the Contract Drawings and as approved by the Engineer.

The Contractor shall establish all other lines, elevations and grades required for the work and be solely responsible for the accuracy thereof.

With respect to establishing quantities for payments, the Engineer shall be notified prior to the establishment of any line, elevation or grade.

- B. Safeguarding Marks. The Contractor shall safeguard all points, stakes, grade marks, monuments and bench marks made or established on the work, re-establish same if disturbed and bear the entire expense of rectifying the work improperly installed due to not maintaining, not protecting or removing without authorization such established points, stakes, marks and monuments.
- C. Temporary Bench Marks. The Contractor shall establish temporary benchmarks as needed outside of the work area for elevation and position reference, as needed.

### 1.16 CUTTING AND PATCHING

Whenever it becomes necessary to cut existing work, the location and size of cut and method of cutting shall be as approved by the Engineer and adjacent work shall not be unnecessarily damaged. On completion of the cutting, all affected areas shall be restored satisfactorily by skilled person.



**1.17 COORDINATION AMONG CONTRACTOR AND SUBCONTRACTORS**

All Contractors and subcontractors are alerted to the importance of coordination and cooperation among themselves, the Engineer, and the Project Owner. It is essential to the expeditious completion of this project that the Contractor and Subcontractors meet at an early stage in the work, for the purpose of allocating their space requirements in such areas where their installations are in close proximity, or are likely to be in conflict or interfere one with the other, and to set up regular meetings as shop drawings are developed. The meetings shall be for the purpose of modifying work schedules and to arrive at an orderly sequence of operations agreeable to all Contractors concerned and to adjust conflicts, work arrangements, etc., so that work stoppages and delays may be avoided, and for the purpose of preparing coordination drawings for the use and guidance of each Contractor.

The meetings will be arranged through the Engineer and shall be separate from and in addition to the regular job progress meetings. If it is desired that the architectural or engineering consultants be present at such meeting, a request to this effect should be directed to the Engineer.

The Contractor's representatives at the meeting shall have the competence and authority to make any necessary decisions and their statements shall commit the Contractors to the agreed procedures, sequence of operations and time schedules.

Failure to be represented at any of these meetings (when scheduled by the Engineer) shall subject the absent Contractor to liability for any and all damages, delays, costs of alterations, etc., which result from the fact that he or his representatives were not present to coordinate his work with the work that was scheduled, arrangements agreed upon or procedures developed at the meeting or meetings in question.

It is emphasized that the above requirement will be strictly enforced by the Project Owner and an offending Contractor will be held to strict accountability for failure to attend and effectively participate in these coordination meetings. If, for compelling reasons, a Contractor finds that he or his representative cannot attend a scheduled meeting, he shall give timely notice to the Engineer so that the meeting may be rescheduled.

The Engineer will give to each Contractor written notice of the time and place and agenda of each such scheduled meeting.

Any Contractor may initiate a meeting by addressing a request for same to the Engineer.

Where procedures have been agreed upon and coordination drawings accepted by all Contractors concerned, it shall become binding upon all Contractors to follow the drawings and procedures, both as to time and performance, and no claim of delay or damages by a Contractor, if he/she fails to comply, will be entertained by the Project Owner.

**1.18 PUBLIC DISSEMINATION OF INFORMATION**

The Contractor agrees that he will not publish, cause to be published, or otherwise disseminate any information of whatever nature relating to the work being performed under this Contract except as may be approved by the Project Owner in writing. The Contractor is further informed of the necessity to abide by the confidentiality clauses found elsewhere in the Construction Agreement.

**1.19 CONSTRUCTION CONTRACTOR PERFORMANCE EVALUATION PROVISION**

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As deemed appropriate by the Project Owner, the Contractor's performance may be evaluated by the Project Owner upon the occurrence of the vouchering of fifty percent (50%) of the Contract price and at substantial completion. A copy of the evaluation will be sent to the Contractor not later than fifteen (15) calendar days after the occurrence of these events, and the Contractor may respond in writing to the performance report. Such responses shall be submitted to the Engineer not later than fifteen (15) calendar days after a copy of the evaluation is sent to the Contractor. The response will be affixed to the evaluation. Failure to respond may result in review of Contractor's performance when a bid is evaluated without the benefit of Contractor's response to the report.

### **1.20 REJECTION OF WORK**

If at any time an inspection, test or analysis of work reveals faulty, inferior or defective materials, poor workmanship, improper installation, excessive wear or non-conformity with the requirements of the Contract Documents, such work will be rejected and shall be replaced with satisfactory work at the Contractor's expense.

### **1.21 CLEANING**

As the work progresses and also before the completion and final acceptance of the work, the Contractor shall remove all rubbish and unused materials resulting from the work and shall leave the structures and grounds in a neat condition satisfactory to the Engineer. Prior to final acceptance, the Contractor shall also remove all temporary structures which he/she may have erected for his/her own use.

### **1.22 CONTRACTOR'S WEEKLY REPORTS**

- A. As soon as the Contractor has started work on the Project, he/she shall submit to the Project Owner and Engineer written weekly reports of work performed the previous week by any of his/her employees, including the employees of his/her subcontractors.
- B. The reports shall be prepared by the Contractor's Superintendent and shall bear his/her signature. Each report shall contain the following information:
  - 1. The type of materials and/or major equipment being installed by the Contractor and the total number of employees working in each category on that particular day.
  - 2. The names of the subcontractors working, and the type of materials and/or major equipment being installed by each together with the total number of employees working for each subcontractor on that particular day.
  - 3. The excavation and other equipment being used by the Contractor and each subcontractor.
  - 4. A look ahead type schedule describing planned activities to be undertaken over the next one to two weeks hence.

### **1.23 SITE SAFETY AND SECURITY**

The Contractor shall solely be responsible for safety and security on the project site.

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Contractor shall comply with the current edition of the "Manual of Accident prevention in Construction, the Associated General Contractors of America, Inc.", insofar as provisions of any article or articles thereof are applicable.

The Contractor shall comply in every respect with the Williams-Steiger Occupational Safety and Health Act of 1970 and all rules and regulations now or hereafter in effect under said Act, and the Contractor further agrees to comply with any and all applicable State laws and regulations pertaining to job safety and health.

The Contractor shall protect and keep Site Owner, Project Owner and Engineer (including their agents and employees) free and harmless from any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorneys' fees, expenses causes of action, claims of judgments resulting from a claimed violation of the Williams-Steiger Occupational Safety and Health Act of 1970 or any rule or regulation promulgated thereunder or of any State laws or regulations pertaining to job safety and health arising out of or in any way connected with the performance of work or work to be performed under this Contract, and Contractor shall indemnify Site Owner, Project Owner and Engineer from any such claims, penalties, suits or actions, public or private, administrative or judicial, including attorneys' fees paid or incurred by or on behalf of the Site Owner and Project Owner and/or on behalf of the Site Owner, Project Owner and/or the Engineer, jointly or severally, and/or their agents and employees. Contractor further agrees in the event of a claimed violation of any federal or state safety and health law or regulation arising out of or in any way connected with the performance of work or work to be performed under this Contract, the Project Owner and/or Engineer may immediately take whatever action is deemed necessary by Project Owner and/or Engineer to remedy the claimed violation. Any and all costs or expenses paid or incurred by Project Owner and/or Engineer in taking such action shall be borne by the Contractor, and the Contractor agrees to protect, hold harmless, and indemnify Project Owner and/or Engineer against any and all such costs or expenses.

Flammable liquids will not be used without first notifying the Engineer of such intentions. Proper extinguishers shall be provided by the contractor at all times. Welding or cutting operations will be permitted in all areas only after the area affected is properly prepared and a welding permit is obtained. The Contractor must provide the proper equipment including protective drop cloths, fire extinguishers and a fire watch. All oxygen and acetylene tanks will be secured to racks. Necessary shields or screens to prevent eye burns to passers-by must be supplied and used. A review of the area must be accomplished at the end of each working day and the area left in a safe condition. A permit from the local fire department shall be obtained for any welding or cutting, as required by local ordinance.

All Contractors will be responsible for safeguarding and protecting their own work, materials, tools, and equipment.

The Contractor will also be responsible for taking reasonable precautions to secure the site from accidents and other mishaps both while the Contractor is on site and during hours when no work is taking place. The Contractor shall maintain and secure the construction area, limiting access to the construction area during the day and closing off access to the construction when the Contractor is not present. The Work of the Contract shall include all necessary measures to exclude pedestrians and recreational users from the construction area. This shall include the provision of appropriate fencing, gates, signage, and flagmen, as needed. Such users shall also be protected from construction traffic in areas when construction vehicles are entering or exiting the job site.

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

The Contractor shall maintain an orderly and tidy site. The Contractor shall clean up all debris and remove rubbish on a daily basis and maintain all areas outside of the immediate work area clean. This shall include loading, staging and dumpster areas.

Additional information and requirements are presented in the Technical Specifications.

### **1.24 WEATHER-RELATED CONDITIONS**

Temporary delays and work stoppages due to rain, snow, flooding or otherwise inclement weather, to the extent normal and seasonal for the area of the project, or scheduling conflicts, shall not be considered as sufficient cause for an extension of time.

Contractor shall provide protection against weather conditions (including snow and freezing temperatures), so as to maintain his work, materials, apparatus and fixtures free from injury or damage. At the end of each day's work he/she shall cover all of his/her new work likely to be damaged. The Contractor shall be responsible for all snow plowing, snow clearing, shoveling, salting, and sanding necessary for access and the legal disposal of removed snow and ice.

Additional requirements regarding weather protection and the weather-related conditions are presented in the technical specifications.

### **1.25 FEES, PERMITS AND LICENSES**

1. The Contractor shall give to the proper authorities all notices as required by law, relative to the work in his/her charge; obtain all permits, certificates of inspection and building occupancy that may be required by authorities having jurisdiction over this work and deliver such certificates to the Project Owner upon completion of the work, as noted in the General Conditions (Section 7.08), and for temporary enclosures, obstructions or excavations in public streets and others as required. Contractor shall pay such proper and legal fees to public officers and others as may be necessary to the due and faithful performance of the work and which may arise incidental to the fulfilling of this Contract.
2. All materials used, and work performed must conform to Federal, local and State laws, ordinances, etc. Should any discrepancies exist between these Contract Documents and the above-mentioned laws, the latter shall govern.
3. Upon completion of the work the Contractor shall secure and present to the Project Owner a Certificate of Inspection and approval from the inspection department having jurisdiction over this work.
4. All fees, building permits, charges and assessments in connection with the above requirements shall be paid by the Contractor.
5. During the period when starting is required to meet the schedule and delivery of the permit, the Contractor shall continue to work at the discretion and direction of the Engineer and shall be held harmless from any consequences of continuation of this work, arising from any legal or cease and desist action brought by the Town.

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

6. Permits for subcontractor for plumbing, electrical work, and the like, shall be paid by the subcontractors involved.
7. Additional information on permits is contained in the Special Conditions and in the Technical Specifications.

### **PART 2 - PRODUCTS**

Not Used

### **PART 3 - EXECUTION**

Not Used.

### **PART 4 – MEASUREMENT AND PAYMENT**

No separate measurement or payment shall be made for the Work of this Section.

**\* \* \* END OF SECTION \* \* \***

**SECTION 00800  
SPECIAL CONDITIONS**

**PART 1 - GENERAL**

The following special conditions are hereby incorporated into the contract documents. This Section supplements Section 00710, Supplemental General Conditions, of this Contract for construction. Where a portion of the Supplemental General Conditions is modified or deleted by these Special Conditions, the unaltered portions of the Supplemental General Conditions shall remain in effect. In such cases as there is disagreement between the Special Conditions and the Supplemental General Conditions, the more restrictive Condition shall apply to the benefit of the Project Owner.

**1.01    PERMITS**

Permits applied for or obtained by the Owner are indicated in Section 00810.

**1.02    SPECIAL CONSIDERATIONS OF SITE LOCATION**

Contractor may be allowed use of off-site locations to be determined by the Town of Newmarket, NH.

**1.03    RETAINAGE OF PAYMENT**

- A.    Retainage shall be withheld from any payment otherwise due the Contractor as per the Contract Agreement, General Conditions, and applicable law.
- B.    All labor and materials incorporated into the project during each month shall be paid on the date agreed on of the succeeding month except five percent (5%) thereof shall be retained each month by the Project Owner. Payment of Retainage shall begin following Substantial Completion, as per as per the Contract Agreement, General Conditions, and applicable law.
- C.    The Project Owner may withhold from any payment otherwise due the Contractor as much as may be necessary, (as determined by the Engineer), to protect the Project Owner against any claim, actual or prospective, against the Project Owner. If he so elects he may also withhold any amounts due from the Contractor to any subcontractor or material men, for labor or materials furnished to the General Contractor.

**PART 2 - PRODUCTS**

Not Used

**PART 3 - EXECUTION**

Not Used

**PART 4 - MEASUREMENT AND PAYMENT**

No separate measurement or payment will be made for the Work of this Section.

**\* \* \* END OF SECTION \* \* \***

**SECTION 00810**  
**PROJECT DOCUMENTS AND PERMITS SECURED BY PROJECT OWNER**

**PART 1 - GENERAL**

The following documents are provided to the Contractor as described below.

1.01 PERMITS

The Contractor shall strictly adhere to all conditions and requirements set forth in the permits and licenses issued in relation to the Work of this Contract. Permits and licenses obtained by the Project Owner are attached herein; however, several permits are pending. Pending permits are anticipated prior to the Notice to Proceed and will be provided to the Contractor as an Addendum to the Contract. Permit conditions are not expected to alter the conditions of work described in this Contract therefore no additional payment shall be made for conformance to the permits by the Contractor. The Terms and Conditions of all Project Permits, whether presented herein or included by reference shall be considered as binding requirements of the Contract. Additional information regarding permits and licenses are contained in Section 01060 of the Technical Specifications.

Work at the site may not begin until all relevant permits are issued. Expected permits are:

1. A Wetlands Bureau Permit Application as administered by the New Hampshire Department of Environmental Services – Wetlands Bureau under the provisions of RSA 482-A. **[PENDING]**
2. A Permit Application as administered by the New Hampshire Department of Environmental Services (NHDES): Permit to Construct or Reconstruct a Dam, NHDES-W-02-001. **[PENDING]**

1.02 WATER CONTROL RESTRICTIONS AND CONDITIONS

The existing fish ladder at the site is owned and operated by the New Hampshire Fish & Game Department (NHF&GD). NHF&GD has imposed certain restrictions regarding the use of the fish ladder by the Contractor and regarding water control and drawdown at the site. A special use permit application to and letter from NHF&GD are attached as described below. The Terms and Conditions contained in the letter shall be considered as binding requirements of the Contract. Additional information regarding water control is contained in Section 01565 of the Technical Specifications.

1. A New Hampshire Fish & Game Department: Special Use Permit and/or Memorandum of Agreement (MOA) for site access. **[PENDING]**
2. A letter regarding drawdown requirements associated with construction provided by New Hampshire Fish & Game Department dated February 22, 2019.

1.03 PRIVATE ABUTTER AGREEMENTS

Certain Work of the Contract, as well as access, will take place on private property abutting the portion of the Site owned by the Town. The Town has research property ownership and has made access agreements for the purposes of construction with the property owners. A letter regarding parcel ownership and agreements with the abutting property owners are attached as described below. The Terms and Conditions

## Macallen Dam – Abutments and Outlet Structure Rehabilitation

contained in the agreements with the abutting property owners shall be considered as binding requirements of the Contract.

1. A letter regarding ownership of parcels adjacent to the dam provided by DTC Lawyers and dated February 15, 2018.

### 1.04 CREST GATE INFORMATION (FOR INFORMATION ONLY)

The Engineer has compiled certain information pertaining to the proposed pneumatic crest gate proposed for Macallen Dam. It is anticipated that this gate will be supplied by the Obermeyer company. A quotation sheet from Obermeyer for the pneumatic crest gate to be installed as a part of the Work, and described in Section 11288, has been attached to assist the Contractor in development of the bid. This information is presented **FOR INFORMATION ONLY**. Neither the Owner nor the Engineer makes any assurances as to the pricing information depicted. The Contractor is responsible for making his own assumptions, interpretations, and conclusions based on the information presented herein and discussions with the gate equipment supplier.

1. A quotation sheet from Obermeyer for the proposed pneumatic crest gate and associated appurtenances for the new outlet structure dated January 4, 2019.



**NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES  
PERMIT TO CONSTRUCT OR RECONSTRUCT A DAM  
WATER DIVISION / DAM BUREAU**

**(TO BE ISSUED BY ADDENDUM)**

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES  
WETLANDS PERMIT  
WETLANDS BUREAU**

**(TO BE ISSUED BY ADDENDUM)**

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**NEW HAMPSHIRE DEPARTMENT OF FISH AND GAME  
SPECIAL USE PERMIT AND/OR MEMORANDUM OF AGREEMENT**

**(TO BE ISSUED BY ADDENDUM)**

## **Macallen Dam – Abutments and Outlet Structure Rehabilitation**

**NEW HAMPSHIRE DEPARTMENT OF FISH AND GAME  
LETTER DESCRIBING DRAWDOWN CONDITIONS DATED 2/22/19**



# New Hampshire Fish and Game Department

**HEADQUARTERS:** 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-1438

**www.WildNH.com**  
e-mail: [info@wildlife.nh.gov](mailto:info@wildlife.nh.gov)  
TDD Access: Relay NH 1-800-735-2964

February 22, 2019

Diane Hardy, Town Planner  
Town of Newmarket  
186 Main Street  
Newmarket, NH 03857

Dear Ms. Hardy,

The New Hampshire Fish and Game Department (NHFGD) has received the Town of Newmarket's request for a water drawdown, pursuant to RSA 211:11, of the Lamprey River in 2019 for work to be conducted on Macallen Dam (Wetlands Permit # 2019-00091/NHB18-2078). The 60% drawings of the project indicate the river would be drawn down just below the current gate structure (approximate elevation; 16 feet).

The period you indicated for the drawdown to complete the construction of the new gate structure and stabilize the river right wall and shoreline will be 3-4 weeks during the period of September 1 through October 31, 2019. Through consultation between your consultant, Todd Monson, and NHFGD's Marine Division staff that period is best for a drawdown of this magnitude and duration to maintain quality habitat for aquatic life in the Lamprey River. However, the impoundment should be completely rewatered no later than October 31<sup>st</sup> and every attempt should be made to rewater the impoundment prior to the Pawtuckaway Lake drawdown in mid-October.

The NHFGD recommends that the rate of water released from the current gate does not exceed 0.5 feet **per day**, in order to allow fish, wildlife, and invertebrates (e.g., mussels) time to adjust to the changing water level upstream of the dam. Additionally, riverine water must be released continually during the draw down to assure aquatic life downstream of the dam is afforded needed quality habitat.

To assure quality of habitat for aquatic life below the dam, when the impoundment is to be refilled the NHFGD recommends a fill rate that allows for 90% of the instream flow to continue downstream while holding 10% of the water to fill the impoundment. This slow fill rate will also help minimize the impacts to the plants and animals within the project vicinity. To help with refilling the impoundment quickly the NHFGD suggests the work try to be completed by the time that DES – Dam Bureau draws down Pawtuckaway Lake in mid-October to take advantage of the additional released water from Pawtuckaway Lake. During the Pawtuckaway Lake drawdown there will be emigrating juvenile river herring that will need an open corridor to Great Bay.

During the last drawdown of the Macallen Dam, the Marine Division received many calls from concerned Newmarket citizens that there were many exposed mussels in shallow areas of

## REGION 1

629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: [reg1@wildlife.nh.gov](mailto:reg1@wildlife.nh.gov)

## REGION 2

PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: [reg2@wildlife.nh.gov](mailto:reg2@wildlife.nh.gov)

## REGION 3

225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: [reg3@wildlife.nh.gov](mailto:reg3@wildlife.nh.gov)

## REGION 4

15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: [reg4@wildlife.nh.gov](mailto:reg4@wildlife.nh.gov)



the impoundment (e.g., confluence of the Piscassic River and Lamprey River; behind the Riverside Cemetery). Therefore, the NHFGD recommends the community of Newmarket be involved with collecting exposed mussels or other slow moving invertebrates that cannot adjust quickly to the receding water in these shallow areas and move them to deeper water or the channel during the drawdown.

If you have any questions or comments, please do not hesitate to contact me at 603-868-1095 or Carol Henderson at 603-271-3511 or by email at [carol.henderson@wildlife.nh.gov](mailto:carol.henderson@wildlife.nh.gov). Thank you for your consideration of the natural resources that will be affected by the proposed drawdown.

Sincerely,

A handwritten signature in cursive script that reads "Cheri Patterson".

Cheri Patterson  
Supervisor of Marine Programs

cc: Carol Henderson  
Stefanie Giallongo  
Kim Tuttle  
John Magee  
Kevin Sullivan  
Michael Dionne

**DTC LAWYERS  
LETTER DETAILING OWNERSHIP RIGHTS OF PARCEL ADJACENT TO DAM  
DATED 2/15/19**



Rec'd  
2/15/18  
*[Signature]*

CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

MICHAEL J. DONAHUE  
ROBERT D. CIANDELLA  
LIZABETH M. MACDONALD  
JOHN J. RATTIGAN  
DENISE A. POULOS  
ROBERT M. DEROSIER  
CHRISTOPHER L. BOLDT  
SHARON CUDDY SOMERS  
DOUGLAS M. MANSFIELD  
KATHERINE B. MILLER  
CHRISTOPHER T. HILSON  
HEIDI J. BARRETT-KITCHEN  
JUSTIN L. PASAY  
ERIC A. MAHER  
AMELIA G. SRETER

RETIRED  
CHARLES E. TUCKER  
NICHOLAS R. AESCHLIMAN

**PLEASE RESPOND TO THE EXETER OFFICE**  
***Confidential Attorney-Client Communication***

February 15, 2018

Steve Fournier, Town Administrator  
Town of Newmarket, NH  
Town Hall  
186 Main Street, 1st Floor  
Newmarket, NH 03857

Re: Lamprey River Retaining Wall off Main Street, Newmarket, NH  
Status of Title

Dear Mr. Fournier:

You have asked me to determine ownership of a certain piece of land along the bank of the Lamprey River and a retaining wall next to the current Durham Book Exchange off of Main Street in downtown Newmarket, NH (the "Parcel"). This letter summarizes my findings based on a review of relevant instruments recorded in the Rockingham County Registry of Deeds.

The Parcel consists of the grassy area between the current Durham Book Exchange and the existing retaining wall along the Lamprey River. The Parcel has not been surveyed and the exact metes and bounds are not included in any recorded deed or plan.

The State of New Hampshire Department of Fish and Game ("Fish and Game") owns the Parcel subject to rights of access of various easement holders.

Fish and Game granted a right of way and easement over the Parcel to the Newmarket Community Development Corporation ("NCDC"). This easement was for the purposes of "non-vehicular ingress and egress to the former Fish and Game Building" and for "maintaining, grading, landscaping, placing temporary furniture on and using said premises as a park-like facility." This easement is subject to Fish and Game's continuing right of access to its fish ladder, and restricts NCDC from building any permanent structures or obstacles, such as fences, walls, or trees, that would obstruct such access. The Parcel cannot be used as a parking area. NCDC is obligated to maintain the Parcel.

DONAHUE, TUCKER & CIANDELLA, PLLC  
16 Windsor Lane, P.O. Box 630, Exeter, NH 03833-4924  
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253  
83 Clinton Street, Concord, NH 03301

B&N Investors Limited Partnership (“B&N”) currently owns the property adjacent to the Parcel where the Durham Book Exchange is located (“B&N Property”). B&N purchased the B&N Property from NCDC. In that conveyance, NCDC granted to B&N the same easement over the Parcel that it obtained from Fish and Game, subject to the same restrictions (no parking or blocking Fish and Game’s access). However, NCDC retained its right to use the easement over the Parcel and the obligation to maintain the Parcel; B&N has the right but not the obligation to conduct maintenance activities such as landscaping for use of the Parcel as a park-like facility. NCDC also has an access easement to enable it to pass to and from the Parcel, the B&N Property, and the adjacent cement bridge.

The Town of Newmarket (“Town”) owns the dam across the Lamprey River near the Parcel (the “Dam”) together with the cement abutments to the Dam and a ten-foot strip of land that appear to overlap both the Parcel and the B&N Property, as well as access rights across the Parcel and the B&N Property, to allow it to access the Dam for the purpose of repairs or additions required to keep the Dam anchored to the shore.

In conclusion, Fish and Game, the Town, NCDC, and B&N all have varying rights to this Parcel. To the extent that the retaining wall is connected to the Dam or the cement abutment, the Town can conduct the repair of the retaining wall. Otherwise, the Town must seek permission from Fish and Game or NCDC to repair the retaining wall. In repairing the wall, the Town must respect the rights of use and access of Fish and Game, NCDC, and B&N.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Amelia Sreter", written in a cursive style.

Amelia Sreter  
(603) 778-0686  
asreter@dtclawyers.com

**OBERMEYER HYDRO, INC.**  
**QUOTATION SHEET FOR PROPOSED PNEUMATIC CREST GATE AND**  
**ASSOCIATED APPURTENANCES FOR NEW OUTLET STRUCTURE DATED 1/4/19**

# **OBERMEYER HYDRO, INC.**

P.O. BOX 668 FT. COLLINS, COLORADO 80522 USA TEL 970-568-9844 FAX 970-568-9845

E-mail: [hydro@obermeyerhydro.com](mailto:hydro@obermeyerhydro.com) WWW: <http://www.obermeyerhydro.com>

January 4, 2019

## **Project Quotation Sheet**

Project: Macallen – New Market, NH

Gate Size: 6.2' x 23'

Obermeyer Hydro, Inc. is pleased to issue this proposal for the supply of Obermeyer Water Control Equipment for the upcoming Macallen Dam Rehabilitation Project in New Market, New Hampshire. Obermeyer Hydro will supply the following components for this project:

- |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6' x 23' Gate:  | One 6.2' high by 23' wide gate including gate panel with inflatable air bladder, clamp bars, hinge retainers, web retainers, splitters, restraining strap clamps, stainless steel anchor bolts, abutment seals, air connection assemblies, etc. Gate panel to be constructed from ASTM A572 grade 50 steel plate and coated with CeramKote 54 epoxy paint. Clamp bars and peripheral parts shall be hot dip galvanized in accordance with ASTM A123 and ASTM A153. |
| Air Supply:     | One Ingersoll Rand 2475N5-P air compressor with in-line membrane type air dryer. Compressor complete with ODP electric motor, mounted and wired starter, automatic start/stop function, air cooled after cooler, low oil level switch, automatic tank drain, and pressure relief valve. Dryer to provide a -20 degree F dew point.                                                                                                                                 |
| Control System: | Square D M340 PLC based upstream water level control system. Control system to measure upstream water elevation using supplied KPSI water level transducer and maintain head pond elevation to within 2" of operator set-point. Package complete with touchscreen interface, water level transducer, and gate position sensor.                                                                                                                                     |

This complete package is available for USD 113,500.00. Based on a February 1, 2019 purchase order the gate will be delivered to the project laydown area no later than June 1, 2019.

The above price does not include the following items:

1. Interconnecting conduit, wiring, or piping.

2. Stilling well for water level transmitter.
3. Installation except for any purchased supervision and training.
4. Any needed anchor bolt epoxy.
5. Bid, supply, or performance bond.
6. Federal, state, or any local taxes.
7. Building for control system.

In-field installation support by OHI erection supervisor shall be USD 1,750.00 per day. Daily rate includes all travel and per diem related expenses.

As all parts are custom manufactured, a thirty five percent (35%) deposit will be required with the placement of an order. The balance, less five percent (5%) retainage shall be due upon shipment. The retainage shall be due sixty days after shipping or upon commissioning of project whichever comes first.

All parts manufactured by Obermeyer Hydro are offered and guaranteed as outlined in attached OHI sales agreement. Items that are supplied, but not manufactured by Obermeyer Hydro, are covered by the original manufacturer's warranty.

Sincerely,  
Obermeyer Hydro, Inc.  
Robert Eckman  
Vice President

OBERMEYER HYDRO, INC.

SALES AGREEMENT

NOTICES - All notices required by the contract will be sent to:

PURCHASER

COMPANY

Obermeyer Hydro, Inc  
P.O. Box 668  
Fort Collins, CO 80522  
TEL: 970-568-9844  
FAX: 970-568-9845

WARRANTY - Company warrants title to the product (s) and also warrants the product (s) on date of delivery to purchaser to be of the kind and quality described herein, merchantable, and free of defects in workmanship and material.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS CONTRACT.

If within five years from the date of initial operation, but not more than five years and six months from the date of shipment by Company of any item of the product (s), Purchaser discovers that such item was not as warranted and promptly notified Company in writing thereof, Company shall remedy such non-conformance by, at Company's option, adjustment or repair or replacement of the item or any affected part of the product (s). Purchaser shall assume all responsibility and expense for removal, reinstallation, and freight in connection with the foregoing remedies. The same obligations and conditions shall extend to replacement parts furnished by Company thereunder. Company shall have the right of disposal of parts replaced by it. The Company shall not be liable for any repairs, replacements, or adjustments to the Product (s) or any costs of labor performed by the Purchaser or others without the Company's prior written approval.

The purchaser shall not operate the Product (s) which is considered to be defective, without first notifying the Company in writing of its intention to do so. Any such use of the Product (s) will be at the Purchaser's sole risk and liability unless Company gives Purchaser approval to operate the Product (s). Such approval will not be unreasonably withheld.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's warranty.

Company's liability to Purchaser relating to the product (s) whether in contract or in tort arising out of warranties, representations, instructions, installations, or defects from any cause, shall be limited exclusively to correcting the product (s) and under the conditions as aforesaid.

Any separately listed item of the product (s) which is not manufactured by the Company shall be covered only by the express warranty of the manufacturer thereof.

PATENTS - Company shall pay costs and damages finally awarded in any suit against Purchaser or its vendees to the extent based on a finding that the design or construction of the product (s) as furnished infringes a United States patent (except infringement occurring as a result of incorporating a design or modification at Purchaser's request) provided that Purchaser promptly notifies Company of any charge of such infringement, and Company is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. This paragraph sets forth Company's exclusive liability with respect to patents.



**DELAYS** - If company suffers delay in performance due to any cause beyond its control, such as Acts of God, war, act of government, act or omission of Purchaser, fire, flood, strike or labor trouble, sabotage, delay in obtaining from others suitable services, materials, components, equipment, or transportation, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. Company will give Purchaser notice in writing within a reasonable time after Company becomes aware of any such delay.

**DELIVERY** - Timely delivery at the designated point is contingent upon Purchaser's supplying to Company, when needed, all required technical information, including drawing approval, and all required commercial documentation. Company may make partial shipments. Company shall select method of transportation and route, unless terms are FOB point of shipment without freight allowed and Purchaser specifies the method and route. When delivery terms are FOB destination or freight allowed to destination, "destination" means common carrier delivery point (within the continental United States, excluding Alaska and Hawaii), nearest the final destination. For shipments outside the United States Company shall arrange for inland shipment to port of exit and shall cooperate with Purchaser's agents in making necessary arrangements for overseas shipment and preparing necessary shipping documents.

**LIQUIDATED DAMAGES** - The Purchaser's sole remedy for the Company's failure to deliver in a timely manner shall be Liquidated Damages in the amount of 0.1% of the contract price per day.

**STORAGE** - Any item of the product (s) on which manufacture or delivery is delayed by causes within the Purchaser's control or causes which affect Purchaser's ability to receive, the product (s) may be placed in storage by Company for Purchaser's account and risk.

**TITLE AND INSURANCE** - Title to the product (s) and risk of loss or damage shall pass to Purchaser upon tender of delivery, except that a security interest in the product (s) or any replacement shall remain in Company, regardless of mode of attachment to realty or other property, until the full price has been paid in cash. Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect the Company's interest by adequately insuring the product (s) against loss or damage from any external cause with Company named as insured or co-insured.

**TAXES AND LICENSES** - The price does not include any Federal, State or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may be now or hereafter applicable to, measured by, or imposed upon this transaction, the Product (s) its sale, its value or its use, or any services performed in connection therewith. Such taxes will be itemized separately to Purchaser, who shall make payment to the Company. The company will accept a valid exemption certificate from the Purchaser if applicable. If such exemption certificate is not recognized by the governmental taxing authority, Purchaser agrees to assume responsibility for payment of any taxes covered by such exemption certificate.

The Purchaser shall obtain all construction and other permits, licenses, inspections as may be required for the erection, construction and operation of the Purchaser's facilities.

**SPECIAL SHIPPING DEVICES** - The value of each special shipping device (oil barrel, reel, tarpaulin, cradle, crib and the like) used by Company to contain or protect the product (s) in shipment will be invoiced to the Purchaser as a separately stated addition to the contract price. If the Company's Proposal or quotation or other contract documents stipulate the return of any such device, it shall be returned by the Purchaser in good condition for credit, FOB Purchaser's plant, freight collect, within thirty (30) days after receipt by Purchaser.

Return of any such device as to which there is no stipulation but which has been separately invoiced is at the option of the Purchaser. If returned promptly in useable condition, FOB destination, freight prepaid, Company will grant purchaser a credit with the invoiced amount (except oil barrels, as to which arrangements for return and refund must be made by the Purchaser with the refiner).

The foregoing provisions as to special shipping devices shall not apply to any such device shipped

outside the continental United States and Canada.

GENERAL - Company will comply with all laws applicable to Company. Installation, erection or servicing of the product (s) by Company, if specified or requested by Purchaser, shall be governed by the terms and conditions of Company(s) service agreement.

This document and the other documents specifically referred to as being a part hereof, constitute the entire contract on the subject matter, and shall not be modified except in writing signed by both parties. Assignment may be made only with written consent of the other party.

TERMINATION - The Company may terminate this agreement upon thirty (30) days prior written notice to Purchaser for any material breach of this contract by Purchaser. In the event of such termination, Purchaser shall pay out reasonable and proper termination charges as set out in a) and b) below.

a) Purchaser has it full remedies at law for a material breach of contract by the Company and damages, if any, will be recoverable as states in the contract. All payments due will be suspended until Purchaser has had a reasonable opportunity to complete the project. For all other stipulations Purchaser may terminate this contract upon thirty (30) days prior written notice to the Company and payment of reasonable and proper termination charges. Such charges will include a portion of the Purchase Order Price, adjusted as necessary reflecting the amount of work completed, man hours expended and materials acquired at the time of termination plus the expenses associated with the termination, including, but not limited to, any additional expenses incurred by reason of termination or cancellation of the Company's agreement with its suppliers and any applicable costs plus pro rata profits calculated on the full contract price.

b) All termination charges shall be due and payable within thirty (30) days after the date of the Company's invoice.

SUSPENSION - Purchaser may, by written notice to the Company, suspend the Company's performance, in whole or in part, or extend the work for reason of force majeure, inability to obtain local state or federal government licensing or approvals, or for any other reason, except that such right of suspension or extension with respect to any portion of the Product (s) which has been released by the Company for procurement or manufacture shall require the mutual agreement of the parties.

In the event of any suspension or extension, other provisions of this contract, such as the price of the Product (s) and Services, shall be equitably adjusted to reflect the time of suspension, and any additional cost or expenses which may be occasioned to the Company hereby. At any time after suspension (s) ordered by the Purchaser has extended for a cumulative period of ninety (90) days, except to the extent that the Company may have previously consented to a suspension in excess of ninety (90) days, the Company may, upon giving Purchaser at least thirty (30) days prior written notice, terminate the contract and Purchaser shall pay reasonable and proper termination charges as set out in the Termination section a) and b).

TERMS - Terms for material supply shall be 35% due with order, 55% due net 15-days from shipping, and 10% due upon system start-up or ninety days after shipping whichever comes first. Terms for installation services shall be net 15-days after conclusion of said service.

SCOPE OF SUPPLY - The Company's Scope of Supply is listed on the January 4, 2019 price proposal that is hereby incorporated by reference.

GOVERNING LAW - The interpretation of this contract shall be governed by the laws of Colorado, USA.

OBERMEYER HYDRO, INC  
P.O. BOX 668, FORT COLLINS, CO 80522

By \_\_\_\_\_

ROBERT ECKMAN  
VICE PRESIDENT

PURCHASER'S ACCEPTANCE

The foregoing Proposal is hereby accepted

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_