



**CALIFORNIA**  
**AMERICAN WATER**

**CALIFORNIA-AMERICAN WATER COMPANY  
SOUTHERN DISTRICT - CITY OF BELLFLOWER**

**SYSTEM 4 WATER MAIN REPLACEMENT PROJECT  
(MAPLEWOOD ST, CLOVERWOOD ST, GLANDON ST, ARDIS AVE, BLAINE  
AVE)  
(I15-590001-01)**

**COUPA Event No. 6962**

**JULY 2023**

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**INVITATION TO BID**  
**COUPA Event No. 6962**  
**FOR CONSTRUCTION OF CALIFORNIA AMERICAN WATER**  
**Southern District**  
**SYSTEM 4 WATER MAIN REPLACEMENT PROJECT**  
**(MAPLEWOOD ST, CLOVERWOOD ST, GLANDON ST, ARDIS AVE, BLAINE AVE)**

**CALIFORNIA-AMERICAN WATER COMPANY** (Owner) is requesting Bids for the construction of the following Project:

Bids for the construction of the Project will be received at California-American Water Company located at 655 West Broadway, Suite 1410, San Diego, CA 92101, by way of electronic submission through the Owner's on-line bidding system (COUPA) until August 8, 2023 at 3:00 PM PST local time. At that date and time, the Bids received will be **publicly** opened, recorded and posted.

Information and to be added to the plan holders list which will potential bidders with all Bidding Documents for the Project can be obtained by emailing either Alexis Russell at [Alexis.Russel@amwater.com](mailto:Alexis.Russel@amwater.com) or Jay Drewry at [Jay.Drewry@amwater.com](mailto:Jay.Drewry@amwater.com)

Bidding Documents may be downloaded from the designated website. Prospective Bidders are urged to register as a plan holder to participate in the bidding process on or before July 21, 2023. The COUPA bidding event will be updated periodically with addenda, plan holder lists, reports, and other information relevant to submitting a Bid for the Project. All official notifications, addenda, and other Bidding Documents will be offered only through COUPA. Neither Owner nor Engineer will be responsible for Bidding Documents, including addenda, if any, obtained from sources other than the designated website.

Bidder will receive an email from [do\\_not\\_reply@amwater-ccc.coupahost.com](mailto:do_not_reply@amwater-ccc.coupahost.com) to participate in bidding event from the Owner's Coupa e-procurement system.

The link included in the email Bidders receive is unique and can be shared with others. Please be mindful of whom you share that link with and also do ***NOT*** delete the email. This link is the only way a Bidder can access the Bidding event on behalf of your organization.

The Issuing Office for the Bidding Documents is:

**California-American Water Company  
655 West Broadway, Suite 1410  
San Diego, CA 92101**

Prospective Bidders, subcontractors, manufacturers and material suppliers may obtain or examine the Bidding Documents at the Issuing Office on Monday through Friday between the hours of 8:00 AM and 5:00 PM local time, Partial sets of Bidding Documents will not be available from the Issuing Office. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the Issuing Office.

Printed copies of the Bidding Documents may be obtained from the Issuing Office for a fixed charge of \$100.00 for each set. Checks shall be made payable to California-American Water Company. Checks shall be non-refundable, and no refunds will be made for return of complete or partial Bidding Documents.

This project is subject to the Uniform Guidance in 2 CFR Part 200 and other regulations governing the Coronavirus State and Local Fiscal Recovery Program under the American Rescue Plan Act. This project is subject to prevailing wage, certified payroll and apprenticeship requirements, and additionally subject to monitoring and enforcement by the California Department of Industrial Relations ("DIR"). All bidders, including all subcontractors, must provide proof of public works contractor registration with the DIR with their bid, and may not be debarred from working on California or federal projects.

<b>BID Event Calendar</b>	<b>Date</b>
Distribution of RFB; Response Period Begins	<b>July 5, 2023</b>
Pre-Bid Conference	<b>July 21, 2023 at 10:00 AM Local Time</b>
Site Visit	<b>July 25, 2023 at 10:00 AM Local Time</b>
Cut-Off for Questions	<b>July 28, 2023 at 5:00 PM Local Time</b>
Response to Questions	<b>August 2, 2023 at 5:00 PM Local Time</b>
Bids Due	<b>August 8, 2023 at 3:00 PM Local Time</b>
Award Announcement	<b>August 11, 2023</b>

Contract Award	<b>August 17, 2023</b>
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A pre-bid conference for the Project will be held virtually via Microsoft Teams on July 21, 2023 promptly starting at 10:00 AM Local Time at:

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 267 914 070 812

Passcode: uis9Ki

[Download Teams](#) | [Join on the web](#)

**Join with a video conferencing device**

[466610253@t.plcm.vc](mailto:466610253@t.plcm.vc)

Video Conference ID: 112 803 066 2

[Alternate VTC instructions](#)

**Or call in (audio only)**

[+1 862-294-2638](tel:+18622942638), [137330952#](tel:+137330952) United States, Newark

Phone Conference ID: 137 330 952#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

The pre-bid meeting will be recorded and made available upon request.

A site visit will be held on July 25, 2023 starting promptly at 10:00 AM Local time. Please contact Dante Alday at [dante.alday@amwater.com](mailto:dante.alday@amwater.com) for the address for the site meeting.

For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.



**CALIFORNIA**  
**AMERICAN WATER**

**INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT**

**2021 Edition**

**Issued by**

**California American Water**

The Instructions to Bidders for Construction Contracts - 2021, American Water Edition ("Instructions to Bidders"), are based on the Suggested Instructions to Bidders for Construction Contracts (EJCDC No. C-200, 2018 Edition). The Instructions to Bidders incorporate terms and conditions that are consistent with American Water System practices and policies.

# INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT

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## ARTICLE 1—DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office*—The office from which the Bidding Documents are to be issued, and which registers plan holders.

## ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribute the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.
- 2.03 Owner has established a Bidding Documents Website as indicated in the invitation to bid. Owner recommends that Bidder register as a plan holder with the Issuing Office at such website and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.
- Owner has established a Coupa bidding event Number 6962 as indicated in the Invitation to Bid. Bidder will receive an email from [do\\_not\\_reply@amwater-ccc.coupahost.com](mailto:do_not_reply@amwater-ccc.coupahost.com) to participate in bidding event from our Coupa e-procurement system. Owner recommends that Bidder check quarantine or spam mail if email with link is not received in a timely manner. Once Bidder receives the email, Bidder will receive Addenda issued by Owner. Coupa will be the primary channel for all communications from Owner to Bidder and Bidder to Owner.**
- 2.04 Bidder may register as a plan holder and obtain complete sets of Bidding Documents, in the number and format stated in the invitation to bid, from the Issuing Office. Bidders may rely that sets of Bidding Documents obtained from the Issuing Office and **Coupa** are materially complete. Registered plan holders will receive Addenda issued by Owner.
- 2.05 *Electronic Documents*
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.

1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.05.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.
- C. After the Contract is awarded, the Owner will provide or direct the Engineer to provide for the use of the Contractor documents that were developed by Engineer as part of the Project design process, as Electronic Documents in native file formats.
  1. Electronic Documents that are available in native file format include:
    - a. **Bidding Documents**
    - b. **Technical Specifications**
    - c. **Engineer Drawings plan sets**
  2. Release of such documents will be solely for the convenience of the Contractor. No such document is a Contract Document.
  3. Unless the Contract Documents explicitly identify that such information will be available to the Successful Bidder (Contractor), nothing herein will create an obligation on the part of the Owner or Engineer to provide or create such information, and the Contractor is not entitled to rely on the availability of such information in the preparation of its Bid or pricing of the Work. In all cases, the Contractor shall take appropriate measures to verify that any electronic/digital information provided in Electronic Documents is appropriate and adequate for the Contractor's specific purposes.
  4. In no case will the Contractor be entitled to additional compensation or time for completion due to any differences between the actual Contract Documents and any related document in native file format.

### **ARTICLE 3—QUALIFICATIONS OF BIDDERS**

- 3.01 Owner will accept Bids only from all contractors that are certified and have a passing grade in Owner's third-party contractor safety risk management company ISNetworld (ISN). Each Bid

must contain evidence of Bidder's qualifications to do business in the state where the Project is located or covenant to obtain such qualification prior to award of Contract.

- 3.02 Prospective Bidders must be certified and having a passing grade of either A or B by Owner's designated third-party safety risk management company and obtain appropriate approval status prior to award of Contract. Failure to achieve and maintain the required certification will result in contractor's bid as being declared non-responsive. Owner will allow prospective bidders a grace period of no more than 30 days after bids are closed and recorded to obtain a passing grade within ISN. Failure on the bidder's part to meet this requirement may be cause to determine the bid as nonresponsive and bidder may forfeit their bid bond.
- 3.03 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representation and certification.

#### **ARTICLE 4—PRE-BID CONFERENCE**

- 4.01 A non-mandatory pre-bid conference will be held at the time and location indicated in the invitation to bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference; however, attendance at this conference is not required to submit a Bid.
- 4.02 Information presented at the pre-Bid conference does not alter the Contract Documents. Owner will issue Addenda to make any changes to the Contract Documents that result from discussions at the pre-Bid conference. Information presented, and statements made at the pre-bid conference will not be binding or legally effective unless incorporated in an Addendum.

#### **ARTICLE 5—SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE**

- 5.01 *Site and Other Areas*
- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.
- 5.02 *Existing Site Conditions*
- A. *Subsurface and Physical Conditions; Hazardous Environmental Conditions*
1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
    - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
    - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface

structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.

- c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
  - d. Technical Data contained in such reports and drawings.
2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
  3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

#### 5.03 *Site Visit*

- A. It is recommended that all Bidders visit the Site and conduct a thorough visual examination of the Site and adjacent areas. During the visit the Bidder must not disturb any ongoing operations at the Site.
- B. A Site visit is scheduled following the pre-bid conference. Directions, if required to the Site will be available at the pre-Bid conference.
- C. Bidders visiting the Site are required to arrange their own transportation to the Site.
- D. All access to the Site other than during a regularly scheduled Site visit must be coordinated through the following Owner or Engineer contact for visiting the Site: **Dante Alday at dante.alday@amwater.com**. Bidder must conduct the required Site visit during normal working hours.
- E. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

#### 5.04 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. If an Owner safety program exists, it will be noted in the General Conditions and Supplementary Conditions.

#### 5.05 *Other Work at the Site*

- A. Reference is made to Article 9 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

## **ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS**

- 6.01 *Express Representations and Certifications in Bid Form, Agreement*
- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder’s examination of Project documentation, Site visit, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
  - B. If Bidder is awarded the Contract, Bidder (as Contractor) will make similar express representations and certifications when it executes the Agreement.

## **ARTICLE 7—INTERPRETATIONS AND ADDENDA**

- 7.01 Owner on its own initiative may issue Addenda to clarify, correct, supplement, or change the Bidding Documents.
- 7.02 Bidder shall submit all questions about the meaning or intent of the Bidding Documents through the COUPA bidding event by way of the message box.
- 7.03 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received after the cutoff date for questions may not be answered.
- 7.04 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

## **ARTICLE 8—BID SECURITY**

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five (5%) percent of Bidder’s maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions. Such Bid bond will be issued in the form included in the Bidding Documents.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within fifteen (15) days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner’s damages in the case of a damages-form bond. Such forfeiture will be Owner’s exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven (7) days after the Effective

Date of the Contract or sixty-one (61) days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven (7) days after the Bid opening.

#### **ARTICLE 9—CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which, the Work is to be: (a) substantially completed, and (b) ready for final payment, are to be achieved, are set forth in the Agreement. or
- 9.02 Bidder must set forth in the Bid the time by which Bidder must achieve Substantial Completion, subject to the restrictions established in Paragraph 13.07 of these Instructions. Substantial Completion is desired on or before November 30, 2023, and final completion to be on or before December 31, 2023. The Owner will take Bidder's time commitment regarding Substantial Completion into consideration during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy Owner that it will be able to achieve Substantial Completion within the time such Bidder has designated in the Bid. The Successful Bidder's time commitments will be entered into the Agreement or incorporated in the Agreement by reference to the specific terms of the Bid.
- 9.03 Provisions for liquidated damages, if any, for failure to timely attain Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

#### **ARTICLE 10—SUBSTITUTE AND "OR EQUAL" ITEMS**

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute or materials and equipment subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an "or-equal" or substitute unless written request for approval has been submitted by Bidder. All Bids shall be based on the specified products. However, Bidders are encouraged to quote on alternative products by listing them in the tabulation of "Alternative Equipment and/or Materials" of the Bid Form as required by Section 01 23 00 of the General Requirements. Each such request must comply with the requirements of Paragraphs 7.05 and 7.06 of the General Conditions, and the review of the request will be governed by the principles in those paragraphs. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all registered Bidders. Bidders cannot rely upon approvals made in any other manner.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as

supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

#### **ARTICLE 11—SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- 11.01 A Bidder must be prepared to retain specific Subcontractors and Suppliers for the performance of the Work if required to do so by the Bidding Documents or in the Specifications. If a prospective Bidder objects to retaining any such Subcontractor or Supplier and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 11.02 The apparent Successful Bidder, and any other Bidder so requested, must submit to Owner a list of the Subcontractors or Suppliers proposed for the following portions of the Work within five days after Bid opening.
- 11.03 If requested by Owner, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.
- 11.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor or Supplier so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.
- 11.05 Owner encourages Bidders to seek diverse subcontractors and suppliers (including but not limited to Women Business Enterprises (WBE’s), Minority Business Enterprises (MBE’s), and Disabled Veteran Business Enterprises (DVBE’s)), while at the same time ensuring that the best combination of quality, service and price is provided in accordance with the highest ethical and professional standards. The Owner recognizes the value of subcontractor and supplier diversity as a strategic business decision and is committed to offer them an equal opportunity to compete for subcontracts to supply materials and services with all other suppliers and contractors in the competitive marketplace. Additional requirements are identified in the Supplemental Conditions.
  - A. Owner has established certain minimum requirements, as set forth below, for the percentage of the total Contract Price that must be paid to DBEs (the “DBE Minimum”). The DBE Minimum for a contract will depend upon the total Contract Price for that contract, as set forth below. For example, for a contract with a Contract Price of \$1,200,000, the DBE Minimum is 25% and, therefore, at least \$300,000 must be paid to DBEs either as the primary contractor or as one or more subcontractors. Further, for a contract with a Contract Price of \$4,000,000, the DBE Minimum is 30% and, therefore, at

least \$1,200,000 must be paid to DBEs either as the primary contractor or as one or more subcontractors.

<b>B. <u>Total Contract Price</u></b>	<b><u>DBE Minimum</u></b>
\$100,000 - \$500,000	<b>15%</b>
\$500,001 - \$1,000,000	<b>20%</b>
\$1,000,001 - \$3,000,000	<b>25%</b>
\$3,000,001 and higher	<b>30%</b>

- C. Notwithstanding the DBE Minimum set forth above, Bidder may propose, and is strongly encouraged to propose, a higher percentage of the Contract Price to be paid to DBEs. As part of its submission, Bidder must respond to the questions listed in Appendix A of the supplementary conditions and submit the entire Appendix A with their bid. The percentage to be paid to DBEs must be NO LOWER THAN the DBE Minimum set forth above. The percentage of the Contract Price that will be paid to DBEs (to the bidder/proposer as primary contractor or to subcontractors), as indicated in Appendix A, will be a contractual requirement (the “DBE Requirement”) that must be met by the bidder/proposer in performing the Contract Services. Failure to meet the DBE Requirement will be considered a breach of the contract and may result in termination of the contract by the Owner.

## **ARTICLE 12—PREPARATION OF BID**

- 12.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 12.03 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.



- 12.05 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06 A Bid by an individual must show the Bidder's name and official address.
- 12.07 A Bid by a joint venture must be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.
- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 12.11 The Bid must contain evidence of Bidder's authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder's licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.

#### **ARTICLE 13—BASIS OF BID**

##### 13.01 *Lump Sum*

- A. Bidders must submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents and as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate.
- B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form.

##### 13.02 *Unit Price*

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

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

13.03 *Allowances*

- A. For cash allowances the Bid price must include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

**ARTICLE 14—SUBMITTAL OF BID**

14.01 The Bidding Documents include one separate unbound copy of the Bid Form, and, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 2 of the Bid Form.

14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the invitation to bid and must be enclosed in a plainly marked package with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, the name and address of Bidder, and must be accompanied by the Bid security and other required documents. Bid's uploaded into OWNER's electronic bidding platform COUPA, and Bids will only be accepted via the Bidder's unique COUPA link previously sent to Bidder.

If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid must be addressed to the location designated in the invitation to bid and arrive on or before the bid opening timeframe as established within the bid documents or addenda.

14.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

**ARTICLE 15—MODIFICATION AND WITHDRAWAL OF BID**

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

15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.

15.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may

withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

#### **ARTICLE 16—OPENING OF BIDS**

- 16.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, and posted publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

#### **ARTICLE 17—BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

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

#### **ARTICLE 18—EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 18.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 18.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.
- 18.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.
- 18.04 If Owner awards the contract for the Work, such award will be to the responsible Bidder whose Bid is in the best interests of the Project.
- 18.05 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 18.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
- 18.07 Discrepancies in the multiplication of units of Work and Unit Prices will be resolved in favor of the Unit Prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 18.08 Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

- 18.09 If required by Owner, Bidder shall provide the following breakdown of the Lump Sum Bid within five (5) days of the date of the bid opening broken down by major work item, organized by Construction Specification Institute (CSI) division and major process components.

#### **ARTICLE 19—BONDS AND INSURANCE**

- 19.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by required bonds and insurance documentation.
- 19.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

#### **ARTICLE 20—SIGNING OF AGREEMENT**

- 20.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within fifteen (15) days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Provisions of Appendix II to 2 CFR Part 200, Subpart D – Contract Provisions for Non-Federal Entity Contracts under Federal Awards (which includes, but is not limited to, Equal Opportunity Clause under 41 CFR § 60-1.4(b), Davis Bacon federal prevailing wage requirements, Copeland Anti-kickback requirements, Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708) compliance, Clean Air Act and Federal Water Pollution Control Act compliance, federal debarment and suspension rules, Byrd Anti-Lobbying Amendment, property trust relationship 2 CFR § 200.316), domestic preference for procurements (2 CFR § 200.321) and procurement of recovered materials (2 CFR § 200.323).
- 20.02 Within ten (10) days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

#### **ARTICLE 21—SALES AND USE TAXES**

- 21.01 Owner may be exempt from some of the CA state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes must not be included in the Bid. Refer to Paragraph SC-7.08 of the Supplementary Conditions for additional information.

#### **ARTICLE 22 – FUNDS SOURCE AND ADDITIONAL INFORMATION**

- 22.01 The funds used to pay for this project are part of the 2021 American Rescue Plan Act, and as such this entire project is subject to the prevailing wages rates as listed with the CA DIR site. In addition to the pervious statd requirements; to be considered responsive, all potential bidders must also:
- **Not be listed on the federal of CA debarment list**
  - **Sign the non-Collusion affidavit and provide with Bid**

- **Proof of contractor and subcontractor public works contractor registration**
- **Ensure bid meets the prevailing wages and if awarded contract maintain and submit certified payroll records**
- **Follow apprenticeship requirements**
- **Ensure materials provided meet the Buy America Act requirements and provide proof with bid and domestic preference for procurements (2 CFR § 200.321).**

**22.02 Buy America Provisions**

- A. Buy America policy (see 23 CFR 635.410) requires a domestic manufacturing process for all steel or iron products that are permanently incorporated in a federal-aid highway construction project. Federal regulations allow an exemption for minor quantities (0.1% of the total contract amount or \$2,500, whichever is greater) of non-domestic steel or iron products.
- B. When a product manufactured predominantly of steel or iron material is identified in the contract by name and/or manufacturer, determine whether the product is, or is not, manufactured in the United States.
- C. Include the Special Provision developed for the purpose of indicating whether a predominantly steel or iron product called for in the contract by name and/or manufacturer is manufactured in the United States and domestic preference for procurements (2 CFR § 200.321). If unable to determine whether or not a product is manufactured in the U.S., list the product as not manufactured in the U.S.

# BID FORM

## CALIFORNIA-AMERICAN WATER COMPANY SOUTHERN DISTRICT - CITY OF BELLFLOWER

### SYSTEM 4 WATER MAIN REPLACEMENT PROJECT (MAPLEWOOD ST, CLOVERWOOD ST, GLANDON ST, ARDIS AVE, BLAINE AVE)

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

#### ARTICLE 1—OWNER AND BIDDER

- 1.01 This Bid is submitted to: California-American Water Company, 655 West Broadway, Suite 1410, San Diego, CA 92101 Attn: Manager, Procurement
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

#### ARTICLE 2—ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
  - A. Required Bid security;
  - B. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids;
  - C. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
  - D. Appendix A Diverse Business Enterprise Requirement Statement of the Supplementary Conditions completely filled out, signed and submitted with bid
  - E. Appendix E Non-Collusion Affidavit of the Supplementary Conditions filled out, signed and submitted with bid.
  - F. Provide Proof of registration as a public works contractor and subcontractors within the State of California
  - G. Provide Proof from the manufacturer the materials offered meet the Buy America Act Provisions and domestic preference for procurements (2 CFR § 200.321).

#### ARTICLE 3—BASIS OF BID

- 3.01 *Lump Sum Bids*
  - A. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum (stipulated) price(s), together with any Unit Prices indicated in Paragraph 3.02:
    1. Lump Sum Contract Price

Bidder: \_\_\_\_\_

Lump Sum Bid Price	\$
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B. All specified cash allowance(s) are included in the price(s) set forth above

3.02 Supplemental Unit Price Bids

A. Bidder will perform the following Work at the indicated unit prices:

Item No.	Spec. Section	Item Quantity	Item Unit	Item Description	Unit Cost	Total Item Cost
1	-	1	LS	General Conditions & Mobilization		
2	-	1	LS	City of Bellflower ROW Permit Fees	\$10,000*	\$10,000*
3	-	1	LS	Contract Bonds		
4	01570	1	LS	Traffic Control, Detours & Access		
5	02540	1	LS	Dust Control		
6	-	1	LS	Clearing, Grubbing & Demolition		
7	-	1	LS	Implementation of Storm Water BMPs		
8	15065	6,115	LF	8" DIP Class 350 WM and Fittings, Trenching Complete		
9	15150	24	EA	8" RW Gate Valve, Valve Box & Cover		
10	15150	1	EA	6" RW Gate Valve, Valve Box & Cover		
11	15150	5	EA	4" RW Gate Valve, Valve Box & Cover		
12	15000	165	EA	1" Water Service		
13	15150 15181	8	EA	Fire Hydrant		
14	15065	7	EA	Connection to Existing Main		
15	City Std Dwgs	6,115	LF	Trench Resurfacing		
16	01500	1	LS	Install Tack Welded Temporary Trench Steel Plates as Needed per City of Bellflower		
17	-	1	LS	Removal of Pipe, Valves & Ancillary Items		
18	City Std Dwgs	1	LS	Curb, Gutter, and Sidewalk Restoration		
19	15025 15030	1	LS	Disinfecting, Flushing, and Testing Pipelines		
20	-	1	LS	Geotechnical Testing Services by Independent Testing Laboratory Selected by CAW	\$5,000*	\$5,000*
21	01000	1	LS	Miscellaneous Facilities & Operations		
<b>TOTAL BID AMOUNT</b>						

Bidder: \_\_\_\_\_

B. Bidder acknowledges that:

1. each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
2. estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

3.03 *Total Bid Price (Lump Sum and Unit Prices)*

Total Bid Price (Total of all Lump Sum and Unit Price Bids)	\$
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3.04 *Alternates*

Bidder will provide alternative equipment and/or materials (if any) as listed below in lieu of the specified equipment and/or materials in accordance with the General Requirements in Specification Section 11 23 00 – Alternates.

Owner may select items of any manufacturer or supplier listed in the following tabulation. Bidder will furnish and install such items selected for a Contract Price equal to the Lump Sum Contract Price, adjusted by the amount of deduction for the substituted item(s).

In the following tabulation, the name of the manufacturer or supplier entered on line (a) is the name of the manufacturer or supplier named in the Specifications for that item and the cost for providing that specified item is included in the Lump Sum Contract Price. If the name of the manufacturer or supplier is not shown on line (a), it is understood that the Lump Sum Contract Price includes the cost for providing the item furnished by the manufacturer or supplier first named in that portion of the Specification pertaining to the equipment and/or materials being substituted.

Names of alternative manufacturers and suppliers shown on lines (b) and (c) with the respective prices to be deducted from the Lump Sum Contract Price should the Owner elect to accept the alternative items.



**ALTERNATIVE EQUIPMENT AND/OR MATERIALS**

Spec. Section	Item and Manufacturer or Supplier	Deduct from Base Bid
_____	(a) _____	_____
	(b) _____	_____
	(c) _____	_____
_____	(a) _____	_____
	(b) _____	_____
	(c) _____	_____
_____	(a) _____	_____
	(b) _____	_____
	(c) _____	_____

**ARTICLE 4—TIME OF COMPLETION**

- 4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 16.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

**ARTICLE 5—BIDDER’S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA**

5.01 *Bid Acceptance Period*

- A. This Bid will remain subject to acceptance for sixty **(60)** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

- A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

- A. Bidder hereby acknowledges receipt of the following Addenda

Addendum Number	Addendum Date

Bidder: \_\_\_\_\_

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**ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Bidder’s Representations*

- A. In submitting this Bid, Bidder represents the following:
  - 1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
  - 2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  - 5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - 6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder’s (Contractor’s) safety precautions and programs.
  - 7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
  - 9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - 10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6.02 *Bidder's Certifications*

A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 6.02.A:
  - a. 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.
  - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
  - c. 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.
  - d. 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.

BIDDER hereby submits this Bid as set forth above:

Bidder:

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(typed or printed)*

*If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.*

Attest: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

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

Bidder's Contact:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

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

Bidder's Contractor License No.: (if applicable) \_\_\_\_\_

## BID BOND

BY THIS AGREEMENT, we, **[Bidder Name]**, as Principal and **[Surety Name]** of the City of **[City]**, State of **[State]**, a corporation existing under the laws and the State of **[State]**, and authorized to transact business in the State of **[State]**, as Surety, are held and firmly bound unto **California-American Water Company**, 655 West Broadway, Suite 1410, San Diego, CA 92101, hereinafter called the Obligee, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying Bid dated **[Date]**, for the California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Projects COUPA Event No. 6962;

NOW, THEREFORE, the condition of this Bond shall be such that if the Principal, upon due acceptance of said Bid and award of a Contract to him by the Obligee, bonds with a good and sufficient surety as may be required by the Contract Documents, and furnishes the Obligee proper evidence of effectiveness of insurance coverage, respectively, within the time, in the forms and in the amounts, as appropriate, required by the Contract Documents, and enters into a Contract with the Obligee in accordance with the Contract Documents then this Bond shall be void; otherwise, the Bond shall be and shall remain in full force and effect.

The Principal and the Surety hereby stipulate and agree that if the Principal fails to perform all conditions of this Bond, they will pay the sum of the Bond to the Obligee as fixed, liquidated damages.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of time within which the Obligee may accept such Bid; and said Surety does hereby waive notice of any such extension. It is the intention of the parties to be legally bound by this instrument.

IN WITNESS WHEREOF, the above parties, intending to be legally bound, have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned and representative, pursuant to authority of its governing.

ATTEST:

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
**[Bidder Name]**

By \_\_\_\_\_

**[Name and Title]**

\_\_\_\_\_  
**[Bidder Address]**

ATTEST:

\_\_\_\_\_

Secretary

\_\_\_\_\_  
**[Surety Name]**

By \_\_\_\_\_

**[Name and Title]**

\_\_\_\_\_  
Attorney-In-Fact

NOTE: This agreement must be properly executed and must accompany the Bid Bond as proposal security.

AGREEMENT OF Surety

BY THIS AGREEMENT we, **[Surety Name]**, as Surety, a corporation existing under the laws of the State of **[State]**, and authorized to transact business in the State of **[State]**, hereby agree to execute, within the time limit specified in the Contract, the Bonds, in the forms and in the amounts required for the faithful performance and proper fulfillment of the Contract for Construction of California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Projects COUPA Event No. 6962, on behalf of **[Bidder Name]**, hereinafter called the Bidder, provided that the Notice of Award be delivered to the Bidder within the time period that Bids are subject to acceptance or within any extended period for which the Bidder agrees not to withdraw his bid; and the Surety further agrees that should the Surety, after notification of such award, omit or refuse to execute the required bonds, then the Surety shall pay to the Obligee the amount of the Bid Bond.

**[Surety Name]**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**[Name and Title]**

(AFFIX CORPORATE SEAL)

\_\_\_\_\_  
**[Surety Address]**



**CALIFORNIA**  
**AMERICAN WATER**

**CALIFORNIA-AMERICAN WATER COMPANY**

**CONSTRUCTION AGREEMENT**

**2021 EDITION**

**Agreement Number: XXXXX**



## CONSTRUCTION AGREEMENT

This Construction Agreement (the "Agreement") is made and entered into as of this [ ] day of [ ], 20[ ] (the "Effective Date"), by and between California-American Water Company, a corporation with its principal office at 655 West Broadway, Suite 1410, San Diego, CA 92101 ("Owner"), and [ ], a [ ] [corporation/limited liability company/limited partnership] with its principal office at [ ] ("Contractor"). Owner and Contractor are collectively referred to herein as the "Parties" and individually referred to herein as a "Party."

The capitalized terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

### ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents as defined in Article 6. The Work is generally described as follows: **California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Project, Consisting of: Maplewood Street, Cloverwood Street, Glandon Street, Ardis Avenue and Blaine Avenue areas.**

### ARTICLE 2—ENGINEER

2.01 Dante Alday ("Engineer") shall act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

### ARTICLE 3—CONTRACT TIMES

3.01 Time is of the Essence.

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.

3.02 Contract Times: Dates

A. Contractor shall achieve Substantial Completion of the Work on or before November 31, 2023, and achieve Final Completion on or before December 31, 2023.

3.03 Liquidated Damages

A. Contractor and Owner acknowledge that time is of the essence and that Owner will suffer financial and other losses if the Work is not completed, or any applicable Milestones are not achieved, within the Contract Times. The Parties also recognize the delays, expense, and difficulties involved in proving, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner \$750.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 3.02 for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work*: Contractor shall pay Owner \$750.00 for each day that expires after the time specified in Paragraph 3.02 for Final Completion without Final Completion being obtained.
  3. Liquidated damages for failing to timely attain Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for Special Damages.
- C. Contractor shall not commence Work pursuant to this Agreement until Owner issues a Notice to Proceed.

#### ARTICLE 4—CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, as follows:

- A. For all Work other than Unit Price Work, a lump sum price of: \$[Number]
- All specific cash allowances are included in the above price in accordance with Paragraph 14.02 of the General Conditions.
- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
- C. **Prevailing Wages.** Contractor is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well as Title 8, Section 16000 et seq. of the California Code of Regulations ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the Total Compensation is \$1,000 or more, Contractor and its subContractors shall fully comply with the Prevailing Wage Laws for their employees and any others to whom such laws are applicable. Contractor and its subContractors shall also be responsible for any and all violations and fines imposed on them pursuant to the Prevailing Wage Laws. Pursuant to SB 854, which amended the Prevailing Wage Laws, this Agreement would also be subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR"). Beginning April 1, 2015, no Contractor or subContractor may be awarded this Agreement unless registered with the DIR pursuant to Labor Code Section 1725.5. The Owner will report all necessary agreements to the DIR as required by the Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. It is most efficient for the Contractor to obtain a copy of the prevailing wages in effect at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the DIR located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative,

Contractor may obtain a copy of the prevailing wages from the Owner's Representative. Contractor shall defend, indemnify and hold the Owner, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

- D. **Apprenticeable Crafts.** If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works when Contractor employs workmen in an apprenticeable craft or trade. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor.
- E. **Certified Payroll.** Contractor and all subcontractors shall submit certified payroll records to the California Labor Commissioner using DIR's electronic certified payroll reporting system.

## ARTICLE 5—PAYMENT PROCEDURES

### 5.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment on or about the twenty fifth (25<sup>th</sup>) day of each month in accordance with Article 16 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 5.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment of each month during performance of the Work provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract Documents.
- B. To reflect the cost of project closeout, Owner shall retain ten (10%) percent of the Contract Price ("Project Retainage") until the presentation of Contractor's final invoice after Final Completion has been obtained.

### 5.03 Final Payment

- A. Contractor shall include the written consent of surety with the final invoice submitted for payment after Final Completion is achieved. Upon acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 16.06 of the General Conditions.

#### 5.04 Consent of Surety

Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

### ARTICLE 6—CONTRACT DOCUMENTS

#### 6.01 Contents

The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
  - a. Performance bond (together with power of attorney), identified as Exhibit A
  - b. Payment bond (together with power of attorney), identified as Exhibit B
3. General Conditions.
4. Supplementary Conditions.
5. Technical Specifications (not attached but incorporated by reference) consisting of **119 pages**, date June 27, 2023 with each sheet bearing the following general title: Bellflower Water Main Replacements City of Bellflower, System 4, Glandon St, Cloverwood St, Maplewood St, Ardis Ave, Charlemagne St, Blaine Ave, Somerset Blvd.
6. Drawings titled “Bellflower Water Main Replacement – System 4 City of Bellflower Maplewood St, Cloverwood St, Glandon St, Ardis Ave, Blain Ave and Somerset Blvd Water Main Replacement Project” consisting of 25 sheets.
7. Bid Addenda (numbers **[Number]** to **[Number]**, inclusive).
8. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor’s Bid (pages **[Number]** to **[Number]**, inclusive), identified as Exhibit **[Letter]**.
  - b. Documentation submitted by Contractor prior to Notice of Award (pages **[Number]** to **[Number]**, inclusive) identified as Exhibit **[Letter]**.
  - c. **[List other required attachments (if any), e.g., documents required by funding agencies or lending agencies]**, identified as Exhibit **[Letter]**.
  - d. Non-collusion affidavit
  - e. Contractor Diversity Requirement and Reporting
9. 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, if any.
  - b. Work Change Directives.
  - c. Change Orders.

- d. Field Orders, if any.
- 6.02 The Contract Documents listed in Paragraph 6.01.A are attached to this Agreement (except as expressly noted otherwise above).
- 6.03 There are no Contract Documents other than those listed above in this Article 6.
- 6.04 The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 7—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **7.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor is a corporation, limited liability company, partnership, or limited partnership (as applicable) that is duly organized, validly existing, and in good standing under the laws of the state of its organization or formation and has full power and authority to enter into this Contract and perform its obligations hereunder. This Contract has been duly authorized, constitutes the legally binding obligation of Contractor, enforceable against Contractor in accordance with its terms and does not conflict with or violate any other agreement to which Contractor is a party.
  - 2. Contractor is, and at all times will act as, an independent contractor, and not as an employee, agent or joint venturer of Owner, and Contractor shall have no power to bind or otherwise obligate Owner. Contractor represents that any and all personnel provided to Owner as a result of this Contract or any subsequent contract(s) will be considered solely employees of Contractor. Contractor's employees shall not be entitled to participate in any of Owner's employee benefit plans, including but not limited to retirement plans (such as pensions, 401(k), and profit sharing), stock purchase plans, deferred compensation plans, health and welfare benefits, disability benefits, paid time off (such as vacation, sick, personal, sabbatical), severance pay and other like plans and programs. Contractor has exclusive liability for all contributions, taxes, deposits, and payments required of employers by Federal, state, or local governments with respect to wages, salaries, remuneration, or benefits paid or owed by Contractor to any of Contractor's employees or others who perform work or render services for Contractor. Contractor has exclusive liability for all income, sales, use or other taxes applicable to materials, equipment, labor, or performance of services pursuant to this Contract.
  - 3. Contractor is, and at all times during the performance of the Work will be, duly licensed or qualified and in good standing under the laws of the state where the Work is to be performed and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder. Contractor and its subcontractors have all of the required permits, technical and financial ability, skills, and capacity necessary to perform the Work in a timely and professional manner in accordance with the Contract Documents and applicable Laws and Regulations.

4. There are no suits or proceedings pending or, to Contractor's knowledge, threatened against Contractor or any subcontractor before any court of law which could have a material adverse effect on each of their ability to perform its or their obligations under this Contract. Contractor shall, and shall ensure that its subcontractors, maintain all such documentation as may be required by applicable Laws and Regulations for the legal employment of its and their employees, including any visas and work permits.
5. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
6. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
7. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. Contractor has taken all reasonable action to identify any Site Conditions which may affect the Project or Contractor's performance pursuant to this Contract. Contractor acknowledges that any information provided by Owner regarding the Site is for information only and Owner is not responsible for any inaccuracy or incompleteness of information provided by a third party.
8. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
9. Contractor has examined and carefully studied the Contract Documents and has considered (i) the information known to Contractor itself; (ii) information commonly known to contractors doing business in the locality of the Site; (iii) information and observations obtained from visits to the Site; and (iv) the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
  - a. The cost, progress, and performance of the Work;
  - b. The completeness, accuracy and sufficiency of the Contract Documents to describe the Work;
  - c. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  - d. Contractor's safety precautions and programs.
10. Based on the information and observations referred to in the preceding paragraph, Contractor (i) agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract; and (ii) has determined that the Contract Documents are sufficient to

indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor is aware of the general nature of work to be performed by others at the Site that relates to the Work as indicated in the Contract Documents.
12. 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.
13. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work as and when required by the Contract Documents.
14. Contractor shall comply with all applicable Owner policies (including, but not limited to, those regarding facility and computer security and access, professional and ethical standards, hazardous materials, safety, and performance of work and conduct on, or security of, any premises under Owner's control). Copies of such policies shall be furnished to Contractor upon request. Contractor shall conform its business dealings with Owner in accordance with the underlying principles of Owner's then current "Code of Ethics," a copy of which is currently available on Owner's website at <https://ir.amwater.com/site/Corporate-Governance/governance-documents> and Owner's current "Supplier Code of Conduct" a copy of which is currently available on Owner's website at <https://amwater.com/corp/partners-suppliers/suppliers>.
15. Contractor shall perform the Work in a manner which is consistent with the skill and care which is ordinarily used by members of the same profession practicing under similar conditions at the same time and locality.
16. Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete its obligations under this Contract. Contractor or its subcontractors are able to furnish the equipment, labor, and other services needed for the Work.
17. Contractor shall comply with Provisions of Appendix II to 2 CFR Part 200, Subpart D – Contract Provisions for Non-Federal Entity Contracts under Federal Awards (which includes, but is not limited to, Equal Opportunity Clause under 41 CFR § 60-1.4(b), Davis Bacon federal prevailing wage requirements, Copeland Anti-kickback requirements, Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708) compliance, Clean Air Act and Federal Water Pollution Control Act compliance, federal debarment and suspension rules, Byrd Anti-Lobbying Amendment, property trust relationship(2 CFR § 200.316), domestic preference for procurements (2 CFR § 200.321) and procurement of recovered materials (2 CFR § 200.323).

#### 7.02 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 7.02:

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.

#### 7.03 Confidential Information

- A. “Confidential Information” means all information about the Owner or Owner’s assets (owned or managed) or its Affiliates furnished by Owner or its Affiliates, or their respective directors, officers, employees, agents or other representatives, whether furnished before or after the date hereof, or furnished orally or in writing or gathered by inspection, and regardless of whether specifically identified as “confidential”, together with analyses, compilations, studies or other documents prepared by Engineer, or by Engineer’s Affiliates, consulting engineers or subcontractors or their respective directors, officers, employees, (such Affiliates, consulting engineers, subcontractors or other persons collectively referred to herein as “Engineer’s Personnel”) which contain or otherwise reflect such information or Engineer’s or Engineer’s Personnel review of such information.
  1. Confidential Information does not include information that:
    - a. is now generally known in the industry;
    - b. was previously in the possession or custody of Engineer or Engineer’s Personnel and not obtained from Owner; or
    - c. was independently developed by Engineer or Engineer’s Personnel.

#### 7.04 Use of Confidential Information

- A. Contractor may not use any Confidential Information for any purpose other than in performing the professional services contemplated under this Contract (the “Permitted Use”). Contractor will seek to prevent any inadvertent disclosure or unintended use of Confidential information that could be deemed as beyond the Permitted Use. Contractor will take appropriate steps to keep confidential information confidential and not use Confidential Information in a way detrimental to the Owner. Without the prior written consent of Owner, neither Contractor nor Contractor’s Personnel may:
  1. distribute or disclose to any person or entity any of the Confidential Information, or any facts related thereto (other than as permitted herein);



2. permit any person or entity to have access to the Confidential Information (other than as permitted herein); or
  3. use the Confidential Information for any purpose other than the Permitted Use.
- B. Contractor may transmit the Confidential Information only to Contractor's Personnel who have a legitimate need to know the Confidential Information for the sole purpose of the Permitted Use and who will (a) be advised by Contractor of the provisions of this Article 7 and (b) agree with Contractor to be bound by the provisions hereof. Contractor is responsible for any breach of this Paragraph 7.04 by Contractor's Personnel (including employees of Contractor or Contractor's Personnel who, after the first date of disclosure of Confidential Information hereunder, become former employees). Contractor will, at its sole expense, take all reasonable measures, including but not limited to court proceedings, to restrain Contractor's Personnel (and former employees of Contractor or Contractor's Personnel) from unauthorized disclosure or use of the Confidential Information.
- C. Contractor hereby acknowledges that if any material breach of this Paragraph 7.04 occurs, Owner could be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which it may be entitled in law or equity, Owner is entitled to an injunction or injunctions to prevent breaches of either Paragraph 7.03 or Paragraph 7.04 or to compel specific performance of Paragraphs 7.03 or 7.04, and Contractor may not oppose the granting of such relief on the basis that monetary damages are adequate. Contractor will reimburse Owner for all costs and expenses, including reasonable attorney's fees and expenses, incurred by it in protecting its rights or enforcing Contractor's or the Contractor's Personnel's obligations under Paragraphs 7.03 or 7.04.
- D. No rights or licenses under patents, trademarks, or copyrights are granted or implied by any disclosure of Confidential Information. Confidential Information, and any and all authorized copies thereof, shall remain the property of Owner and shall be destroyed or returned if requested by Owner, provided that Contractor may keep one copy of Confidential

Information solely for recordkeeping so long as is necessary to comply with regulatory requirements.

7.05 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
  - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

7.06 Notices

- A. All notices required or permitted under this Contract from one party to another under or in connection with this Contract shall be in writing (or shall be made by a tele-communications device capable of creating a written record) and shall be delivered to Owner and Contractor at their contact addresses specified below. Notices shall be deemed given at the time they are actually received by the receiving party. Either party may change its address for notices under this Contract by giving written notice to the other party by the means specified in this section.

The respective addresses for giving notices hereunder are as follows:

To Contractor:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

To Owner:

Manager, Procurement  
655 West Broadway, Suite 1410  
San Diego, CA 92101

IN WITNESS WHEREOF, the undersigned have executed this Construction Agreement as of the date first written above.

Owner:

Contractor:

\_\_\_\_\_  
*(typed or printed name of organization)*

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

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

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

**PERFORMANCE BOND**

BY THIS AGREEMENT, **[Contractor Name]**, having an office at **[Contractor Address]**, as Principal, hereinafter called Contractor, and **[Surety Name]**, having an office at **[Surety Address]**, as Surety, hereinafter called Surety, are held and firmly bound unto the unto **California-American Water Company**, having an office at 655 West Broadway, Suite 1410, San Diego, CA 92101, as Obligee, hereinafter called Owner, in the amount of **[Amount]** (\$ **[Amount]**), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrations, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated **[Date]**, entered into a Contract with the Owner for the construction of the project entitled entitled California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Projects, in accordance with Drawings and Specifications prepared by Blair, Church and Flynn Consulting Engineers, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Contractor shall be and declared by Owner to be in default under the Contract, the Surety shall promptly remedy the default, or shall arrange for the performance of the Contractor's obligations under the Contract in accordance with its terms and conditions. Otherwise, after reasonable notice to the Surety, the Owner may arrange for the performance of the Contractor's obligations under the Contract and, if so, the Surety shall pay to the Owner any cost to complete the work that exceeds the balance of the Contract price up to an amount equaling the penal sum of this bond. The balance of the Contract price is the total amount payable by the Owner to the Contractor under the Contract and any amendments thereto, less the amount already properly paid by the Owner to the Contractor. The Surety is liable for any damages arising from the Contractor's default, including delay, consequential and/or liquidated damages.

The Surety hereby waives notice of any alteration or extension of time made by the Owner. Termination of the Contractor by the Owner is not a condition precedent of this bond.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due or before the expiration of two (2) years from the date of substantial completion of the project or before the expiration of two (2) years from the date the Contractor is declared to be in default, whichever is latest.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_  
[Contractor Name] (SEAL)

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

By \_\_\_\_\_

\_\_\_\_\_  
[Name and Title]

WITNESS:

\_\_\_\_\_  
[Surety Name] (SEAL)

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

By \_\_\_\_\_  
(Attach Power of Attorney)

\_\_\_\_\_  
[Name and Title]

## LABOR AND MATERIAL PAYMENT BOND

BY THIS AGREEMENT, we, **[Contractor Name]**, having an office at **[Contractor Address]**, as Principal, hereinafter called Contractor, and **[Surety Name]**, having an office at **[Surety Address]**, as Surety, hereinafter called Surety, are held and firmly bound unto **California-American Water Company**, having an office at 655 West Broadway, Suite 1410, San Diego, CA 92101, as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined in the amount of **[Amount]** (\$ **[Amount]**), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated **[Date]**, entered into a Contract with the Owner for the construction of the project entitled California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Project, in accordance with Drawings and Specifications prepared by Blair, Church and Flynn Engineering Consultants which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly make payment of all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however to the following conditions:

1. A claimant is defined as one having a direct contract with the Contractor or with a Subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
2. The above named Contractor and Surety hereby jointly and severally agreed with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a) Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following: the Contractor, the Owner or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor, Owner or Surety, at any place where an office is regularly maintained for the transaction of

business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

- b) After the expiration of one (1) year following the date on which Contractor ceased Work on said Contract or after the expiration of one (1) year following the Date of Substantial Completion of the Project, whichever is later, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, on any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
**[Contractor Name]** (SEAL)

By \_\_\_\_\_

\_\_\_\_\_  
**[Name & Title]**

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
**[Surety Name]** (SEAL)

By \_\_\_\_\_

(Attach Power of Attorney)

\_\_\_\_\_  
**[Name and Title]**



# AMERICAN WATER

**AMERICAN WATER  
STANDARD GENERAL CONDITIONS  
OF THE CONSTRUCTION CONTRACT  
2021 Edition**

**Issued By  
American Water  
Camden, New Jersey**

The American Water Standard General Conditions of the Construction Contract, 2021 ("General Conditions"), incorporate terms and conditions that are consistent with American Water practices and policies. Only the General Conditions contained herein are a part of the Contract Documents for the project.



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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## 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. *Affiliate*— Entities directly or indirectly controlled by, controlling, or under common control with a Party.
  3. *Agreement*—The written instrument concerning the Work, 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.
  4. *Application for Payment*—The form acceptable to Owner which is to be used by Contractor to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  5. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—An individual or entity that submits a Bid to Owner.
  7. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  8. *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.
  9. *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 Agreement, issued on or after the Effective Date of the Contract.
  10. *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; 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.
  11. *Claim*—A demand or assertion by one party directly to the other party seeking: (a) an adjustment of Contract Price or Contract Times; contesting an initial decision by

Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; (b) contesting Engineer's decision regarding a Change Proposal; (c) seeking resolution of a contractual issue that Engineer has declined to address; (d) concerning disputes arising after Engineer has issued a recommendation of final payment; or (e) seeking other relief with respect to the terms of the Contract.

12. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to: (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
13. *Contract* – The entire and integrated contract between Owner and Contractor concerning the Work.
14. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
15. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
16. *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.
17. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
18. *Cost of the Work*—See Paragraph 14.01 for definition.
19. *Defect or Defective*—Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents.
20. *Drawings*—The part of the Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
21. *Effective Date of the Contract* —The date, indicated in the Agreement, on which the Contract becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
22. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

23. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
24. *Engineer*—The individual or entity designated as such in the Agreement.
25. *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.
26. *Final Completion*—The point after Substantial Completion when no other Work remains to complete the Project, including the satisfaction of all items set forth in the list of items to be completed and corrected provided by Owner or Engineer, and all Defective Work has been corrected to Owner’s and Engineer’s satisfaction.
27. *Force Majeure*—Causes that are beyond a party’s reasonable control and that is not caused by such party’s negligence including, but not limited to, acts of God or the public enemy, fire, flood, civil disturbance, pandemic, or government mandated shutdown.
28. *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.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
29. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all federal, state or local governmental bodies, agencies, authorities, and courts having jurisdiction.
30. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
31. *Losses*—All claims, demands, actions, proceedings, judgments, losses, damages, costs, and expenses (which expenses include but are not limited to all professional fees and charges of engineers, architects, attorneys and other professionals, and all other court or other dispute resolution expenses).



32. *Milestone*—A principal event in the performance of the Work that the Contract Documents require Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
33. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
34. *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.
35. *Owner*—The American Water System entity designated as such in the Agreement.
36. *Owner Parties* – Owner, Owner’s Affiliates, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
37. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
38. *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.
39. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
40. *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.
41. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
42. *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.
43. *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.
44. *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 or areas furnished by Owner which are designated for the use of Contractor.
45. *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.

46. *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.
47. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
48. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the 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 of such Work.
49. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
50. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
51. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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.
52. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either: (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or proximate to the Site including existing surface or subsurface structures (except Underground Facilities), or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, 5.05 and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
53. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
54. *Unit Price Work*—Work to be paid for on the basis of unit prices.
55. *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.
56. *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 Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Computation of Time* – When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
- C. *Intent of Certain Terms or Adjectives*: 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 11 or any other provision of the Contract Documents.

- D. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means 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 Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Agreement requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, and before any Work at the Site is started, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Supplementary Conditions), the certificates, endorsements, 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 signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), 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 one fully signed copy of the Agreement in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

### 2.03 *Before Starting Construction*

- A. Preliminary Schedules: Within ten (10) days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (number 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 *Acceptance of Schedules*

- A. At least ten (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 the schedules submitted in accordance with Paragraph 2.03.A.
  - 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. Owner must approve the Schedule of Values.
  - 4. If a schedule is not acceptable, Contractor will have an additional ten (10) days to revise and resubmit the schedule.

5. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated in the Agreement, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

**ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will 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. Any ambiguities in the Contract Documents shall be interpreted in the manner which provides the best option to Owner.
- F. Nothing in the Contract Documents creates:
  1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  2. 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.

### 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, means 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, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. Reporting Discrepancies

1. *Contractor's 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.
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 7.13) 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.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents prepared by or for Engineer 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 shall submit to the Engineer, and Owner as applicable, in writing 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.
- 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.
- 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 notify Owner and Contractor in writing 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 13.

### 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 versions, 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; 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 precludes 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 (30<sup>th</sup>) 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 thirty (30) days after the Effective Date of the Contract. In no event will Owner have any obligations or duties to Contractor under the Contract until Contract Times commence to run.

### 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 may be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points and property monuments 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 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance 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 must be submitted in accordance with the requirements of Article 12.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, 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 assert a Claim for an equitable adjustment in Contract Price or 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 assert a claim for an equitable adjustment in Contract Times. Any adjustment given to Contractor will 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 a Claim for 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, pandemics and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts of war or terrorism; and
  - 4. Government-mandated shutdowns.
- D. Any adjustment of Contract Times or Contract Price is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  - 1. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 12.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  - 1. The circumstances that form the basis for the requested adjustment;
  - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  - 5. The impact on Contract Price, in accordance with the provisions of Paragraph 12.07.
- F. Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

**ARTICLE 5 - SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 *Availability of Lands*

- A. Owner shall furnish the Site.
- 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 worker activity to the Site, proximate 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, or to improvements, structures, utilities, or similar facilities located at such adjacent lands 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; and (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 in a court of competent jurisdiction. Contractor shall indemnify, defend and hold harmless Owner Parties as set forth in Paragraph 7.16.

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 will 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. No later than Final Completion, 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 consist of:

1. Those reports in Owner's possession of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings in Owner's possession of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
  3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data:* Technical Data provided by Owner as part of the Supplemental Conditions is provided for transparency and information only. Owner does not warrant the accuracy or completeness of Technical Data prepared by third parties. Such reports and drawings are not Contract Documents.
- D. *Limitations of Other Data and Documents:* Contractor may not rely upon or make any claim against Owner, Owner's Affiliates, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of any Technical Data 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;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in the Technical Data;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. 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 will necessitate a change in Contract Price or Contract Time or constitutes a Hazardous Environmental Condition, 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 7.13), 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 or to protect public health and safety) 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 whether it is necessary for Owner to obtain 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; 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. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. Possible Price and Times Adjustments
  - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related 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 14.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D, 4.05.E and 4.05.F.
  - 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;
    - 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 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, then any such adjustment will 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, no later than thirty

(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:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
2. complying with applicable state and local utility damage prevention Laws and Regulations;
3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
5. 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 on the Drawings, or was not shown or indicated on the Drawings 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 7.13), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review:*

Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy or could not have reasonably been discovered by Contractor;
2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; 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
4. 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. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. Possible Price and Times Adjustments
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related 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. 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 14.03;
    - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D, 4.05.E and 4.05.F; and
    - c. 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, then any such adjustment will 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, no later than thirty (30) days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  - 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data: (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports in Owner's possession relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
  2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; 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 on the accuracy of the Technical Data as defined in Paragraph 1.01.A.51. 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;
  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 7.13); 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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within thirty (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. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 4.05.F, 12.07, and 12.08.
- 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 12. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 9.
- I. 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 agrees to include in its subcontracts with major Subcontractors a requirement for such Subcontractors to furnish a performance bond and a payment bond, each in an amount at least equal to the subcontract price, and each naming the Owner and Contractor as co-obligees, as security for the faithful performance and payment of all such Subcontractors' obligations under their respective subcontract documents. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 16.08, whichever is later, except as provided otherwise by Laws or Regulations.
- B. All bonds furnished in compliance with the above shall be executed by sureties having a rating of "A" by the most recent A.M. Best's Key Rating Guide and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. AIA Bond Form 311 shall be used. 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 must show that it is effective on the date the agent or attorney-in-

fact signed the accompanying bond. In the event the terms of any bond are inconsistent with the terms of this Contract, this Contract shall control.

- C. Contractor shall and shall require its Subcontractors to obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- D. Contractor is not required to furnish a performance or labor and material payment bond at the time of award. If Owner requests at a later date that such bonds be furnished, Contractor will provide the bonds from a surety meeting the requirements of Paragraph 6.01.C above. In this case Contractors Fee will be increased in an amount equal to the premium paid for the bonds requested by Owner.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact): (1) any confidential premium or pricing information, and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact): (1) any confidential premium or pricing information, and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

- F. 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, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. 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.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain 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.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 17.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) 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 will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least ten (10) days prior written notice has been given to the purchasing policyholder. Within three (3) days of receipt of any such written notice, the

purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until Final Completion, and longer if expressly required elsewhere in this Contract, 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;
  - 4. apply with respect to the performance of the Work, whether such performance is 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; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  - 4. not seek contribution from insurance maintained by the additional insured; and
  - 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and

Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until Final Completion.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until Final Completion. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- 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 then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the insurance provisions of the Contract do not expressly require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. 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, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with the previous Paragraph (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer 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.
  - 1. 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, risks, 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 individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater 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.

2. None of the above waivers extends 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. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 16.04, after Substantial Completion pursuant to Paragraph 16.03, or after final payment pursuant to Paragraph 16.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. 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 all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 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 fifteen (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 6.04 shall maintain such proceeds in a segregated account,

and 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 the Agreement or applicable Laws and Regulations.

- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Contractor's Means and Methods of Construction**

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to: (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### **7.02 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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, acceptable to Owner, who will not be replaced without written authorization from Owner except under extraordinary circumstances.

### **7.03 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 maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will 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.

7.04 *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 must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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. Contractor shall not substitute any materials described in the Contract Documents without Owner's written permission in each instance.
- C. All materials and equipment must 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.

7.05 *Substitutes and "Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified, no like, equivalent, or equal, and no substitution whatsoever is permitted.

7.06 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers 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 or Supplier 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 (5) days.
- E. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within thirty (30) days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will 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 solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to a written agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer and specifically contains provisions whereby the Subcontractor or Supplier waives all rights against Owner and Contractor and all other individuals or entities identified in the Contract Documents to be listed as insureds or additional insureds for all Losses caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.
- N. Any Subcontractor shall abide by the requirements of 41 CFR 60-1.40, 41 CFR 60 250.5(a), 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a), and such requirements are hereby incorporated by reference. These regulations prohibit discrimination against individuals on the basis of certain characteristics, qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment for such individuals, qualified protected veterans and qualified individuals with disabilities.

#### 7.07 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. 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. Contractor shall indemnify, defend and hold harmless Owner Parties from and against any claims arising from or related to Contractor's failure to comply with this Paragraph 7.07.

#### 7.08 *Taxes*

- A. Unless otherwise provided in the Contract Documents, 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. Contractor has exclusive liability for all contributions, taxes, deposits, and payments required of employers by federal, state, or local governments with respect to wages, salaries, remuneration or benefits paid or owed by Contractor to any of Contractor's employees or others who perform work or render services for Contractor. Contractor has exclusive liability for all income, sales, use, or other taxes applicable to materials, equipment, labor, or performance of Services pursuant to this Contract.

#### 7.09 *Laws and Regulations*

- A. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- B. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- C. 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, defend and hold harmless Owner Parties 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 is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- D. Owner or Contractor may give written 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 thirty (30) days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.10 *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.

#### 7.11 *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.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. 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.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.11.C.2 or 7.11.C.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).
- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.

- G. Contractor shall register with Owner's designated third-party safety risk management company and obtain the appropriate approved safety status. Failure to achieve and maintain the required approval may result in Contractor being disqualified from consideration for award(s) and possible contract termination.
- H. Contractor shall comply with the applicable requirements of Owner's safety programs, including Owner's Cut-off and Ring Saw Operations Practice and any site-specific safety requirements. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- I. 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.
- J. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 16.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- K. Contractor's duties and responsibilities for safety and protection will 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.

#### 7.12 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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.

#### 7.13 *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 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

#### 7.14 *Submittals*

- A. Shop Drawing and Sample Requirements
  - 1. Before submitting a Shop Drawing or Sample, Contractor shall:
    - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

- b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) 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
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
- 1. Shop Drawings
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must 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 7.14.C.
  - 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 7.14.C.
  - 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. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of 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 will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.14.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 or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.14.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, will 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 or Sample will 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 7.14.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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 Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and

Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

- E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs
  - 1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
    - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  - 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.17.

7.15 *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. Work not conforming with the requirements of the Contract Documents shall be corrected promptly by Contractor after receipt of written notice from Owner. Contractor shall, whenever possible, pass through manufacturer warranties to Owner. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 16.08. The time in which Owner may enforce its warranty and guarantee rights hereunder is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period:
  - 1. Owner shall give Contractor written notice of any Defective Work within sixty (60) days of the discovery that such Work is Defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 13.01.B, such that any related Claim must be brought within thirty (30) days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes Defects or damage caused by:

1. abuse, or improper modification, 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.15:
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. The end of the correction period established in Paragraph 16.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of Defective Work by Owner.
- E. 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 will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.16 *Indemnification*

- A. Except as limited by Paragraph 7.16.B, to the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless the Owner Parties, with respect to any and all Losses which, in whole or in part, are attributable to, arise from or are related to: (a) the performance or furnishing of the Work, or (b) any obligation defined in this Contract of Contractor or any third party for whom Contractor is responsible, which Losses shall include, but not be limited to, Losses arising from: (1) bodily and/or mental injury, sickness or disease, or death; (2) injury to and/or destruction of tangible property (other than the Work itself), including but not limited to the loss of use resulting therefrom; (3) governmental fines and/or penalties; (4) corrective measures required under the Federal OSHA or any similar Laws and Regulations; (5) corrective measures and/or damages relating to any pollution condition and/or hazardous material, including but not limited to those corrective measures required under any Laws and Regulations; or (6) delay in completion of the Work.
- B. Contractor's obligation to indemnify, defend, and hold harmless an Owner Party shall not apply to any action or proceeding: (a) that alleges that the damages claimed result solely from the negligence, recklessness, or willful misconduct of the Owner Party(s) and from no



other act or failure to act of any others associated with the Work, or (b) if a final, non-appealable judgment is obtained which establishes that the damages claimed resulted solely from the negligence, recklessness, or willful misconduct of the Owner Party(s) and from no others associated with the Work, in which latter event the Contractor's obligation to defend the Owner Party(s) shall cease upon the date the judgement becomes final and non-appealable, and the Owner Party(s) shall thereupon reimburse the Contractor for its reasonable attorney's fees and costs incurred as a result of defending the Owner Party(s). In all other instances, including but not limited to where the damages claimed are alleged to result, in whole or in part, from the negligence, recklessness, intentional misconduct, or other acts or failure to act of the Contractor, or others associated with the Work (including but not limited to instances where the Contractor or such others are non-parties to the action or proceeding), the Contractor's obligations to indemnify, defend, and hold harmless the Owner Party(s) from all Losses remain in full force and effect.

- C. When the Contractor's obligation to defend an Owner Party herein arises, the Contractor shall defend through counsel approved in writing by such Owner Party, or in an action or proceeding involving more than one Owner Party, by such counsel approved in writing by a majority of the Owner Parties.
- D. For demands or claims asserted against any of the Owner Parties, by an employee of the Contractor, a Subcontractor, a sub-subcontractor, materialman, or supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations to indemnify, defend, and hold harmless any Owner Party, as set forth in this Paragraph, shall not be limited by any requirement or limitation on, or immunity or defense as to, the amount or types of damages, compensation or benefits payable to, or claims available to, the employee or other beneficiaries associated with the employee, and arising under any workers' compensation, disability benefits, or other employee benefits Laws and Regulations.
- E. The obligations of the Contractor, and rights of the Owner and other Owner Parties, as set forth in this Paragraph 7.16, are cumulative, in addition to, and do not diminish or replace any other obligations of the Contractor or rights of the Owner and other Owner Parties, whether such other obligations and rights arise from the Contract, or Regulations, common law or equity.
- F. *Limitation of Damages.* 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.

#### 7.17 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional,

whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.17, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.17;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

7.18 *Intellectual Property; Ownership of Work Product*

- A. "Work Product" includes, without limitation, Contractor's drawings, specifications, submittals, or reports, prepared as part of Contractor's services for a Project, except working notes and internal documents. Work Product become Owner's property when it is delivered to Owner and Owner pays for the services which produced the Work Product, provided however that Contractor hereby grants Owner a license to copy and use the Work Product to complete the Work in the event Contractor ceases to perform the Work as contemplated under this Article 7. Contractor is entitled to a reproducible copy of all material furnished to Owner, the costs of which are included in the compensation amounts specified in the Contract Documents.
- B. Owner's reuse of Work Product for other than the specific service or project covered in this Contract, or modification and use by Owner of any documents or work products connected with this Contract, without the written permission of Contractor is at Owner's risk. Owner holds harmless Contractor from all claims, damages and expenses including attorney's fees arising out of such unauthorized reuse of Work Product by Owner or the use by others acting through Owner.

### 7.19 *Critical Infrastructure*

- A. Contractor acknowledges that the Federal Government has declared public-water systems, including Owner's, to be critical infrastructure essential to the continued operation of the government and the nation. Contractor acknowledges that Owner's water and wastewater operations are governed by numerous federal and state statutes and regulations, and subject to regulation by numerous federal and state agencies. Contractor acknowledges that, among other things, Owner provides retail water and wastewater service to the public, as authorized and regulated by public utility commissions, so that Owner has a public-service obligation to provide safe and affordable water and wastewater service to the public.

## **ARTICLE 8 - DATA PROTECTION**

### 8.01 *Data Ownership*

- A. Owner shall be, for all purposes hereof and as between Contractor and Owner, the sole and exclusive owner of any information or data supplied by Owner in connection with Contractor's performance hereunder including, but not limited to, all proprietary data, information and records, all internal financial information and projections, all billing, pricing, personnel, salary, and insurance information, of or relating to Owner or its Affiliates (collectively, "Owner Data"). Except as expressly provided herein and as necessary to perform hereunder, Contractor and its employees, agents, and Subcontractors shall not have any rights in or to Owner Data in any form or any information derived from or in connection with Owner Data.
- B. Owner Data shall not be transported outside Owner's network or the work location. Should a circumstance arise in which it is necessary, Contractor shall request written approval from Owner. In no case should Contractor do the transport. Should it be necessary to transport, Contractor personnel responsible for the request shall hand deliver the information to an approved Owner resource that will be responsible for transmitting the data through secure channels.
- C. Except as otherwise provided in this Contract or as agreed to in writing by the Parties, files that contain Owner Data should be encrypted at rest, regardless if stored on a server, desktop, laptop, or other device or media.

### 8.02 *Data Protection*

- A. If, in connection with this Contract or performance hereunder, Contractor receives, is exposed to, uses, discloses or processes information about individuals which is held in a form capable of being automatically processed (for example, on a computer) or in a structured manual filing system on behalf of Owner or its Affiliates (collectively, the "Personal Data"), Contractor shall: (a) process such Personal Data only pursuant to the written instructions of Owner (or, with Owner's prior written approval, those of Owner's Affiliates); (b) implement appropriate technical and organizational measures to protect such Personal Data from and against any accidental or unlawful destruction or any accidental loss, alteration, unauthorized disclosure, use or access, including, but not limited to, in connection with any transmission of such Personal Data over a public or private network, and from and against all other unlawful forms of processing, access, use and disclosure; (c) process such Personal Data fairly and lawfully; (d) except where instructed otherwise by Owner in writing, make all reasonable efforts to delete such Personal Data after a reasonable time, given the purposes

for which they are held, unless it is appropriate to keep them indefinitely; (e) not use or further disclose such Personal Data to any person except as required or permitted by this Contract or with the prior written consent of Owner; (f) not process such Personal Data except to the extent reasonably necessary for performance of Contractor's Services under this Contract. In all events and circumstances in which Contractor uses, discloses or processes Personal Data on behalf of Owner, Contractor shall (and Owner specifically instructs Contractor to), in such use, disclosure or processing of such Personal Data, take only such steps as are reasonably necessary for performance pursuant to this Contract and take all such steps as are consistent and in accordance and compliance with the provisions of this Contract and all applicable laws and regulations of all relevant jurisdictions; (g) unless otherwise agreed, not process or store any Personal Data in jurisdiction(s) outside of the United States; and (h) when interfacing with Owner regarding Personal Data, only disclose or transmit Personal Data to those Owner employees and Owner agents authorized by the Owner.

### 8.03 *Security Breaches*

- A. Security breaches must be reported to American Water Security Operations – ITS for data security incidents and American Water Operations Security for any security breach involving physical security. Security Breaches are to be reported to the American Water Security Hot-line at 1-866-801-1123, Option 4. Any security breach must be reported as soon as Contractor is aware that the breach has occurred.
- B. To the extent any unauthorized or impermissible disclosure or loss of, inability to account for, any unauthorized access to, or the destruction or corruption of, any Personal Data is attributable to a breach by Contractor of this Contract, Contractor shall bear: (i) the expenses incurred by Contractor in complying with its legal obligations relating to such breach, and (ii) in addition to any other damages for which Contractor may be liable for under this Contract, the following expenses incurred by Owner in responding to such breach, to the extent applicable: (a) the expense of providing notice to affected individuals; (b) the expense of providing notice to governmental authorities, credit bureaus, and other required entities; (c) the expense of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months; to the extent the incident could lead to a compromise of the data subject's credit or credit standing, (d) call center support for such affected individuals for a specific period not to exceed thirty (30) days; (e) the expense of any other measures required under applicable law; and (f) any other damages for which Contractor would be liable under this Contract.
- C. If a party discovers or is notified of a breach or potential breach of this Article 8 and such breach or potential breach results in the unauthorized possession, use, or knowledge, or attempt thereof, of the other party's Confidential Information, the party by or through whom the unauthorized possession, use or knowledge, or attempt thereof occurred shall: (a) promptly notify the other party of any unauthorized possession, use or knowledge, or attempt thereof, of the other party's Confidential Information by any person or entity that may become known to such party; (b) promptly furnish to the other party full details of the unauthorized possession, use or knowledge, or attempt thereof; (c) assist the other party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information; (d) timely cooperate with the other party in any litigation and investigation against third parties deemed necessary by the other party to protect its proprietary rights; and (e) promptly use its commercially reasonable

efforts to prevent a recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.

8.04 *Cost of Compliance*

- A. Each party shall bear the expenses it incurs as a result of compliance with this Paragraph; provided, however, the party by or through whom the unauthorized possession, use or knowledge, or attempt thereof, occurred shall bear the reasonable, direct, actual, incremental expenses the other party incurs as a result of compliance with clauses (c), (d), or (e) of Paragraph 8.03.B.

**ARTICLE 9 - OTHER WORK AT THE SITE**

9.01 *Other Work*

- A. In addition to and apart from the Work, 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 third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. 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.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner.

## 9.02 *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.

## 9.03 *Delay or Disruption*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, 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. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this Paragraph within thirty (30) days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will 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, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will 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.
- B. Contractor shall, and shall cause its Subcontractors to, use best efforts to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other person performing other work at or adjacent to the Site.
  - 1. If Contractor or any Subcontractor, employee, or agent of 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 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.
  - 2. 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 Contractor.

- C. 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, defend and hold harmless Owner Parties 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 10 - OWNER'S RESPONSIBILITIES**

### **10.01 Responsibilities**

- A. In addition to any responsibilities of Owner specifically set forth in this Contract:
1. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.
  2. Owner may at its discretion appoint an engineer to replace Engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.
  3. Owner shall promptly furnish the data required of Owner under the Contract Documents.
  4. Owner shall make payments to Contractor when they are due as provided in the Agreement.
  5. If requested by Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
  6. Owner shall require its employees and representatives to comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed in writing.
  7. 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. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

### **10.02 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.

## **ARTICLE 11 - ENGINEER'S STATUS DURING CONSTRUCTION**

### **11.01 *Owner's Representative***

- A. Engineer will be Owner's representative during the construction period.
- B. Owner reserves the right to at any time, and in Owner's sole discretion to: 1) designate an employee of Owner or an Owner-affiliated entity as Engineer, 2) directly undertake or perform some or all Engineer's authority, duties or responsibilities, and 3) retain Owner-affiliated entities or independent engineers, or consultants or managers to undertake some or all of Engineer's or Owner's authority, duties or responsibilities under the Contract Documents.
- C. The assignment of any authority, duties or responsibilities to Engineer or others under the Contract Documents, or any undertaking, exercise or performance thereof by Engineer, Owner, or others intended to be for the sole and exclusive benefit of Owner and not for the benefit of the Contractor, Subcontractor, Supplier or any other person or organization.

### **11.02 *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 hereinabove. 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.

### **11.03 *Resident 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 the Supplementary Conditions and in Paragraph 11.05.



- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

11.04 *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.

11.05 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 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, will 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 Contractor, 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 also apply to the Resident Project Representative, if any.

11.06 *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 of which Engineer has been informed.

**ARTICLE 12 - CHANGES TO THE CONTRACT**

12.01 *Amending and Supplementing the Contract*

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

- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that 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, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

#### 12.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in 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, (b) required because of Owner's acceptance of Defective Work or Owner's correction of Defective Work, 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 that embody the substance of any final and binding results under any Paragraph herein which allows for an adjustment of Contract Times or Contract Prices.

#### 12.03 *Work Change Directives*

- A. A Work Change Directive does not constitute a change in 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 12.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than thirty (30) days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than sixty (60) days after issuance of the Work Change Directive.

#### 12.04 *Field Orders*

- A. 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.

- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 12.05 *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. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work 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 must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph obligates 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.

#### 12.06 *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, or in the case of uncovering Work, as provided for herein.

#### 12.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- 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 14.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; 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 plus a Contractor's fee for overhead and profit.
- C. When applicable, the Contractor's fee for overhead and profit will 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 14.01.B.1 and 14.01.B.2, the Contractor's fee will be fifteen (15%) percent.
- b. For costs incurred under Paragraph 14.01.B.3, the Contractor's fee will be five (5%) percent,
- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.07.C.2.a and 12.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of fifteen (15%) percent of the costs incurred under Paragraphs 14.01.B.1 and 14.01.B.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 (5%) 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 will be no greater than twentyseven (27%) percent of the costs incurred by the Subcontractor that actually performs the Work; for example

Cost of Work Performed or Furnished by Sub-Subcontractor	\$10,000.00
Sub-Subcontractor's Fee (15%)	<u>\$1,500.00</u>
Total to Sub-Subcontract	\$11,500.00
Subcontractor's Fee (5%)	<u>\$575.00</u>
Total to Subcontractor	\$12,075.00
Contractor's Fee (5%)	<u>\$603.75</u>
Total Change Order	\$12,678.75

- d. No fee will be payable on the basis of costs itemized under Paragraphs 14.01.B.4, 14.01.B.5, and 14.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to five (5%) percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the categories in Article 14.

**12.08 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 must comply with the provisions of Article 12. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Article 4.

**12.09 Change Proposals**

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer

concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. Change Proposal Procedures

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer and Owner within thirty (30) days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within fifteen (15) days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Article 4.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

C. The supporting data must 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.

1. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
2. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within thirty (30) days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within thirty (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 13.
3. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 13.
4. *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 in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 13.

- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 16.06.B.

#### 12.10 *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 13 - CLAIMS**

#### 13.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject 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;
  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; and
  4. Subject to the waiver provisions of Paragraph 16.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 16.06.B.
- 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 thirty (30) days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within thirty (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 rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, 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 will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within thirty (30) days of such action the other party invokes the procedure set forth in Article 20 for final resolution of disputes.

- E. *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 ninety (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 will be final and binding unless within thirty (30) days of the denial the other party invokes the procedure set forth in Article 20 for the final resolution of disputes.
- F. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, 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 will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 14 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### 14.01 *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 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. When needed 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 will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 14.01.C, and will 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 in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, 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, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of 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, 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.
    - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. *Construction Equipment Rental*
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs. The equipment rental rate



book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions is the most current edition of Rental Rate Blue Book for Construction Equipment or AED Green Book: Rental Rates & Specifications for Construction Equipment, latest editions.

- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price (“changed Work”), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed 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 builder’s risk or other property insurance established in accordance with these General Conditions), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will 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 does not include any of the following items:
1. Payroll costs and other compensation of Contractor’s officers, executives, principals, general 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 14.01.B.1 or specifically covered by Paragraph 14.01.B.4. The payroll costs and other compensation

excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than \$1,000.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. 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.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in this Article.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 12.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 12.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 14, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

#### 14.02 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 for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

#### 14.03 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 Contract.
- 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. Adjustments in Unit Price
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the extended price of a particular item of Unit Price Work amounts to five (5) percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of

Unit Price Work actually furnished or performed by Contractor differs by more than twenty (20) percent from the estimated quantity of such item indicated in the Contract; and

- b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

## **ARTICLE 15 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### *15.01 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction 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 with such procedures and programs as applicable.

### *15.02 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 will be governed by the provisions of Paragraph 15.05.
- 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 will 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 will 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.
- G. No observations, inspections, tests, or approvals by Engineer, Owner or others shall relieve Contractor of its obligation to perform the Work in accordance with the Contract Documents.

#### 15.03 *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 written 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, 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 set-off against payments due to Contractor.

#### 15.04 *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 will 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 set-off against payments due to Contractor. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 15.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a set-off against payments due to Contractor.
  - 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, 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 thirty (30) days of the determination that the Work is not defective.

#### 15.06 *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 will 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.

15.07 *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 defective Work as required by Engineer, then Owner may, after seven (7) days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph, 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 will be charged against Contractor as set-offs against payments due to Contractor. 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.

**ARTICLE 16 - PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

16.01 *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 for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 14.03. 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 thirty (30) 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.
  - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) 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.

3. It is understood and agreed by Contractor that any Contractor invoice that is inaccurate or incomplete or that lacks the detail, specificity or supporting documentation required by this section and/or as may be requested by Owner shall not, to the extent of such deficiency, constitute a valid request for payment.
4. Each Application for Payment shall be accompanied by complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work, to the date of the Application of Payment.
5. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
6. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within ten (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 14.03, 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; 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;
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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 required by Article 16.
  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, or has accepted defective Work;
    - 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. Thirty (30) days after Owner's receipt of each Application for Payment together 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 based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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, or has accepted defective Work;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or Final Completion;
  - 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; or
  - l. Other items entitle 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 will 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 will be treated as an amount due as determined by Article 16 and subject to interest as provided in the Agreement.

#### 16.02 *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 (7) days after the time of payment by Owner.

#### 16.03 *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 will 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 (7) 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 fourteen (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, then Engineer will, within said fourteen (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.

#### 16.04 *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 16.03.A through 16.03.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 16.03 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 6.04 regarding builder's risk or other property insurance.

#### 16.05 *Final Inspection / Final Completion*

- 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. Final Completion of the Work shall not be achieved until all items requiring correction and completion have been completed, and all Defective Work has been repaired or replaced, to Owner's satisfaction.

## 16.06 *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 7.10), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must 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 duly pending Change Proposals and Claims;
  - 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; and
  - f. assignments for the benefit of Owner executed by Contractor and by each subcontractor of all manufacturer guaranties and warranties associated with the Work.
3. Contractor shall defend, indemnify, and hold Owner Parties harmless against any Lien filed in connection with the Work by any Subcontractor, Supplier or other lien claimant. At Owner's request, Contractor shall furnish a bond or other collateral satisfactory to Owner to defend and indemnify Owner Parties against any Lien.

B. *Engineer's Review of Final Application and Recommendation of Payment:* 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 (10) days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will 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. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to any limitations stated in the notice or set forth in this Contract.

- D. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within thirty (30) days of Owner's receipt of the final Application for Payment from Engineer.

#### 16.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 20, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- 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 as a Claim, or appealed under the provisions of Article 20.

#### 16.08 *Correction Period*

- A. If within one (1) year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work or repair of Work has been found to be defective, Contractor shall promptly, after receipt of written notice and without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs;
  - 2. correct such Defective Work;
  - 3. remove the Defective Work from the Project and replace it with Work that is not defective, if the Defective Work has been rejected by Owner, 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 from the corrective measures.
- B. Owner shall give any such notice of defect within sixty (60) days of the discovery that such Work or repairs is defective. If such notice is given within such sixty (60) days but after the end of the correction period, the notice will be deemed a notice of Defective Work.
- C. If, after receipt of a notice of defect, within sixty (60) days and within the correction period, 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 and Contractor shall pay all related costs, losses, and damages (including but not limited to all professional fees and legal costs).
- D. 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.
- E. 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.

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

16.09 *Force Majeure*

- A. Neither Party hereunder will be responsible for any failure or delay in its performance under this Contract due to Force Majeure; provided, however, that if any such failure or delay in performance hereunder extends beyond fifteen (15) calendar days then Owner shall have the right to immediately terminate this Contract.

**ARTICLE 17 - SUSPENSION OF WORK AND TERMINATION**

17.01 *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 ninety (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 increase in the Contract Price and/or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than thirty (30) days after the date fixed for resumption of Work.

17.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more Event of Default by Contractor will justify Owner's termination of the Contract pursuant to Article 18 in the Agreement:
- B. 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.
- C. 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.

17.03 *Owner May Terminate for Convenience*

- A. Upon seven (7) 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): completed Work accepted by Owner, expenses incurred in securing the Work, demobilization expenses actually incurred by Contractor, materials delivered to the Site in connection with the Work and paid for by Contractor, and, at Owner's option, materials delivered elsewhere as part of the Work and paid for by Contractor.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination. In

the event the Work is not readily terminable, Owner and Contractor shall terminate the earliest point at which the Work may be safely stopped

17.04 *Contractor May Terminate:*

- A. If, through no act or fault of Contractor: (1) the Work is suspended for more than ninety (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 thirty (30) days after it is submitted, or (3) Owner fails for forty five (45) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) 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.

**ARTICLE 18 - DEFAULTS; REMEDIES**

18.01 *Event of Default*

- A. Contractor shall be deemed to be in default under this Contract upon the occurrence of an "Event of Default", which includes, at a minimum, any of the following events:
1. Contractor fails 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. Contractor fails to perform or otherwise to comply with a material term of the Contract Documents;
  3. Contractor disregards Laws or Regulations of any public body having jurisdiction or the authority of Owner or Engineer;
  4. Contractor breaches any material provision of this Contract, and such breach is not cured within seven (7) days of Contractor's receipt of written notice of the breach;
  5. Contractor abandons the performance of the Work or, in Owner's reasonable determination, will not meet one or more milestones or deadlines for completion of the Work;
  6. Contractor commences a voluntary case or other proceeding under any bankruptcy or insolvency law, or seeks the appointment of a trustee, receiver, liquidator, custodian, or similar official of all or any substantial part of its property;
  7. Any involuntary case or other proceeding under any bankruptcy or insolvency law, seeking the appointment of a trustee, receiver, liquidator, custodian, or similar official for all or any substantial party of the other Party's property, is commenced against Contractor, and Contractor consents to any relief requested, or if such proceeding is not stayed or discharged within thirty (30) calendar days; or
  8. Contractor makes a general assignment of the benefit of creditors or fails generally to pay its debts as they become due, or otherwise suffers or otherwise permits an attachment of execution levied upon any of its property connected with its performance hereunder.



## 18.02 Remedies

- A. If a Contractor Event of Default occurs, Owner or its assignees shall have the following rights and remedies, in addition to any other rights and remedies that may be available to Owner or its assignees under this Contract and Applicable Law:
  - 1. Owner, without prejudice to any of its other rights or remedies, may terminate this Contract, and/or seek damages as provided in Paragraph 18.03;
  - 2. Owner may require Contractor to withdraw from all locations where the Work is being performed, to assign to Owner or its designee such of Contractor's subcontracts and purchase orders and Applicable Permits as Owner may request, and to deliver and make available to Owner all information, documents, patents, and licenses of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work; to remove Contractor's personal property and any debris or waste materials generated by Contractor in the performance of the Work. Owner may take possession of any or all facilities related to the Work and necessary for completion of the Work;
  - 3. Owner shall have the right to have the Work finished by any means deemed appropriate by Owner in its sole and absolute discretion, including hiring additional labor and charging Contractor therefor; and
  - 4. Owner may seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Contract or to make restitution of amounts improperly received under this Contract.

## 18.03 Damages for Contractor Default

- A. If a Contractor Event of Default occurs, Contractor shall be liable to Owner for any and all damages to Owner as a result of such Contractor Event of Default, it being understood that, to the extent that the actual costs of completing the Work, including compensation for obtaining a replacement contractor required as a consequence of Contractor's Event of Default, exceed those amounts that would have been payable to Contractor but for Contractor's Event of Default, Contractor shall be obligated to pay the difference to Owner. In addition, in the event of a Contractor Event of Default, Owner shall be entitled to withhold further payments to Contractor for the Work performed prior to termination of this Contract until Owner determines the liability of Contractor, if any, under this Paragraph. Upon determination of the total cost of the Work, Owner shall notify Contractor in writing of the amount, if any, that Owner shall pay Contractor or Contractor shall pay Owner.
- B. If it is determined for any reason that Contractor was not in default or that its default was excusable or that Owner was not entitled to the remedy against Contractor provided above, the termination will be deemed to be a Termination for Convenience.

## ARTICLE 19 - FINAL RESOLUTION OF DISPUTES

### 19.01 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, pursuant to Article 13; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. At any time after submitting a notice of a Claim and prior to the expiration of the thirty (30) day time period, Owner or Contractor may give to the other party written notice of intent to submit a Claim to a process of bilateral negotiations as set forth below.
- C. Within thirty (30) days of delivery of such notice, Owner and Contractor shall meet and confer regarding the Claim. A good-faith effort to negotiate resolution shall be made by both parties.
- D. If the negotiations contemplated by Article 19 are unsuccessful, management representatives of Owner and Contractor at least one tier above the individuals who met previously shall meet, confer and negotiate with thirty (30) days of the closure of the unsuccessful negotiations.
- E. If the Claim is not resolved by negotiation, the Claim shall be deemed denied and shall become final and binding thirty (30) days after termination of the negotiations unless, within that time period Claimant may:
1. elect in writing to invoke any further dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the Claim 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.
- F. All other disputes arising under the Contract shall be resolved through submittal of the dispute to a court of competent jurisdiction, unless another dispute resolution process is provided in the Supplemental Conditions.

## **ARTICLE 20 - EQUAL OPPORTUNITY EMPLOYMENT**

- 20.01 Contractor shall comply with all applicable Laws and Regulations which prohibit discrimination against any applicant for employment or employees and will take affirmative action to ensure compliance. Such action shall be applicable to, but not be limited to, recruitment and recruitment advertising; hiring; promotion; upgrading; transfer; selection for training, including apprenticeship; demotion; layoff; and termination. Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

## ARTICLE 21 - FAR CLAUSES

- 21.01 “Commercial item” has the meaning contained Federal Acquisition Regulation 2.101, Definitions.
- 21.02 “Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor of Services at any tier.
- 21.03 To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.
- 21.04 The Contractor shall insert the following clauses in subcontracts for commercial items:
1. 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds \$5.5 million and has a performance period of more than one hundred twenty (120) days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
  2. 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Paragraph 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
  3. 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
  4. 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
  5. 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
  6. 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));
  7. 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
  8. 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
  9. 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
  10. (A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).  
(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
  11. 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015).
  12. 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Paragraph 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

13. 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.
14. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

## **ARTICLE 22 - MISCELLANEOUS**

### *22.01 Headings*

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

### *22.02 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 of the Contract or of the services of Contractor.

### *22.03 Severability*

- A. Any provision or part of the Contract held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Contract 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.

### *22.04 Entire Contract*

- A. The Contract contains the entire agreement between the parties. No communication shall be sufficient to amend or modify the Contract unless it is put into a writing which is signed by both parties.

### *22.05 No Waiver*

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

### *22.06 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.

### *22.07 Assignment of Contract*

- A. Contractor may not assign or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Contract without the written

consent of Owner. A corporate merger, consolidation or change of ownership, whether by operation of law or otherwise, shall constitute a transfer or assignment requiring Owner's written consent.

22.08 *Successors and Assigns*

- A. Unless expressly provided otherwise, nothing in this Contract shall be construed to create, impose, or give rise to any duty owed by Owner or Contractor to any third-party. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of Owner and Contractor and not for the benefit of any other party.

22.09 *Controlling Law*

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

22.10 *Non-Exclusive Contract*

- A. Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

22.11 *Unmanned Aerial Vehicles (Drones) Policy*

- A. Contractor shall adhere to American Water's Drone Policy, included in the Supplemental Conditions, if using any unmanned aerial vehicles (i.e., drones).

22.12 *Use of Logo*

- A. Contractor shall not, without Owner's express written permission: (i) use the name of Owner or any Owner Affiliate, nor any of their trade names, logos, trademarks, or service marks, whether registered or not, in connection with publicity, advertisements, promotion or in any other connection; or (ii) identify Owner or any of its Affiliates in any manner on customer or vendor lists or on any website or in any website metatags; or (iii) disclose to any third party the existence of this Contract or the monetary value thereof. Contractor shall indemnify Owner Parties for reasonable costs and expenses incurred in connection with enforcing the provisions of this section. The provisions of this section shall survive termination of this Contract.

22.13 *Background Checks*

- A. Contractor shall conduct background checks and drug screens with respect to each member of the Contractor's personnel that either: (1) have unescorted physical access to Owner facilities; or (2) have access to Owner systems, business sensitive information and/or Confidential Information, in accordance with Owner's background screening requirements for non-employees prior to such individual's assignment to Owner's account. At a minimum, such background checks and drug screens shall include:
  - 1. a social security number trace;
  - 2. personal history (to the extent permitted by applicable law);
  - 3. verification of name, references, work eligibility status (including Form I-9), current address, educational background, work history (including previous employers and dates of employment), professional licenses (if applicable);

4. court records for over the prior seven (7) years, including criminal history (state and federal) and felony or misdemeanor convictions (as permitted by applicable law); and
5. a drug screen (consistent with the then-existing Department of Transportation's Drug-Testing Panel) conducted at a certified laboratory.

Contractor shall maintain the results of such background checks or drug screens. Upon request, Contractor will make available for Owner's review, the documentation and results of the background screening with respect to any employee of the Contractor performing under this Contract. Owner will not retain such records or documentation and any findings of its review will be confidential. Contractor will not assign any individual to Owner's account if there are any adverse results to his or her applicable background check.



**CALIFORNIA**  
**AMERICAN WATER**

**CALIFORNIA-AMERICAN WATER COMPANY  
SUPPLEMENTARY CONDITIONS  
OF THE CONSTRUCTION CONTRACT**

**2021 Edition**

**SUPPLEMENTARY CONDITIONS OF THE AMERICAN WATER  
CONSTRUCTION CONTRACT**

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# SUPPLEMENTARY CONDITIONS OF THE AMERICAN WATER CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement the **Standard General Conditions of the Construction Contract, American Water Edition (2021)**, and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect except as amended.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

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

## ARTICLE 2—PRELIMINARY MATTERS

### SC-2.04 Preconstruction Conference; Designation of Authorized Representatives

The following replaces GC 2.04.A in its entirety:

- A. Before any Work at the site is started, a conference attended by Owner, Contractor, Engineer, major subcontractors, and others as appropriate will be held with the assistance of a facilitator in order to establish a Partnering relationship among the parties as to the Work and to discuss the schedules and procedures referred to in Paragraph 2.03.A of the General Conditions. At such conference, the parties shall develop common Project objectives in the form of a partnering charter and shall develop working arrangements for periodic meetings among the parties, including subsequent partnering meetings, and for the rapid resolution of issues that may develop. Owner and Contractor shall mutually agree on the selection of the facilitator. The cost of the facilitator and the cost of the meeting facilities for all partnering sessions will be paid by the Owner. Each party will be responsible for the payroll, travel and living expenses of their employees and their subcontractors or consultants designated to attend the meeting. Three (3) formal partnering sessions are anticipated, an initial One (1) day workshop session followed by two (2) separate one day follow-up meetings.

### SC-2.06 Electronic Transmittals

The following replaces Paragraphs GC 2.06.B in its entirety:

- B. *Electronic Documents Protocol*: The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.
  1. *Basic Requirements*

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.
- e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation: 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

- a. The Owner will operate a Project information management system (also referred to in this EDP as "Project Website") for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information.

SC-2.07 Stipulation Waiver of Right to File Lien

The following supplements Paragraph GC 2.06:

To the fullest extent permitted by law, Contractor shall, simultaneous with the signing of the Agreement, and as a condition precedent to the enforceability of any provision of the Agreement by the Contractor, execute and deliver to the Owner the Stipulation Waiver of Right to File Lien in

the form attached hereto. Owner will file the executed Stipulation Waiver of Right to File Lien with the appropriate public office in the County where the Project is located prior to the commencement of the Work or within ten (10) days after the effective date of the Agreement.

Contractor shall give a copy of the executed Stipulation Waiver of Right to File Lien to all Subcontractors, Suppliers, or any other person furnishing services, labor, materials, or equipment to or for the Project under any contract with the Contractor at the time the orders are placed by the Contractor and prior to the time such services, labor, materials, and equipment are furnished.

**ARTICLE 3—RESERVED**

**ARTICLE 4— RESERVED**

**ARTICLE 5— RESERVED**

**ARTICLE 6— BONDS AND INSURANCE**

SC - 6.01      *Performance, Payment, and Other Bonds*

The following replaces Paragraph GC 6.01 in its entirety:

- 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 the Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 16.08, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents.
- B. Contractor shall also furnish such other bonds (if any) as required by the Contract Documents.
- C. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws and Regulations and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Department Circular 570 (as amended and supplemented by the Bureau of the Fiscal Service, U.S. Department of Treasury). A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of the individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state of jurisdiction in which the Project is located, to issue bonds in the required amount.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within twenty (20) days after

the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

- F. 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 17.
- G. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

SC-6.02 Insurance—General Provisions

The following paragraph supplements Paragraph GC 6.02.B:

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

SC- 6.03 Contractor’s Insurance

The following supplements Paragraph GC 6.03.C:

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

- 1. At no expense to Owner, Contractor and subcontractors shall: (1) obtain and keep in force during the term of this Contract, and any renewals or extensions hereof; and (2) require its subcontractors to obtain and keep in force during the terms of their respective engagements or contracts, the minimum insurance limits and coverage set forth below. The insurance coverage limits stated below are minimum coverage requirements, not limitations of liability, and shall not be construed in any way as Owner’s acceptance of the responsibility of Contractor.

**a. Workers’ Compensation:**

State:	<u>Statutory</u>
Employer’s Liability:	
Bodily Injury, each Accident	\$ <u>1,000,000</u>
Bodily Injury By Disease, each Employee	\$ <u>1,000,000</u>
Bodily Injury/Disease Aggregate	\$ <u>1,000,000</u>

**b. Commercial General Liability:**

General Aggregate	\$ <u>1,000,000</u>
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Products - Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

**c. Automobile Liability herein:**

Bodily Injury:	
Each Person	\$ <u>1,000,000</u>
Each Accident	\$ <u>1,000,000</u>
Property Damage:	
Each Accident	\$ <u>1,000,000</u>
Combined Single Limit of:	\$ <u>1,000,000</u>

**d. Excess or Umbrella Liability:**

Per Occurrence	\$ <u>4,000,000</u>
General Aggregate	\$ <u>4,000,000</u>

**e. Contractor's Pollution Liability:**

Each Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>

2. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least ten (10) days prior written notice has been given to the insured and additional insured.
3. Automobile liability insurance provided by Contractor shall provide coverage 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.
4. Contractor's commercial general liability policy shall be written on a CGL ISO 04 13 commercial general liability occurrence form and include the following coverages and endorsements:
  - a. Products and completed operations coverage maintained for three years after final payment;
  - b. Blanket contractual liability coverage to the extent permitted by law;
  - c. Broad form property damage coverage; and
  - d. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.

5. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as 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.
    - a. Additional insured endorsements will 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). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
    - b. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
  6. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
  7. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
  8. 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 17.
- E. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following:
- **Owner**
  - **Engineer**
  - **Consultant**

SC- 6.04 Builder's Risk and Other Property Insurance

The following supplements Paragraph GC 6.04.A:

The Contractor shall bear all risks of all loss or damage to the materials and Work until the Work is finally accepted by the Owner, except that the Contractor may claim reimbursement under the Owner's builder's risk insurance policy as herein provided and limited. Owner will carry "All Risk" Builders Risk Insurance subject to deductibles, terms, and conditions as stated in the policy and below. It is the obligation and responsibility of the Contractor to make appropriate claim to the insurance company for all losses claimed under the policy. Should any loss not be covered under this policy, in whole in or parts, the Contractor shall bear the loss. Any questions regarding coverages, limitation, exclusion, etc. contained in the policy shall be addressed by bidders prior to submittal of bids, to:

**Director, Risk Management, American Water,  
One Water Street, Camden  
856-955-4001**

Such insurance shall cover the full value of the cost of replacement to the Owner, less applicable deductibles, of all completed portions of the work to be performed throughout the entire time of construction. The deductibles on each separate and unrelated loss are:

Each claim for loss or damage shall be subject to a per occurrence deductible amount of **\$100,000**, unless a specific deductible shown below applies:

Earth Movement:

1. **\$100,000** Per Occurrence, except as follows:
  - a. **Five (5%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage, subject to a minimum of **\$250,000** any one occurrence, as respects locations in **California and Hawaii**;
  - b. **Three (3%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage, subject to a minimum of **\$100,000** any one occurrence, as respects locations in the **New Madrid Earthquake Zone Counties**;
  - c. **Three (3%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage, subject to a minimum of **\$100,000** any one occurrence, as respects locations in the **Pacific Northwest Earthquake Zone Counties**;

Flood:

1. **Three (3%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage, subject to a minimum of **\$500,000** any one occurrence,

2. **Five (5%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage, subject to a minimum of **\$1,000,000** any one occurrence, as respects locations **wholly or partially within Special Flood Hazard Areas (SFHA), areas of 100-year flooding, as defined by the Federal Emergency Management Agency (FEMA);**

Wind & Hail:

1. **Two (2%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage arising out of a **Wind & Hail** (including a storm that has been declared by the National Weather Service to be a Hurricane, Typhoon, Tropical Cyclone, Tropical Storm or Tropical Depression) **except in 1st Tier Counties of AL, GA, VA, MS, NC, SC, LA, TX and the entire states of Hawaii and Florida**, regardless of the number of Coverages, Locations or Perils involved (including but not limited to, all Flood, wind, wind gusts, tornados, cyclones, hail or rain) and subject to a minimum deductible of **\$250,000** any one occurrence;
2. **Five (5%) percent** of Total Insurable Values at the time of the loss at each location involved in the loss or damage arising out of a **Wind & Hail** (including a storm that has been declared by the National Weather Service to be a Hurricane, Typhoon, Tropical Cyclone, Tropical Storm or Tropical Depression) in **1st Tier Counties of AL, GA, VA, MS, NC, SC, LA, TX and the entire states of Hawaii and Florida**, regardless of the number of Coverages, Locations or Perils involved (including but not limited to, all Flood, wind, wind gusts, storm surges, tornados, cyclones, hail or rain) and subject to a minimum deductible of **\$1,000,000** any one occurrence;

Equipment Breakdown:

1. **\$100,000** Per Occurrence,
2. Two (2) days per occurrence as respects Soft Costs

If two or more deductible amounts provided in this policy apply to a single occurrence, the total to be deducted shall not exceed the largest deductible applicable unless otherwise stated in the policy.

Such insurance shall not cover: (1) damage to or loss of material or equipment furnished by either party which are damaged or lost due to carelessness or negligence on the part of the Contractor, or (2) damage to or loss of machinery, tools, equipment, or other property furnished by the Contractor whether or not used by the Contractor in carrying out the terms of the Contract unless such machinery, tools, equipment or other property are specifically intended for permanent incorporation into the Contract work and are included in an approved application for payment.

## ARTICLE 7— CONTRACTOR’S RESPONSIBILITIES

### SC-7.02 Supervision and Superintendence



The following supplements Paragraph GC 7.02.B.

The Contractor shall assign a project manager, acceptable to the Owner, who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

SC-7.06 Concerning Subcontractors and Suppliers

P. **DIVERSITY SUBCONTRACTORS AND SUPPLIERS:** It is Owner's desire that certified Diversity Subcontractors (as defined below) be retained to perform a portion of the Work, while at the same time ensuring that the best combination of quality, service and price is provided in accordance with the highest ethical and professional standards. Owner recognizes the value of subcontractor and supplier diversity as a strategic business decision and is committed to offer them an equal opportunity to compete for subcontracts to supply materials and service with all other suppliers and contractors in the competitive marketplace.

Contractor agrees to use best efforts to award subcontracts to certified Diverse Subcontractors and shall provide quarterly reports of its diversity contracting efforts during the term of the Contract as defined and described in Appendix A and submitted to the Owner as indicated therein.

A "Diverse Subcontractor" shall be defined as a business that provides services or materials to Contractor in fulfillment of this Contract with is at least fifty-one (51%) percent owned, operated, and controlled on a daily basis by a person of one or more of the following characteristics: American citizen of ethnic minority classifications, women, veteran, disabled veteran and disabled.

SC-7.07 Permits

The following paragraphs supplement Paragraph GC 7.07A

A listing of the permit(s) known at the time of preparation of the Bid Documents to be required for the Project and the identification of the party responsible for obtaining such permit(s) is set forth in the attached Schedule SC 7.07. The Owner and Engineer will assist the Contractor as required by the Permitting Agency in obtaining all permits required to be obtained by the Contractor. The Contractor will assist the Owner as required by the Permitting Agency in obtaining the permits required to be obtained by the Owner. Owner will obtain and pay for all necessary permits which by Laws or Regulations must be obtained by the Owner. The Contractor will obtain and pay for all other permits, licenses, and certificates of inspection. The Contractor will pay for all inspection costs and fees.

The Contractor and/or his Subcontractor(s) shall obtain, complete, seal, and sign all applications required to obtain construction permits required by state and local government agencies. A copy of the electrician's and plumber's current state and/or local license shall be delivered to the Owner.

When required by the local governing body, the electrician and plumber will execute a mechanical bond in the form approved by the local government.

All bonds, application forms and copies of licenses shall be delivered to the Owner so these documents may be submitted with the Owner's application for a building permit. The Contractor shall assist the Owner in preparing the building permit. The Owner will pay for the building permit.

**SCHEDULE SC-7.07**  
**Project Name**  
**Permits and Approvals**

Description	Approving Agency	Date Submitted	Status	Responsible Party	
				Owner	Contractor
City of Bellflower ROW Permit					X

\*(Contractor to obtain permit and Owner to pay for permit fees)

SC - 7.08      Taxes

The following supplements Paragraph GC 7.08.A:

- B. Contractor’s responsibility under Paragraph 7.08 and this Paragraph SC-7.08 to pay all such taxes shall: (i) include the obligations to pay any interest or penalties that may be assessed as a result of Contractor’s late payment or failure to pay such taxes, and (ii) survive final payment, completion and acceptance of the Work and termination or completion of the Contract.
- C. Owner may be exempt from CA sales and use taxes on certain services, machinery, equipment, material, and apparatus, tools or supplies in connection with the Work.
- D. Without altering Contractor's full responsibility to properly determine and pay such taxes, the Owner will provide the Contractor, for use at Contractor's risk, a copy of any Guidelines developed by the Owner with respect to sales and use tax exemptions that may be available in whole or in part in the state in which the Project is located. A copy of the Guidelines for the state in which the Project is located is included in Appendix B attached to the Supplementary Conditions. Such Guidelines are not Contract Documents. They may not necessarily reflect the current status of state tax exemptions or current status interpretations of these exemptions.
- E. Contractor shall indemnify and hold harmless and defend Owner from and against all claims, losses, expenses, damages, and liability relating to: (i) Contractor’s nonpayment of any sales, consumer, use and other similar taxes or interest or penalties required to be paid by Contractor, or (ii) Contractor’s failure to utilize or implement any available sales and use tax exemption or Contractor’s failure to obtain any necessary exemption certificate or other required exemption evidence.

- F. Contractor shall furnish evidence satisfactory to Owner that Contractor has paid all sales, consumer, use and other similar taxes required to be paid by Contractor. Contractor shall also furnish to Owner with Contractor's applications for final payment a schedule of all items incorporated in the Work that Contractor has determined are entitled to sales and use taxes exemption and for which no sales and use taxes were paid by Contractor. Owner reserves the right to audit the Contractor's compliance with applicable sales and use taxes requirements prior to release of retainage and final payment. If Owner disagrees with any of Contractor's determinations or exemptions or otherwise has reason to believe that Contractor has not paid all applicable sales and use taxes, Owner shall be entitled to withhold the amount of sales and use taxes Owner believes Owner may be potentially liable for as a result of Contractor's nonpayment until: (i) Contractor presents evidence satisfactory to Owner that Contractor has paid the taxes in question or that the items in question are exempt, and (ii) all statutes of limitation for the applicable taxing authority to bring an action against Owner for payment of the taxes in question have expired, whichever first occurs.
- G. In addition to Owner's other rights and remedies under this Paragraph SC-7.08, Owner shall be entitled to set off against monies otherwise due Contractor hereunder the amount of any sales and use tax, or any other tax, which Owner is required to pay be reason of Contractor's failure to comply with Paragraph 7.08 of the General Conditions.

SC-7.11 Safety and Protection

The following supplements Paragraph GC 7.11 B

1. Contractor shall be required to have monthly safety audits conducted at the Work site by either a corporate safety official of the contracting company, or an independent safety company. The written report resulting from the audit shall be submitted to the Owner.
2. Owner requires that Contractors develop and maintain a site-specific safety plan during the performance of the Work. The site-specific safety plan should identify all hazards associated with the Work and provide safe work practices and personnel protection methods during the performance of the Work.
3. Contractor shall be required to provide a **[full-time / part-time]** dedicated on-site safety manager, acceptable to the Owner, whose duties and responsibilities are for the prevention of Work-related accidents and the maintenance and supervision of safety plans, precautions and programs.

The following supplements Paragraph GC 7.11 G

Contractor shall comply with the applicable requirements of Owner's safety program. The following Owner safety programs are applicable to the Work:

- 1. American Water – "Cut-off and Ring Saw Safety Operations Practice", Section 2: Application to Contractors and Subcontractors, dated May 1, 2019, as follows:**

“Contractors and subcontractors performing work for American Water will conform to the following requirements. To the extent necessary, agreements and related statements of work will be amended to enforce the requirements.

- The use of cut-off and ring saws is prohibited unless permanently secured in an approved cart.
- Cut-off and ring saws may be used for pavement cutting if equipped with an approved abrasive or diamond tipped blade, which requires a constant flow of water. The saw must be properly and permanently mounted in a cart approved by the manufacturer and designed specifically for the saw model in use. All manufacturers’ recommendations, warning and safeguards must be followed.
- The use of diamond tipped cut off wheels can only be used when operated with a constant flow of water, dry cutting is prohibited.
- Cut-off saws may be used, without being attached to a cart, to cut concrete masonry block (concrete masonry units (CMUs)) if equipped with the appropriate blade. All manufacturer’s recommendations and warnings, and safeguards must be used.
- It remains the contractors’/subcontractors’ responsibility to train their respective employees on the proper use and application of all equipment, to follow manufacturer recommendations and to comply with all Federal, State, and local health and safety regulations.
- Owner reserves the right to prohibit the use of any or all cut-off and ring saw operations by contractors/subcontractors.”

2. Be in compliant status within Owner’s designated third-party safety risk management company (or have obtained a waiver) prior to the signing of this agreement, and maintain a compliant status throughout the duration of the Agreement. In the event the Contractor becomes noncompliant during the performance of the Agreement, may, at the sole discretion of the Owner, be suspended or terminated pursuant to Article 17 of the Standard General Conditions of the Construction Contract, American Water Edition (2021).

Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. If Contractor notices any conflicts, errors, ambiguities, or discrepancies with Owner’s safety program, Contractor shall promptly give Owner written notice, and confirm written resolution thereof by Owner is acceptable to Contractor.

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.

**ARTICLE 8—RESERVED**

**ARTICLE 9—RESERVED**

**ARTICLE 10—RESERVED**

**ARTICLE 11—ENGINEER’S STATUS DURING CONSTRUCTION**

SC-11.03      Resident Project Representative

The following subparagraph supplements Paragraph GC 11.03.A

1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

**ARTICLE 12—RESERVED**

**ARTICLE 13— RESERVED**

**ARTICLE 14—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

SC - 14.01      Cost of the Work

The following supplements Paragraph GC 14.01.B.5.c.(2):

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of Rental Rate Blue Book for Construction Equipment or AED Green Book: Rental Rates & Specifications for Construction Equipment, latest editions.

The following supplements Paragraph GC 14.01.C.2:

- a. For purposes of this paragraph, “small tools and hand tools” means any tool or equipment whose current price if it were purchased new at retail would be less than **\$1,000**.

**ARTICLE 15—RESERVED**

**ARTICLE 16— PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

SC-16.01      Progress Payments

The following supplements Paragraph GC 16.01:

- F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the guaranteed maximum price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and

progress into closer alignment and take into account the guaranteed maximum price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

SC-16.06 Final Payment

The following supplements Paragraph GC 16.06.A.e:

Contractor, Subcontractors and Suppliers shall execute and deliver to Owner their release of liens on forms supplied by Owner. Blank forms are included in Appendix C of these Supplementary Conditions.

**ARTICLE 17—RESERVED**

**ARTICLE 18—RESERVED**

**ARTICLE 19—FINAL RESOLUTION OF DISPUTES**

SC-19.01 Methods and Procedures

The following supplements Paragraph GC 19.01.F:

G. *Covenant of Good Faith and Fair Dealing:*

1. This contract imposes an obligation of good faith and fair dealing in its performance and enforcement. The Contractor, Engineer and Owner, with a positive commitment to honesty and integrity, agree to the following mutual duties:
  - a. Each will function within the laws and statutes applicable to their duties and responsibilities.
  - b. Each will assist in the other's performance.
  - c. Each will avoid hindering the other's performance.
  - d. Each will proceed to fulfill its obligations diligently.
  - e. Each will cooperate in the common endeavor of the contract.

H. Voluntary Partnering:

1. The Owner intends to encourage the foundation of a cohesive partnership process with the Contractor and its principal subcontractors and suppliers. The partnership process will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives of the process will be to achieve effective and efficient performance of the Work within the Contract Price and Contract Times, all in accordance with the contract requirements.
2. This partnership will be bilateral in make-up and participation will be totally voluntary. To implement this partner initiative after the Contract Times start to run, the Contractor and Owner will initiate a partnering development seminar/team building conference in accordance with Paragraph 2.04 of the General Conditions.

3. The establishment of a partnering charter on the Project will not change the legal relationship of the parties to the Contract nor relieve either party from any of the terms of the Contract.

**ARTICLE 20—RESERVED**

**ARTICLE 21—RESERVED**

**ARTICLE 22— MISCELLANEOUS**

*SC-22.11 Unmanned Aerial Vehicles (Drone) Policy*

Contractor shall adhere to American Water’s Drone Policy, attached hereto as Appendix D, if using unmanned aerial vehicles (i.e., drones).



## APPENDIX A

### CONTRACTOR DIVERSITY REQUIREMENT AND REPORTING

#### 1. CONTRACTOR COMMITMENT

- 1.1. Contractor agrees to provide opportunities for suppliers identified and Certified as a Minority-owned Business Enterprise, Woman-owned Business Enterprise, Service-Disabled Veteran-owned Business Enterprise, Vietnam Era Veteran-owned Business Enterprise, or SBA 8A Business Development Enterprise, Owned (collectively, hereinafter "MWDVBE"), in accordance, at a minimum, with the terms and conditions of this Exhibit.
- 1.2. Contractor represents and warrants that the percentage of the Contract Price that will be paid to DBEs, including to the Contractor and any of Contractor's subcontractors, will be at least        % (the "DBE Requirement"). If Contractor fails to meet the DBE Requirement, such failure will be deemed a Default and may result in termination of this Contract by Owner pursuant to Section 17.02 of the American Water Standard General Conditions of the Construction Contract (2021 edition). Parties will meet on a quarterly basis to discuss Contractor's performance relative to the goal and identify opportunities to improve inclusion of diverse suppliers.
- 1.3. In addition, if the scope of this Contract includes the provision of products or performance of services for or in conjunction with an American Water Works, Inc. federal government agreement, the then-current Federal Acquisition Regulations ("FAR") requirements regarding MWDVBE subcontracting and reporting shall also apply.
- 1.4. In the event that a change in ownership results in a change of Contractor or any subcontractor's status as a Certified MWDVBE, Supplier shall notify American Water Works, Inc. in writing within thirty (30) days of such change.
- 1.5. In cases where the Owner's goal is not met, Contractor shall provide documentation of all reasonable efforts made in order to meet said goal. Owner, at their sole discretion, has the right to reject Contractor's bid proposal in the event that the goal is not met, or if Contractor's documentation of reasonable efforts is not sufficient.

#### 2. DEFINITIONS FOR THIS EXHIBIT

- 2.1. "Certified" means currently certified as MWDVBE by an authorized certifying body, such as the National Minority Supplier Development Council (NMSDC) or its affiliate regional councils, the Women's Business Enterprise National Council (WBENC) or its affiliate regional councils, the California Public Utility Commission (CPUC) Clearinghouse, or other similar local, state, or federal certifying body.
- 2.2. "Control" means overall fiscal/legal responsibility and exercising the power to make policy decisions.
- 2.3. "Owned" means at least fifty-one percent (51%) of the business or, in the case of a publicly owned business, at least fifty-one percent (51%) of the stock is owned by a minority, woman or service-disabled veteran.
- 2.4. "Minority-owned Business Enterprise (MBE)" means business concern in which at least fifty-one percent (51%) of the ownership and control is held by individuals who are members of a minority group and of which at least fifty-one percent (51%) of the net profits accrue to members of a minority group. Such persons include, but are not limited to, Black Americans,

Hispanic Americans, Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the former U.S. Trust Territory of the Pacific Islands (Republic of Palau, the Commonwealth of the Northern Mariana Islands, Republic of the Marshall Islands, Federated States of Micronesia) Laos, Cambodia (Kampuchea), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians); and members of other groups designated by the U. S. Small Business Administration as minorities.

- 2.5. "Women-owned Business Enterprise (WBE)" means a business concern which is at least fifty-one percent (51%) owned and controlled by a woman or women; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock is owned by a woman or by women. Such women's business enterprise shall further be classified as either minority or non-minority women-owned business, depending upon the greater portion of ownership.
- 2.6. "Vietnam Era Veteran-owned Business Enterprise (VBE)" means a business concern that is at least fifty-one percent (51%) owned and controlled, or in the case of a publicly owned business, at least fifty-one percent (51%) of the stock is owned, by an owner or owners who are veterans of the U.S. military, ground, navel, or air service, any part of whose service was during the period August 5, 1964 through May 7, 1975, who (1) served on active duty for a period of more than one hundred and eighty (180) days and were discharged or released with other than a dishonorable discharge, or (2) were discharged or released from active duty because of a service-connected disability. "Vietnam-Era Veteran" also includes any veteran of the U.S. military, ground, navel, or air service who served in the Republic of Vietnam between February 28, 1961 and May 7, 1975.
- 2.7. "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected as defined in 38 U.S.C. 101(16).
- 2.8. "Service-disabled Veteran-owned Business Enterprise (SDVBE)" means a business concern that is: (a) at least fifty-one percent (51%) owned by one or more service-disabled veterans or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more service-disabled veterans or, (b) in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran.
- 2.9. "8A" means a business certified by the Small Business Administration ("SBA") 8(a) Business Development program as a business owned by a socially and economically disadvantaged person or entity.

### **3. DIVERSE BUSINESS ENTERPRISES REQUIREMENT STATEMENT**

- 3.1. In addition to the aforementioned, Owner utilizes the established guidelines from the California Public Utilities Commission ("CPUC") to qualify diverse suppliers and requires certification as a Diverse Business Enterprise ("DBE") by the Supplier Clearinghouse and/or the California Department of General Services. To be eligible for award of a contract from this solicitation, the bidder/proposer must execute and submit, as part of his or her bid/proposal, this statement. DBEs are divided into four classifications, as follows: Minority Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE"), Disabled Veteran Business Enterprises ("DVBE"), and Lesbian, Gay, Bi-Sexual and Transgender Business Enterprises ("LGBTBE"). This statement shall be deemed a material factor in the Owner's

evaluation of the bid/proposal. Failure to complete and submit this statement, or the inclusion of a false statement, shall render the bid/proposal non-responsive.

3.2. The CPUC has set a goal for Owner to achieve at least 21.5% of total contract spend on DBEs, divided into the four classifications as follows: MBE – 15%, WBE – 5%, DVBE – 1.5%, and LGBTBE – goal TBD by 4<sup>th</sup> quarter 2021.

3.3. Owner has established certain minimum requirements, as set forth below, for the percentage of the total Contract Price that must be paid to DBEs (the “DBE Minimum”). The DBE Minimum for a contract will depend upon the total Contract Price for that contract, as set forth below. For example, for a contract with a Contract Price of \$1,200,000, the DBE Minimum is 25% and, therefore, at least \$300,000 must be paid to DBEs either as the primary contractor or as one or more subcontractors. Further, for a contract with a Contract Price of \$4,000,000, the DBE Minimum is 30% and, therefore, at least \$1,200,000 must be paid to DBEs either as the primary contractor or as one or more subcontractors.

3.4.	<u>Total Contract Price</u>	<u>DBE Minimum</u>
	\$100,000 - \$500,000	<b>15%</b>
	\$500,001 - \$1,000,000	<b>20%</b>
	\$1,000,001 - \$3,000,000	<b>25%</b>
	\$3,000,001 and higher	<b>30%</b>

3.5. Notwithstanding the DBE Minimum set forth above, Contractor may propose, and is strongly encouraged to propose, a higher percentage of the Contract Price to be paid to DBEs. As part of its submission, Contractor must respond to the questions below and identify the percentage of the Contract Price that will be paid to DBEs (such percentage must be NO LOWER THAN the DBE Minimum set forth above). The percentage of the Contract Price that will be paid to DBEs (to the bidder/proposer as primary contractor or to subcontractors), as indicated on this form, will be a contractual requirement (the “DBE Requirement”) that must be met by the bidder/proposer in performing the Contract Services. Failure to meet the DBE Requirement will be considered a breach of the contract and may result in termination of the contract by the Owner.

#### 4. REPORTING

4.1. Contractor shall report quarterly MWDVBE expenditures by using the “Prime Supplier MWDVBE Quarterly Report”. The Prime Supplier MWDVBE Quarterly Report shall include a) MWDVBE expenditures specific to American Water Works, Inc. contracts (herein, "Direct Expenditures"); and b) prorated share of the Primary Supplier’s non-contract specific MWDVBE expenditures (herein, "Indirect Expenditures"). American Water Works, Inc. prorated share of such Indirect Expenditures for the applicable calendar quarter shall be equal to the percentage derived from the following formula: Sales to American Water Works, Inc./Sales to all customers.

4.2. Such reports shall be submitted by no later than thirty (30) days following the end of each calendar quarter.

4.3. Each report is intended to provide a mechanism for Owner to monitor the Contractor’s compliance and progress in achieving its MWDVBE commitments as set forth in this Exhibit.

4.4. Contractor will provide:

- 4.4.1. A list of the name(s) and address(s) of the Certified MWDVBE suppliers Contractor has identified to be used in support of this Contract;
  - 4.4.2. A description of the products/services or scope of work performed by MWDVBE suppliers; and
  - 4.4.3. The percentage or volume of contract work performed by each such firm.
- 4.5. If there is a need for Owner to contact the Contractor's representative regarding Diversity Reporting they will contact the following individual who manages their Supplier Diversity Reporting program:

Name: \_\_\_\_\_

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

Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_

5. Contractor's Commitment:

- 5.1. Is Contractor certified as a Diverse Business Enterprise with the CPUC Supplier Clearinghouse and/or the California Department of General Services?

Respond YES or NO: \_\_\_\_\_

If YES, provide a copy of your certification and identify which classification your firm is certified under (i.e., MBE, WBE, DVBE, or LGBTBE): \_\_\_\_\_

- 5.2 What is the DBE Requirement (the percentage of the Contract Price that will be paid to DBEs) that Contractor will agree to in the contract for the Contract Services?

\_\_\_\_\_ % of Contract Price (such percentage must be equal to or greater than the DBE Minimum as set forth above, if Contractor meets one of the diverse categories as described herein, the percent will be 100%)

Contractor: \_\_\_\_\_

Printed Name of Authorized Person: \_\_\_\_\_

Signature of Authorized Person: \_\_\_\_\_

Title of Authorized Person: \_\_\_\_\_

## APPENDIX B

### STATE TAX GUIDELINES

#### GUIDELINES FOR CALIFORNIA CONTRACTORS

##### USE OF THIS GUIDELINE:

This guideline may not be complete or current as of the date of the Contract or CONTRACTOR's performance of the Contract. State laws are subject to change. This guideline does not alter the CONTRACTOR's obligations under the contract to properly determine and pay applicable taxes.

##### GENERAL RULE:

Contractors' purchases of tangible personal property that will be used to perform a construction contract for a water processing or distribution facility are taxable.

##### INTERPRETATION OF GENERAL RULE:

A construction contract is any agreement, including an agreement by a subcontractor to erect, construct, alter or repair a facility. Property that loses its identity when it is affixed to real property, such as materials, is considered consumed directly in the performance of the construction contract. The contractor is subject to tax on his purchased of property that will be consumed to perform the contract.

Property that retains its identify after it is installed in a facility, such as certain machinery, is subject to tax when it is transferred by the contractor to the purchaser. The contractor may claim an exemption from tax on purchases of property which will be resold. The contractor is required to collect tax on the subsequent transfer of that property under a construction contract.

##### SPECIFIC ITEMS:

Materials: A construction contractor is a consumer of materials and is subject to tax on purchases of materials used in a construction contract. Materials include construction materials and components and tangible personal property incorporated into, attached, or affixed to real property by contractors in the performance of a construction contract that lose their identity and become part of real property.

A construction contractor also may sell materials prior to installation and the contract may separately state the sales price of the materials and the charge for installation. In this case, the contractor is considered a retailer of materials. The contractor must collect tax on the materials.

Fixtures: A contractor is a retailer of fixtures that he furnishes and installs to perform a construction contract. The sale of fixtures is subject to tax. Fixtures include items which are accessory to a building or other structure and do not lose their identity as accessories when installed.

Machinery and Equipment: A contractor is a retailer of machinery and equipment. Therefore, machinery and equipment furnished in connection with a construction contract is subject to tax. Machinery and equipment includes property that is not essential to the building or structure itself, but which can be attached to the realty without losing its identity and, if attached, is readily removable without damage to the unit or to the realty.

California Regulation 1521 lists property typically considered as materials, fixtures, machinery and equipment as follows:

Materials: The following is a list of typical items regarded as materials:

Asphalt	Paper
Bricks	Piping, valves and pipe fittings
Builders' hardware	Plaster
Caulking material	Power poles, towers and lines
Cement	Putty
Conduit	Reinforcing mesh
Doors	Roofing
Ducts	Sand
Electric wiring & connections	Sheet metal
Flooring	Steel
Glass	Stone
Gravel	Stucco
Insulation	Tile
Lath	Wall coping
Lead	Wallboard
Lime	Wallpaper
Linoleum	Wall-to-wall carpeting (when affixed to the floor)
Lumber	Weather stripping
Macadam	Windows
Millwork	Window screens
Mortar	Wire netting and screen
Oil	Wood preserver
Paint	

Fixtures: The following is a list of typical items regarded as fixtures:

Air conditioning units	Cranes (including moving parts of cranes)
Awnings	affixed or annexed to a building, structure or Burglar
alarm & fire alarm fixtures	fixed work
Cabinets, counters, and lockers	Plumbing fixtures
(prefabricated)	Refrigeration units

Electric generators (affixed to and accessory to a building, structure or fixed works)

Elevators, hoists, and conveying

Furnaces, boilers & heating units

Lighting fixtures

Signs

Television antennas

Transformers and switchgear

Vault doors and equipment units

Venetian blinds

Machinery and Equipment: The following are lists of typical items regarded as:

Machinery and Equipment

Drill presses

Electric generators  
(unaffixed, or, if affixed,  
which meet the require-  
ments of Reg. 1521  
subparagraph (a) (6))

Lathes

Machine tools

Printing presses

Not Machinery or Equipment

Fixtures and materials as defined in this regulation

Wiring, piping, etc., used as a source of power,  
water, etc., for machinery and equipment

Radio transmission antennas

Large tanks (i.e., over 500 barrel capacity)

Fire alarm systems

Street light standards

Cooling towers other than small prefabricated  
cooling units

**APPENDIX C**  
**RELEASE OF LIENS**  
**(CONTRACTORS)**

WHEREAS, we, the undersigned, have installed or furnished labor, materials and/or equipment for the installation of the Project entitled California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Project, installed pursuant to a written agreement dated [REDACTED], 20 [REDACTED], between the **California-American Water Company**, having an office at 655 West Broadway, Suite 1410, San Diego, CA 92101 hereinafter called Owner and [REDACTED], having an office at [REDACTED], hereinafter called Contractor, which said facilities are owned by the Owner and described and located as follows:

**California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Projects**

WHEREAS, we, the undersigned, have agreed to release any and all claims and liens which we have, or might have, against the Owner, or said facilities by reason of the labor, materials and equipment furnished by us in connection with said installation;

NOW THESE PRESENTS WITNESS that we the undersigned, in consideration of the premises, and of the sum of One Dollar (\$1.00) in hand paid by the said Owner, at and before the sealing and delivery hereof, the receipt whereof we do hereby acknowledge, have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim, unto the said Owner, its successors and assigns, any and all manner of liens, claims and demands whatsoever which we now have, or might or could have, on or against the said facilities, or the owner thereof, for work done, or for equipment or materials furnished in connection with the installation thereof. It is the intent of this release that the Owner, its successors and assigns shall and may hold, have, use and enjoy the said facilities free and discharged from all liens and demands whatsoever which we now have, or might or could have against the same if these presents had not been made.



IN WITNESS WHEREOF, we have hereunto set our hand and seal the day written opposite our signature.

Company Name \_\_\_\_\_ (SEAL)

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_, 20\_\_

Sworn to and subscribed before me,  
a Notary Public, this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public (SEAL)

I, \_\_\_\_\_, duly authorized representative of  
\_\_\_\_\_, designated as Contractor, do hereby state that  
the parties whose names are signed to the attached releases, pages 1 through \_\_\_\_, are all of the  
parties who have furnished labor, materials or equipment in connection with the construction of the  
facilities mentioned above; excepting only such materials as may have been furnished by the Owner.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Representative's Signature

Sworn to and subscribed before me,  
a Notary Public, this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public (SEAL)

**RELEASE OF LIENS**  
**(Subcontractors)**

WHEREAS, we, the undersigned, have installed or furnished labor, materials or equipment for the installation of the Project entitled California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Project, installed pursuant to a written agreement dated \_\_\_\_\_, 20\_\_\_\_, between the **California-American Water Company**, having an office at 655 West Broadway, Suite 1410, San Diego, CA 92101, hereinafter called Owner and \_\_\_\_\_, having an office at \_\_\_\_\_, hereinafter called Contractor, which said facilities are owned by the Owner and described and located as follows:

**California-American Water Company, Southern District, City of Bellflower, System 4 Water Main Replacement Projects**

WHEREAS, we, the undersigned, have agreed to release any and all claims and liens which we have, or might have, against the Owner or said facilities by reason of the labor, materials and equipment furnished by us in connection with said installation;

NOW THESE PRESENTS WITNESS that we, the undersigned, in consideration of the premises, and of the sum of One Dollar (\$1.00) in hand paid by the said Owner, at and before the sealing and delivery hereof, the receipt whereof we, do hereby acknowledge, have remised, released and forever quitclaimed, and by these presents do remise, release and forever quitclaim, unto the said Owner, its successors and assigns, any and all manner of liens, claims and demand whatsoever which we now have, or might or could have, on or against the said facilities, or the owner thereof, for work done, or for equipment or materials furnished in connection with the installation thereof. It is the intent of this release that the Owner, its successors and assigns shall and may hold, have, use and enjoy the said facilities free and discharged from all liens and demands whatsoever which we now have, or might or could have against the same if these presents had not been made. And we do further certify and acknowledge, that we have received of and from the said Contractor, payment in full on account of labor done or materials or equipment furnished for or in connection with said facilities.

IN WITNESS WHEREOF, we have hereunto set our hand and seal the day written opposite our signature.

Company Name \_\_\_\_\_ (SEAL)  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Dated \_\_\_\_\_, 20\_\_\_\_

Sworn to and subscribed before me, a Notary Public,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(SEAL)  
Notary Public  
(Subcontractors and Suppliers)

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## APPENDIX D

### DRONE POLICY

1. Pilots must be current Title 14 CFR Part 107 certified.
2. Contractor must have a UAV Safety Management System (SMS) that: “follows the recommendations provided by the current edition of the International Civil Aviation Organization (ICAO) Safety Management Manual Document 9859, ICAO Annex 19 and the Federal Aviation Administration SMS Implementation Guide for determining acceptable levels of risk within the organization by collecting and incorporating safety assurance data to develop safety performance targets and safety performance indicators both quantitatively and qualitatively.”
3. Contractor who will be utilizing drones during the course of their contract with American Water require the following minimum insurance coverage. The below coverage types and minimums are in addition to those coverages listed in Article 6:
  - a. Coverage Required: Aviation Insurance Policy- Unmanned Aircraft Systems
  - b. Bodily Injury and Property Damage Liability: \$5,000,000 each occurrence and in the aggregate
    - i. Primary/ Non-Contributory
    - ii. Additional Insured
    - iii. Aviation Personal and Advertising Injury Liability \$5,000,000 occurrence/ aggregate
    - iv. Expense for Medical Services \$5,000
    - v. Fire Legal Liability \$100,000 each occurrence
    - vi. Waiver of Subrogation for Physical Damage
  - c. Professional Liability or Errors and Omissions: \$1,000,000 each occurrence/ aggregate

**APPENDIX E  
NON-COLLUSION AFFIDAVIT FOR  
CONTRACTOR**

\_\_\_\_\_ declares and says:

1. That he/she is the (owner, partner, representative, or agent) of \_\_\_\_\_, hereinafter referred to as (CONTRACTOR) or (subcontractor).
  
2. That he/she is fully informed regarding the preparation and contents of this proposal titled \_\_\_\_\_ and dated \_\_\_\_\_ for certain work for California-American Water Company in the State of California.
  
3. That his/her proposal is genuine, and is not collusive or a sham proposal.
  
4. That any of its officers, owners, agents, representatives, employees, or parties in interest, including this affiliate, has not in any way colluded, conspired, connived or agreed, directly or indirectly, with any other CONTRACTOR, firm, or person to submit a collusive or sham proposal in connection with such contract, or to refrain to submitting a proposal in connection with such contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other CONTRACTOR, firm, or person to fix the price or prices in said proposal, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against City, or any person interested in the proposed contract; and,
  
5. That the price or prices quoted in the proposal are fair and proper, and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the CONTRACTOR, or any of its agents, owners, representatives, employees, or parties in interest, including this affiliate.

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Dated this \_\_\_ day of \_\_\_, 20\_\_\_, at \_\_\_\_\_, California.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

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