

Tree Replacements for Western Sanitary Sewer Interceptor – Division II

Project Manual

**City of West Lafayette
Board of Public Works and Safety**

January 2014



GREELEY AND HANSEN

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Joseph M. Teusch

Seal Affixed
January 21, 2014



GREELEY AND HANSEN

SECTION 00003

CITY OF WEST LAFAYETTE, INDIANA

TREE REPLACEMENTS WESTERN SANITARY SEWER
INTERCEPTOR – DIVISION II

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Section 00100

NOTICE TO BIDDERS

**TREE REPLACEMENTS FOR WESTERN
SANITARY SEWER INTERCEPTOR – DIVISION II**

The Board of Public Works and Safety of the City of West Lafayette, Indiana will receive sealed bids for the **Tree Replacements for Western Sanitary Sewer Interceptor – Division II** until the hour of **8:30 AM** local time on **February 18, 2014**, at the office of the Clerk-Treasurer, City Hall, 609 West Navajo Street, West Lafayette, Indiana 47906, Bids received after said time will be returned unopened. No oral, telephoned, telegraphed, or facsimile bids or changes to bids will be considered. After said time bids will be publicly opened and read aloud at the Council Chambers, City Hall, 609 West Navajo Street, West Lafayette, Indiana 47906.

The Work comprises furnishing all labor, materials, equipment, supplies and services to furnish, install and maintain, eight hundred (800), 2-inch caliper trees and all associated Work complete in place as shown and specified.

Bids must be entered upon the bid form and the State Board of Accounts Form 96 (Revised 2013), submitted in **triplicate** with the bid and non-collusion affidavit properly executed, and must comply with the statutes of Indiana and with the rules and regulations of the State Board of Accounts of Indiana. Bids shall be submitted in a sealed envelope marked, **“BID - TREE REPLACEMENTS FOR WESTERN SANITARY SEWER INTERCEPTOR - DIVISION II”**.

The bid must be accompanied by a certified or cashier's check or bid bond in an amount not less than five percent (5%) of the total bid price made in favor of the City of West Lafayette, Indiana, which amount shall accrue to and become the property of the City should the Bidder, awarded a contract, fail to enter into the required written agreement and secure the same with the required one hundred percent (100%) performance, payment, and guarantee bond.

Copies of the Contract Documents may be obtained from the office of Greeley and Hansen, 7820 Innovation Boulevard, Suite 150, Indianapolis IN, (317) 924-3380. There is no fee for copies of the Contract Documents but Bidders must register with Greeley and Hansen to ensure receipt of addenda. Copies of the Contract Documents may be examined during regular business hours at the office of the Clerk-Treasurer, City Hall, 609 West Navajo Street, West Lafayette, Indiana 47906.

Bids remain in effect for ninety (90) days. The Board reserves the right to reject any or all bids and to waive irregularities of bidding.

CITY OF WEST LAFAYETTE
BOARD OF PUBLIC WORKS AND SAFETY

Judith C. Rhodes, Clerk-Treasurer

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SECTION 00200

INSTRUCTIONS TO BIDDERS

ARTICLE 1 DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions of the Construction Contract (EJCDC No. 1910-8, 1996 Edition) and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:
- A. Bidder - The individual or entity who submits a Bid directly to OWNER.
 - B. Issuing Office - The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
 - C. Successful Bidder - The lowest, responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.
 - D. Notice to Bidders – The advertisement or invitation to bid.
 - E. E- Verify Program – An electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, S.403(a), as amended, operated by the United States Department of Homeland Security or successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

ARTICLE 2 COPIES OF BIDDING DOCUMENTS

- 2.01 Refer to the Notice to Bidders for information on how and where copies of the Bidding Documents may be examined or obtained.
- 2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 OWNER and ENGINEER in making copies of Bidding Documents available do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, each Bidder must complete the Experience Questionnaire on the Indiana State Board of Accounts Form 96. The

Bidder's financial statement shall be submitted in a separately sealed envelope, clearly marked Bidder's Financial Statement, enclosed in the sealed envelope containing the Bid. The financial statement will be returned to the Bidder unopened with his Bid Security unless it is necessary to open the envelope for the purpose of determining the award. The financial statement submitted by the successful Bidder will be retained by the OWNER.

- 3.02 Bidders who are nonresident corporations shall furnish to the OWNER a Certified Copy of the Certificate of Authority to do Business in Indiana issued by the State of Indiana within 15 calendar days of notice to do so. Such notice will be given to Bidders who are nonresident corporations, to whom it appears an award will be made, and the copy of the certificate must be filed with the OWNER before the award will be made. Failure to promptly submit this evidence of qualification to do business in the State of Indiana may be basis for rejection of the Bid.
- 3.03 Each bidder must ensure that to the greatest extent feasible, opportunities for training and employment should be given to lower income residents of the project area and purchases and/or contracts for work in connection with the project should be awarded to small business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

ARTICLE 4 EXAMINATION OF CONTRACT DOCUMENTS, OTHER RELATED DATA, AND SITE

- 4.01 It is the responsibility of each Bidder before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;
 - B. All Bidders are to inform themselves of the conditions under which the work is to be performed, the site of the work, the obstacles which may be encountered, and all other relevant matters concerning the work to be performed. The successful Bidder will not be allowed any extra compensation by reason of any matter or thing concerning which said Bidder might have fully informed himself, because of his failure to have so informed himself prior to the bidding.
 - C. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
 - D. To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data;
 - E. To promptly notify ENGINEER of all conflicts, errors, ambiguities, or discrepancies which Bidder has discovered in or between the Contract Documents and other such related documents;
 - F. Become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;

- G. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
- H. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents; and
- I. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.02 Reference is made to the Supplementary Conditions for identification of:

- A. Those reports of exploration and tests of subsurface conditions at or contiguous to the site which have been used by ENGINEER in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the “technical data” contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of reports or any other data will be made available by ENGINEER to any Bidder on request. Those reports or any other data are not part of the Contract Documents but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of 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.

4.03 Underground Facilities

Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER, or others.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions.

4.05 Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or

procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 4.06 On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.
- 4.07 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by ENGINEER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 SITE AND OTHER AREAS

The Site is identified in the Bidding Documents. All additional lands and access thereto required temporarily for storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

ARTICLE 6 INTERPRETATIONS AND ADDENDA

- 6.01 No interpretation of the meaning of the Plans, Drawings or other Contract Documents will be made to any Bidder orally. All questions about the meaning or intent of the Bidding Documents are to be directed to ENGINEER in writing, addressed to: Greeley and Hansen, 7820 Innovation Blvd, Suite 150, Indianapolis, Indiana 46278. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda which, if issued, will be mailed or faxed to all parties recorded by ENGINEER as having received the Bidding Documents, not later than 5 days prior to the date fixed for the Bid opening. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

If requested, a copy of an Addendum will be delivered to a prospective Bidder's representative at the office of the ENGINEER and receipted for by said Bidder's representative. Failure of any Bidder to receive any addenda does not relieve said Bidder

from any obligation under the Bid as submitted. All addenda issued become part of the Contract Documents.

- 6.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

ARTICLE 7 BID SECURITY

- 7.01 Each Bid must be accompanied by Bid Security made payable to OWNER in an amount of five (5) percent of Bidder's maximum Bid price and in the form of a certified or bank cashier's check or a Bid Bond, on the form attached, issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions.
- 7.02 The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within fifteen (15) days after the Notice of Award, OWNER may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the Effective Date of the Agreement or the 90th day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 7.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 8 CONTRACT TIMES

- 8.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in the Agreement and in the Bid Proposal Form.

ARTICLE 9 LIQUIDATED DAMAGES

- 9.01 Provisions for liquidated damages are set forth in the Agreement.

ARTICLE 10 SUBSTITUTE AND "OR-EQUAL" ITEMS

- 10.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission

of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the General Conditions and may be supplemented in the General Requirements.

ARTICLE 11 PREPARATION OF BID

- 11.01 The Bid Proposal Form is included with the Bidding and Contract Documents. Prepare and present the Bid Form, including a fully executed Indiana State Board of Accounts Form No. 96 together with the Additional Provisions, in accordance with the Instructions to Bidders.
- 11.02 All blanks on the Bid Form shall be completed and the Bid signed. A Bid price shall be indicated for each Bid item listed therein.
- 11.03 A bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 11.04 A bid by a partnership shall be executed in the partnership name and signed by a partner, whose title must appear under the signature, accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.
- 11.05 A bid by a limited liability company shall be executed in the name of the firm by a member 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 below the signature.
- 11.06 A bid by an individual shall show the Bidder's name and official address.
- 11.07 A bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature.
- 11.08 Print all names below the signatures.
- 11.09 Acknowledge receipt of all Addenda on the Bid Form.
- 11.10 Show the address and telephone number for communications regarding the Bid.
- 11.11 Provide evidence of authority to conduct business as an out-of-state corporation in the State of Indiana in accordance with Article 3 above. Show state contractor license number, if any.
- 11.12 Provide E-Verify Affidavit, that if Bidder is awarded the Contract, it will enroll in and participate in the E-Verify program. Within three (3) business days of notification by OWNER, the apparent lowest responsive Bidder will be required to submit proof from the E-Verify Program (Post-Bid Submittal) that it is currently enrolled in the Program. An example confirmation is the confirmation email received from E-Verify that the Contractor has successfully enrolled in E-Verify.

ARTICLE 12 SUBMITTAL OF BID

- 12.01 A bid shall be submitted no later than the time and place indicated in the Notice to Bidders and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder, and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate envelope plainly marked on the outside with the notation "**BID - TREE REPLACEMENTS FOR WESTERN SANITARY SEWER INTERCEPTOR - DIVISION II.**" A mailed bid shall be addressed to City of West Lafayette, 609 West Navajo Street, West Lafayette, Indiana 47906 and sent by Certified Mail. Mailed Bids must be received no later than the time fixed for opening Bids.

ARTICLE 13 MODIFICATION AND WITHDRAWAL OF BID

- 13.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 13.02 If, within 24 hours after Bids are opened, any Bidder files a duly signed, written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

ARTICLE 14 OPENING OF BIDS

- 14.01 Bids will be opened at the time and place indicated in the advertisement or Notice to Bidders and, unless obviously nonresponsive, read aloud publicly.

ARTICLE 15 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 15.01 All Bids will remain subject to acceptance for 90 calendar days after the day of the Bid Opening, but OWNER may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

ARTICLE 16 AWARD OF CONTRACT

- 16.01 OWNER reserves the right to reject any or all Bids, including, without limitation, the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the OWNER. OWNER also reserves the

right to waive all information not involving price, time or changes in the Work and to negotiate contract terms with the successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of 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. Discrepancies between the words and figures will be resolved in favor of the words.

- 16.02 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 16.03 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications and financial ability of Bidders to perform the Work in accordance with the Contract Documents.
- 16.04 If the contract is to be awarded, OWNER will award the contract to the Bidder whose Bid will be in the best interests of the Project.

ARTICLE 17 CONTRACT SECURITY AND INSURANCE

- 17.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to performance and payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.
- 17.02 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to insurance. Certificates of Insurance (and other evidence of insurance requested by OWNER or Other Additional Insured) must be furnished, as required, before beginning work.

ARTICLE 18 SIGNING OF AGREEMENT

- 18.01 When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents, which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds. Within ten days thereafter OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 19 SALES AND USE TAXES

- 19.01 OWNER is exempt from Indiana State Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Paragraph SC-6.10 of the Supplementary Conditions for additional information.

ARTICLE 20 RETAINAGE

20.01 Provisions concerning retainage are set forth in the Agreement.

ARTICLE 21 PROJECT FUNDING

21.01 This project will be funded through local funds.

END OF SECTION

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SECTION 00300

BID PROPOSAL FORM

Part of State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)

BID OF

(Contractor)

(Address)

FOR

PUBLIC WORKS PROJECTS

OF

BOARD OF PUBLIC WORKS AND SAFETY

CITY OF WEST LAFAYETTE, INDIANA

TREE REPLACEMENTS FOR WSSI - DIV. II

Filed _____, _____

Action taken _____



CONTRACTOR'S BID FOR PUBLIC WORK - FORM 96

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)
Prescribed by State Board of Accounts

PART I

(To be completed for all bids. Please type or print)

Date (month, day, year): _____

1. Governmental Unit (Owner): Board of Public Works and Safety, West Lafayette, IN
2. County : Tippecanoe
3. Bidder (Firm): _____
Address: _____
City/State/ZIPcode: _____
4. Telephone Number: _____
5. Agent of Bidder (if applicable): _____

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of West Lafayette, IN
(Governmental Unit) in accordance with plans and specifications prepared by _____
_____ and dated _____ for the sum of
stated in Section VII \$ _____

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

If additional units of material included in the contract are needed, the cost of units must be the same as that shown in the original contract if accepted by the governmental unit. If the bid is to be awarded on a unit basis, the itemization of the units shall be shown on a separate attachment.

The contractor and his subcontractors, if any, shall not discriminate against or intimidate any employee, or applicant for employment, to be employed in the performance of this contract, with respect to any matter directly or indirectly related to employment because of race, religion, color, sex, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

CERTIFICATION OF USE OF UNITED STATES STEEL PRODUCTS *(If applicable)*

I, the undersigned bidder or agent as a contractor on a public works project, understand my statutory obligation to use steel products made in the United States (I.C. 5-16-8-2). I hereby certify that I and all subcontractors employed by me for this project will use U.S. steel products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

ACCEPTANCE

The above bid is accepted this _____ day of _____, _____, subject to the following conditions: _____

Contracting Authority Members:

_____	_____
_____	_____
_____	_____

PART II

(For projects of \$150,000 or more – IC 36-1-12-4)

Governmental Unit: Board of Public Works and Safety

Bidder (Firm) _____

Date (month, day, year): _____

These statements to be submitted under oath by each bidder with and as a part of his bid. Attach additional pages for each section as needed.

SECTION I EXPERIENCE QUESTIONNAIRE

1. What public works projects has your organization completed for the period of one (1) year prior to the date of the current bid?

Contract Amount	Class of Work	Completion Date	Name and Address of Owner

2. What public works projects are now in process of construction by your organization?

Contract Amount	Class of Work	Expected Completion Date	Name and Address of Owner

3. Have you ever failed to complete any work awarded to you? _____ If so, where and why?

4. List references from private firms for which you have performed work.

SECTION II PLAN AND EQUIPMENT QUESTIONNAIRE

1. Explain your plan or layout for performing proposed work. *(Examples could include a narrative of when you could begin work, complete the project, number of workers, etc. and any other information which you believe would enable the governmental unit to consider your bid.)*

2. Please list the names and addresses of all subcontractors *(i.e. persons or firms outside your own firm who have performed part of the work)* that you have used on public works projects during the past five (5) years along with a brief description of the work done by each subcontractor.

3. If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the subcontractor, and whether you will require a bond. However, if you are unable to currently provide a listing, please understand a listing must be provided prior to contract approval. Until the completion of the proposed project, you are under a continuing obligation to immediately notify the governmental unit in the event that you subsequently determine that you will use a subcontractor on the proposed project.

4. What equipment do you have available to use for the proposed project? Any equipment to be used by subcontractors may also be required to be listed by the governmental unit.

5. Have you entered into contracts or received offers for all materials which substantiate the prices used in preparing your proposal? If not, please explain the rationale used which would corroborate the prices listed.

SECTION III CONTRACTOR'S FINANCIAL STATEMENT

Attachment of bidder's financial statement is mandatory. Any bid submitted without said financial statement as required by statute shall thereby be rendered invalid. The financial statement provided hereunder to the governing body awarding the contract must be specific enough in detail so that said governing body can make a proper determination of the bidder's capability for completing the project if awarded.

Section V: Assurances

- 1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform all Work as specified or indicated in the Contract Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
- 2. Bidder accepts all of the terms and conditions of the Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the day of Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER. Bidder will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding requirements within 15 days after the date of OWNER's Notice of Award.

3. In submitting this Bid, Bidder represents, set forth in the Agreement, that:

A. Bidder has examined and carefully studied the Contract Documents, the other related data identified in the Contract Documents, and the following Addenda, receipt of all which is hereby acknowledged:

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

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

D. Bidder has carefully studied all: reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface of subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions. Bidder accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions. Bidder acknowledges that such reports and drawings are not Contract Documents and may not be complete for Bidder's purposes. Bidder acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data

shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Contract Documents.
- G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that Bidder has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder.
- J. Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work for which this Bid is submitted.
- K. Bidder is of lawful age and that no other person, firm, corporation, or joint venture has any interest in the Bid or in the Contract proposed to be entered into.
- L. This Bid is made without any understanding, agreement, or connection with any other person, firm, corporation, or joint venture making a Bid for the same purposes, and is in all respects fair and without collusion or fraud.

- M. Bidder is not in arrears to the City of West Lafayette, upon debt or contract; is not a defaulter, as surety or otherwise, upon any obligation to the City of West Lafayette; and has not been delinquent or unfaithful in any former contract with the City of West Lafayette.
- N. No officer or employee or person whose salary is payable in whole or in part by the Owner is, shall be or become interested, directly or indirectly, as a contracting party, partner, stockholder, surety or otherwise, in this Bid, or in the performance of the Contract, or in the supplies, materials, or equipment and Work or labor to which it relates, or in any portion of the profits thereof.
- O. Bidder is licensed to do business in the State of Indiana. A successful bidder shall furnish proof of license before the Contract will be awarded.
- P. Bidder further represents that 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 agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

Section VI: Bid Prices

1. Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform all Work as specified or indicated in the Contract Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder declares that all the component parts of the Contract Documents have been carefully examined and the documents are fully understood and it is agreed that the Bidder will execute the Contract and furnish the required Performance and Payment Bonds and will complete the Work in accordance with the Contract Documents for the following price(s):

BID

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
1	73	Furnish, install and maintain 2” Caliper Hackberry , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
2	73	Furnish, install and maintain 2” Caliper Sugar Maple , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
3	73	Furnish, install and maintain 2” Caliper Sterling Silver Linden , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
4	73	Furnish, install and maintain 2” Caliper Black Gum , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
5	73	Furnish, install and maintain 2” Caliper Swamp White Oak , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
6	73	Furnish, install and maintain 2” Caliper Northern Red Oak , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
7	73	Furnish, install and maintain 2” Caliper Shumard Oak , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
8	73	Furnish, install and maintain 2” Caliper Allee or Frontier Elm , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
9	73	Furnish, install and maintain 2” Caliper Seedless Sweetgum , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
10	73	Furnish, install and maintain 2” Caliper Male Kentucky Coffeetree , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____

Contract Item No.	Estimated Quantity	Description and Price in Words	Price in Figures	
			Unit Price	Computed Total Price For Item
11	70	Furnish, install and maintain 2” Caliper Tulip , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____
12	800	Furnish, install and maintain Tree Staking , complete in place as shown and specified for the unit price of _____ dollars and _____ cents.	\$ _____	\$ _____

CONTRACTOR _____

TOTAL BID PRICE (Total of All Contract Item Prices)

_____ (\$ _____)

(Amount in Words) (Amount in Figures)

Section VII: Additional Provisions

1. Unit Prices have been computed in accordance with paragraph 11.03 of the General Conditions.
2. Bidder acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents.
3. Bidder agrees that the Work will be substantially complete by **November 15, 2014** as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions by **December 1, 2014**.
4. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.
5. The following documents are attached to and made a condition of this Bid:
 - a. Required Bid Security in the amount of five percent (5%) of the bid in the form of a Certified or Cashier's Check, or a Bid Bond on the attached form. The Bid Security will be retained or returned in accordance with Article 8 of the Instructions to Bidders.
 - b. Required executed copy of Bidder's Qualification Statement with supporting data (Part II of Bid Proposal Form).
 - c. Required Bidder's Financial Statement.
 - d. E-Verify Affidavit (refer to Section 00200, Paragraph 12.12).
6. The terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions or Instructions to Bidders.
7. Accompanying this Bid is a certified check, a bank cashier's check, or bid bond which shall become the property of the City of West Lafayette, Indiana, if this Bid shall be accepted by the City of West Lafayette, Indiana, and the undersigned bidder fails to furnish the required bonds and insurance within Fifteen (15) days and to enter into a Contract within Thirty (30) days after the Owner's acceptance of this Bid.

IN WITNESS WHEREOF, this Bid is hereby signed and sealed as of the date indicated.

Date: _____ Bidder:
By: _____

Printed name of signer

Title of signer

Where Bidder is a Corporation, add:

(SEAL) ATTEST: _____
Secretary

Where Bidder is a Joint Venture, each member of the Joint Venture must sign the Bid.

The bid must be sworn to by the person signing the bid in one of the following forms:

(Form of Affidavit where Bidder is an Individual)

STATE OF)
) SS:
COUNTY OF)

_____, being duly sworn, deposes and says: That I am the person described in and who executed the foregoing Bid and that the several matters therein stated are in all respects true.

(Signature)

Subscribed and sworn to before me this _____
day of _____, 20__.

Notary Public _____ County

(SEAL)

My Commission expires:

(Form of Affidavit where Bidder is a Firm)

STATE OF)
) SS:
COUNTY OF)

_____, being duly sworn,

deposes and says: That I am a member of _____

_____ the firm described in and which executed the foregoing Bid; that I duly subscribed the name of the firm thereunto on behalf of the firm; and that the several matters therein stated are in all respects true.

(Signature)

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public _____ County

(SEAL)

My Commission expires:

(Form of Affidavit where Bidder is a Corporation)

STATE OF)
) SS:
COUNTY OF)

_____ and _____
being duly sworn, depose and say: That we reside in the Cities of

_____ and
_____, respectively;

that we are the _____ and
_____, respectively;

of _____
the corporation described in and which executed the foregoing instrument; that we know the seal of the corporation; that the seal affixed to this instrument is such corporate seal and was so affixed by order of the Board of Directors of the corporation; that we signed our names thereto by like order; and that we have knowledge of the several matters therein stated and they are in all respects true.

(Signature)

(Signature)

Subscribed and sworn to before me this _____
day of _____, 20__.

Notary Public _____ County

(SEAL)

My Commission expires:

(Form of Affidavit where Bidder is a Joint Venture)

STATE OF)
) SS:
COUNTY OF)

Name: _____

Firm: _____

Name: _____

Firm: _____

Name: _____

Firm: _____

and

Name: _____

Firm: _____

being duly sworn, depose and say: That we are members of the joint venture described in and which executed the foregoing Bid; that we duly subscribed the names of the firms forming the joint venture thereunto on behalf of each firm and that the several matters therein stated are in all respects true.

(Signature)

(Signature)

(Signature)

(Signature)

Subscribed and sworn to before me this _____
day of _____, 20__.

Notary Public _____ County

(SEAL)

My Commission expires:

E-VERIFY AFFIDAVIT

(To be submitted with Bid)

Pursuant to Indiana Code 22-5-1.7-11, the contractor awarded the Bid is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify Program. The contractor who is award the Bid is not required to verify the work eligibility status of all its newly hired employees through the E-Verify Program if the E-Verify Program no longer exists.

The individual person(s) executing this Proposal, being first duly sworn, depose(s) and state(s) that the Bidder does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into an agreement for this Bid, the undersigned business entity will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify Program.

SIGNATURES

[Signature by or on behalf of the Bidder in the spaces provided below shall constitute execution of this E-Verify Program Affidavit.]

Written Signature: _____

Printed Name: _____

Title: _____

Important – Notary Signature and Seal Required in the Space Below

STATE OF _____

SS:

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20__

My commission expires: _____ (Signed) _____

Residing in _____ County, State of _____

SECTION 00500

FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR

ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2014 by and between the Board of Public Works and Safety, West Lafayette, Indiana (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

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

Furnish all labor, delivery, storage, maintenance, supervision, materials, equipment, supplies both temporary and permanent to install 800 trees.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**West Lafayette, Indiana
Tree Replacements for Western Sanitary Sewer Interceptor – Division II**

Article 2. ENGINEER

The Project has been designed by Greeley and Hansen who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

3.1 Substantial Completion

All Work shall be substantially completed by November 15, 2014.

3.2 Final Completion and Readiness for Final Payment

All Work shall be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions by December 1, 2014.

3.3 Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraphs 3.1 and 3.2 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Five Hundred dollars (\$500) for each calendar day that expires after the time specified for Substantial Completion. CONTRACTOR shall pay OWNER Five Hundred dollars (\$500) for each calendar day that expires after the time specified for Final Completion and Readiness for Final Payment.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the total sum of the amounts determined pursuant to the CONTRACTOR's Bid (See Article 7.4).

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage

OWNER shall make progress payments on the basis of CONTRACTOR's Applications for Payment, on or about the thirtieth day of each month during performance of the Work as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

Progress payments shall not exceed an amount equal to 90 percent of the Work completed and of the cost of materials not incorporated in the Work but delivered and suitably stored (with the balance being retainage). If the Work is 50 percent complete as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed less the aggregate of payments previously made; and

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Work completed, less such amounts as ENGINEER shall determine, in accordance with paragraph 14.02.B.5 of the General Conditions.

5.1.3 Upon issuance and OWNER'S execution of a Certificate of Substantial Completion, OWNER may reduce the retained amount to not less than two hundred percent (200%) of the cost of the Work remaining to be completed, corrected or accepted.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data".

- 6.2 CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 6.4 CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions as to the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02B of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- 6.5 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- 6.6 CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.7 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- 6.8 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

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

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 This Agreement, identified as Section 00500
 - 7.1.1 Performance and Payment Bonds, identified as Sections 00610 and 00620
- 7.2 Notice to Proceed, identified as Section 00680
- 7.3 CONTRACTOR'S BID, identified as Section 00300
- 7.4 Standard General Conditions, identified as Section 00700
- 7.5 Supplementary Conditions, identified as Section 00800
- 7.6 Specifications bearing the title City of West Lafayette, Indiana Tree Replacements for Western Sanitary Sewer Interceptor – Division II
- 7.7 Addenda (numbers _____ to _____, inclusive)
- 7.8 Exhibit A, Figures
- 7.9 Exhibit B, INDOT Permit

The documents listed in the paragraphs above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.05 of the General Conditions.

Article. 8 MISCELLANEOUS

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

- 8.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 8.5 This Contract is to be governed by the law of the State of Indiana. Venue for all disputes arising under this Contract shall be Tippecanoe County, Indiana.
- 8.6 Notwithstanding any term or condition in this Contract to the contrary, in the event litigations is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.
- 8.7 By signing this Contract, CONTRACTOR certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

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

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

OWNER: Board of Public Works and Safety CONTRACTOR: _____
City of West Lafayette _____

By: _____ By: _____
Title: _____ Title: _____
[CORPORATE SEAL] [CORPORATE SEAL]

Attest: _____ Attest: _____
Title: _____ Title: _____
Address for giving notices: Address for giving notices:
609 West Navajo Street _____
West Lafayette, IN 47906 _____

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

License No. _____
Agent for service of process: _____

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

Designated Representative: Designated Representative:
Name: _____ Name: _____
Title: _____ Title: _____
Address: _____ Address: _____

Phone: _____ Phone: _____
Fax: _____ Fax: _____

END OF SECTION

(NO TEXT FOR THIS PAGE)

Performance Bond

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

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

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

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

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

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

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

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

4.4.1 After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2 Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

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

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

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

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

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

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2 Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3 CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)
AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

Payment Bond

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

SURETY

Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

EJCDC No. 1910-28-B (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

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

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

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

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY--Name, Address and Telephone)

AGENCY or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

NOTICE TO PROCEED

Dated _____

TO: _____
(CONTRACTOR)

ADDRESS¹: _____

Contract: Tree Replacements for Western Sanitary Sewer Interceptor - Division II

Project: _____

OWNER'S CONTRACT NO. _____

You are notified that the Contract Times under the above contract will commence to run on _____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Substantial Completion is _____ and the date of readiness for final payment is _____.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must comply with all requirements within the contract documents.

City of West Lafayette, Indiana
(OWNER)

By: _____
(AUTHORIZED SIGNATURE)

(TITLE)

Copy to ENGINEER

¹(Use Certified Mail, Return Receipt Requested)

(NO TEXT FOR THIS PAGE)

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and



AMERICAN CONSULTING
ENGINEERS COUNCIL

Issued and Published Jointly By



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

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

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

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

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

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

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

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

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to 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 inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

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

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

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

2.05 Before Starting Construction

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, 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 knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

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

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

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

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and 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 Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for 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 intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees 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. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

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

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

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

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not 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 ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

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

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

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

4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

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

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

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

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

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 *OWNER's Liability Insurance*

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

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

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

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. Engineer's Evaluation: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. Special Guarantee: OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. ENGINEER's Cost Reimbursement: ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

6.06 Concerning Subcontractors, Suppliers, and Others

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

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

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

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

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, 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). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, 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.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, 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 their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

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

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

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

9.06 *Rejecting Defective Work*

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

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

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

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

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

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

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

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

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

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

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice 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) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

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

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

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

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

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

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

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

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

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

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

11.02 *Cash 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 as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the 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 costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

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

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. 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.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

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

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

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

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

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or
2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

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

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

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

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

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

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such 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 all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *OWNER May Correct Defective Work*

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

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 Progress Payments

A. Applications for Payments

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

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

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

B. Review of Applications

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to 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: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that 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 to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or 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 referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

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

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling OWNER to a set-off against the amount recommended; or
- d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

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

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, 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. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibili-

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

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

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), 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 finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

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

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

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

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

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

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

SECTION 00800

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) have the meaning assigned to them in the General Conditions.

SUPPLEMENTARY CONDITIONS TO ARTICLE 1. DEFINITIONS AND TERMINOLOGY

SC-1.01A.7. In the first sentence of the paragraph 1.01.A.7. of the General Conditions delete "Advertisement or Invitation to Bid" and substitute "Notice to Bidders" therefore.

SC-1.01A.51. Add new paragraph 1.01.A.51., immediately after paragraph 1.01.A.50. of the General Conditions which shall read as follows:

51. "Additional Insureds", except where otherwise expressly defined, shall mean:

Board of Public Works and Safety, City of West Lafayette, Indiana
Greeley and Hansen LLC
Purdue Research Foundation
Trustees of Purdue University
INDOT

SUPPLEMENTARY CONDITIONS TO ARTICLE 2. PRELIMINARY MATTERS

SC-2.02.A. Amend the first sentence of paragraph 2.02.A. of the General Conditions by striking out "ten" and inserting "five", and as so amended paragraph remains in effect.

SC-2.03.A. Delete paragraph 2.03.A. in its entirety and insert the following in its place:

The Contract Time will commence to run on the day indicated in the Notice to Proceed. In no event will the Contract Time commence to run later than 30 days after the Effective Date of the Agreement.

SUPPLEMENTARY CONDITIONS TO ARTICLE 5. BONDS AND INSURANCE

SC-5.04 The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

5.04.A.1. and 5.04.A.2. Workers' Compensation, etc. under paragraphs 5.04.A.1. and 5.04.A.2. of the General Conditions:

- | | |
|---|--------------|
| (1) State: | Statutory |
| (2) Applicable Federal
(e.g., Longshoreman's): | Statutory |
| (3) Employer's Liability: | \$ 1,000,000 |

5.04.A.3., 5.04.A.4., and 5.04.A.5. Contractor's Liability Insurance under paragraphs 5.04.A.3. through 5.04.A.5. of the General Conditions which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of CONTRACTOR:

- | | |
|--|--------------|
| (1) General Aggregate
(Except Products –
Completed Operations) | \$ 1,000,000 |
| (2) Products – Completed
Operations Aggregate | \$ 1,000,000 |
| (3) Personal and Advertising
Injury (Per Person/
Organization) | \$ 1,000,000 |
| (4) Each Occurrence
(Bodily Injury and
Property Damage) | \$ 1,000,000 |
| (5) Property Damage Liability Insurance will provide Explosion, Collapse
and Underground coverage where applicable. | |
| (6) Excess Liability
General Aggregate | \$ 1,000,000 |
| Each Occurrence | \$ 1,000,000 |

5.04.A.6. Automobile Liability:

- | | |
|--|--------------|
| (1) Combined Single
Limit (Bodily Injury
and Property Damage): | \$ 1,000,000 |
| Each Accident | \$ 1,000,000 |

5.04.B.1. Include on polices as additional insureds:

Board of Public Works and Safety, City of West Lafayette, Indiana
Greeley and Hansen LLC
Purdue Research Foundation
Trustees of Purdue University
INDOT

5.04.B.2. The limits of liability for the insurance required by paragraph 5.04.B.4 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

Contractual Liability:

General Aggregate	\$ 1,000,000
Each Occurrence	\$ 1,000,000

SC-5.05 Delete paragraph 5.05 of the General Conditions in its entirety and insert the following in its place:

5.05 Contractor shall purchase and maintain until the date of final acceptance, Owners and Contractor's Protective Liability Insurance to protect OWNER, including its employees, officers and agents against claims which may arise from the operations of the Contractor, or his subcontractors. The coverage shall be for not less than the following amounts or greater where required by law or regulation:

Limits per Occurrence	
Bodily Injury/Property Damage	\$1,000,000
Personal/Advertising Injury	\$1,000,000
General Aggregate Limit per Policy	
Year except Products/Completed Operations	\$1,000,000

This insurance shall also cover the Engineers, Greeley and Hansen, Greeley and Hansen's subconsultants or such other engineer or engineers as may act under the contract, against similar claims.

SC-5.06 Delete paragraph 5.06 of the General Conditions in its entirety and insert the following in its place:

5.06 Property Insurance

A. CONTRACTOR shall purchase and maintain property insurance on the Work in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in these Supplementary

Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;
3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;
5. allow for partial utilization of the Work by OWNER;
6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph 5.06A will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07 of the General Conditions.

SUPPLEMENTARY CONDITIONS TO ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES

SC-6.02.B. Add the following after paragraph 6.02.B. of the General Conditions:

1. Work Hours: Perform work between 7:00 a.m. and 7:00 p.m. Mondays through Fridays only. Emergency work may be performed anytime without the OWNER's written consent required in paragraph 6.3
2. Work After Hours: Night work may be established by CONTRACTOR as regular procedure with written consent of OWNER. Such consent, however, may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for proper prosecution and control of night work.

SC-6.06.B. Add the following after paragraph 6.06.B. of the General Conditions:

1. Within 15 days after the effective date of the Agreement, CONTRACTOR shall submit to ENGINEER for review a list in duplicate of the names of proposed manufacturers, materialmen, suppliers and subcontractors. Obtain approval of this list by OWNER prior to submission of any shop drawings or product data.

SC-6.08 Add the following 6.08.B, 6.08.C after paragraph 6.08.A. of the General Conditions:

SC-6.08.B. OWNER has obtained the following permits:

1. Indiana Department of Transportation Right Of Way Permit

SC-6.08.C. CONTRACTOR shall comply with all permit conditions that apply to the Work or execution thereof.

SC-6.10 Add the following language at the end of paragraph 6.10 of the General Conditions:

Materials and equipment that are purchased for this project that will become the property of the OWNER are exempt from sales tax. CONTRACTORS purchasing materials or equipment for the project shall register with the Indiana Department of Revenue for the sales tax exemption. To register, a federal tax ID number, a business address and a fee are required.

SC-6.13 Add the following new paragraphs 6.13.A.4., 6.13.A.5., 6.13.A.6., and 6.13.A.7. after paragraph 6.13.A.3. of the General Conditions which shall read as follows:

4. No Duty. The duty of the OWNER or ENGINEER to observe CONTRACTOR's performance does not include any review of the

adequacy of CONTRACTOR's safety measures in, on, or near the Work site or sites. ENGINEER has not been retained or compensated to provide design and construction review services relating to CONTRACTOR's safety precautions required for CONTRACTOR to perform the Work.

5. No Liability. Neither the OWNER, nor any official or employee of the OWNER, nor the ENGINEER, or any authorized assistant or agent of any of them, shall be responsible for safety precautions and programs in connection with the Work or any liability arising therefrom.

SUPPLEMENTARY CONDITIONS TO ARTICLE 7. OTHER WORK

SC-7.02 Add a new paragraph 7.02.C. immediately after paragraph 7.02.B. of the General Conditions which shall read as follows:

- C. Should CONTRACTOR cause damage to the Work or property of any separate CONTRACTOR at the site, or should any claim arising out of CONTRACTOR's performance of the Work at the site be made by any separate contractor against CONTRACTOR, OWNER, ENGINEER, ENGINEER's Consultants, or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, ENGINEER, and ENGINEER's Consultants harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against OWNER, ENGINEER, or ENGINEER's Consultants to the extent based on a claim arising out of CONTRACTOR's performance of the Work. Should a separate contractor cause damage to the Work or property of CONTRACTOR or should the performance of Work by any separate contractor at the site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER, ENGINEER, or ENGINEER's Consultants or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from OWNER, ENGINEER, or ENGINEER's Consultants on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, CONTRACTOR may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be CONTRACTOR's exclusive remedy with respect to OWNER, ENGINEER, and ENGINEER's Consultants for any delay, disruption,

interference or hindrance caused by any separate contractor. This paragraph does not prevent recovery from OWNER, ENGINEER, or ENGINEER's consultant for activities that are their respective responsibilities.

SUPPLEMENTARY CONDITIONS TO ARTICLE 9. ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.04 Delete the first sentence of paragraph 9.04A of the General Conditions and insert the following in its place:

- A. ENGINEER will issue, within five working days of receipt, such written clarifications or interpretations of the requirement of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. If ENGINEER determines, based upon the nature of the requested clarification or interpretation, that the response cannot be furnished in five working days, ENGINEER will advise the CONTRACTOR giving a schedule for furnishing the information.

SUPPLEMENTARY CONDITIONS TO ARTICLE 11. COST OF WORK; CASH ALLOWANCES; UNIT PRICE WORK

SC-11.03 Delete paragraph 11.03.C of the General Conditions in its entirety and insert the following in its place:

- C. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:
 - 1. If the total cost of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement: and
 - 2. If there is no corresponding adjustment with respect to any other item of Work; and
 - 3. If CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof; or if OWNER believes that the quantity variation entitles OWNER to an adjustment in the unit price, either OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SUPPLEMENTARY CONDITIONS TO ARTICLE 12. CHANGE OF CONTRACT PRICE;
CHANGE OF CONTRACT TIMES

SC-12.06 Delete paragraph 12.06 of the General Conditions in its entirety and insert the following in its place:

12.06 Delay Damages

- A. No claim for payment, compensation or adjustment of any kind (other than the extensions of time provided for herein) shall be made or asserted against the OWNER or ENGINEER by the CONTRACTOR for damages caused by hindrances or delays from any cause, whether such hindrances or delays be avoidable or unavoidable, and the CONTRACTOR shall make no claim for damages by reason of any such hindrances or delays, and will accept in full satisfaction of such hindrances or delays an extension of time to complete the performance of the Work as specified.

SUPPLEMENTARY CONDITIONS TO ARTICLE 14. PAYMENTS TO CONTRACTOR
AND COMPLETION

SC-14.05 Add a new paragraph immediately after paragraph 14.05.A.2. of the General Conditions, which is to read as follows:

3. OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to ENGINEER and within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and ENGINEER that such part of the Work is not ready for separate operation by OWNER, ENGINEER will finalize the list of items to be completed or corrected and will deliver such lists to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed ENGINEER). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow

CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

SC-14.10 Add a new paragraph immediately after paragraph 14.09 of the General Conditions, which is to read as follows:

14.10 Audits, Access to Records

- A. The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of work under this agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this agreement. The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submission required for any negotiated change order and a copy of the cost summary submitted to the OWNER.
- B. The OWNER or any of its authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection.
- C. The Contractor agrees to make paragraphs A. through C. of this clause applicable to all negotiated change orders and agreement amendments affecting the agreement price.
- D. Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

SUPPLEMENTARY CONDITIONS TO ARTICLE 17. MISCELLANEOUS

SC-17.06 Add a new paragraph immediately after paragraph 17.05 of the General Conditions, which is to read as follows:

17.06 Prohibition of Discrimination

The CONTRACTOR agrees:

- A. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;

- B. That no contractor, subcontractor, or any person on his behalf shall in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;
- C. That there may be deducted from the amount payable to the contractor under this contract, a penalty of five dollars [\$5.00] for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract; and
- D. That this Contract may be canceled or terminated by the OWNER and all money due to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.

SC-17.07 Add a new paragraph immediately after paragraph 17.06 of the General Conditions, which is to read as follows:

17.07 Severability

- A. If any portion of the Contract Documents is invalid or unenforceable pursuant to applicable law, such portion shall be void in the jurisdiction where it is invalid or unenforceable, and the remainder of the Contract Documents shall remain binding upon the parties hereto.

SC-17.08 Add a new paragraph immediately after paragraph 17.07 of the General Conditions, which is to read as follows:

17.08 Compliance With E-Verify Program.

- A. Pursuant to IC 22-5-1.7, CONTRACTOR shall enroll in and verify the work eligibility status of all newly hired employees of CONTRACTOR through the E-Verify Program (“Program”). CONTRACTOR is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- B. CONTRACTOR and its Subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that CONTRACTOR or its Subcontractor subsequently learns is an unauthorized alien. If CONTRACTOR violates this Section 17.10, OWNER shall require CONTRACTOR to remedy the violation not later than thirty (30) days after OWNER notifies CONTRACTOR. If CONTRACTOR fails to remedy the violation within the thirty (30) day period, OWNER shall terminate the contract for breach of contract. If OWNER terminates the contract, CONTRACTOR shall, in addition to any other contractual remedies, be liable to OWNER for actual damages. There is a rebuttable presumption that CONTRACTOR

did not knowingly employ an unauthorized alien if CONTRACTOR verified the work eligibility status of the employee through the Program.

- C. If CONTRACTOR employs or contracts with an unauthorized alien but OWNER determines that terminating the contract would be detrimental to the public interest or public property, OWNER may allow the contract to remain in effect until OWNER procures a new contractor.

- D. CONTRACTOR shall, prior to performing any work, require each Subcontractor to certify to CONTRACTOR that the Subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. CONTRACTOR shall maintain on file a certification from each Subcontractor throughout the duration of the Project. If CONTRACTOR determines that a Subcontractor is in violation of this Section 17.10, CONTRACTOR may terminate its contract with the Subcontractor for such violation. Such termination may not be considered a breach of contract by CONTRACTOR or the Subcontractor.

- E. CONTRACTOR and its Subcontractors shall, prior to performing any work, submit executed affidavits which state they will not knowingly employ illegal aliens. An affidavit (approved by the State Board of Accounts) can be obtained from the following website: <http://www.citiesandtowns.org/egov/docs>.

END OF SECTION

(NO TEXT FOR THIS PAGE)

Exhibit A - Figures



GREELEY AND HANSEN



MATCHLINE SEE FIGURE 1-2

LEGEND

-  - RIGHT-OF-WAY
-  - TREE PLANTING AREA

PLAN

SCALE: 1"=500'

FILE: J:\Projects\07914 West Laf Western Sanitary\21 CADD Files\21.50 General Studies and Reports - Design\07914OR01_TREE 1:1 01/03/14 09:34 GH-H



GREELEY AND HANSEN

WEST LAFAYETTE, INDIANA
U.S. 231 TREE PLANTINGS

MATCHLINE SEE FIGURE 1-1



MATCHLINE SEE FIGURE 1-3

LEGEND

-  - RIGHT-OF-WAY
-  - TREE PLANTING AREA

PLAN

SCALE: 1"=500'

FILE: J:\Projects\07914 West Laf Western Sanitary\21 CADD Files\21.50 General Studies and Reports - Design\07914OR01_TREE 1:1 12/30/13 15:38 GH-H



GREELEY AND HANSEN

WEST LAFAYETTE, INDIANA
U.S. 231 TREE PLANTINGS

MATCHLINE SEE FIGURE 1-2



LINDBERG RD

U.S. 231

MATCHLINE SEE FIGURE 1-4

LEGEND

-  - RIGHT-OF-WAY
-  - TREE PLANTING AREA

PLAN

SCALE: 1"=500'

FILE: J:\Projects\07914 West Laf Western Sanitary\21 CADD Files\21.50 General Studies and Reports - Design\07914OR01_TREE 1:1 12/30/13 15:37 GH-H



WEST LAFAYETTE, INDIANA
U.S. 231 TREE PLANTINGS

MATCHLINE SEE FIGURE 1-3

FIGURE 1-4



MATCHLINE SEE FIGURE 1-5

LEGEND

- RIGHT-OF-WAY
- TREE PLANTING AREA

PLAN

SCALE: 1"=500'

FILE: J:\Projects\07914 West Laf Western Sanitary\21 CADD Files\21.50 General Studies and Reports - Design\07914OR01_TREE 1:1 01/03/14 07:42 GH-H

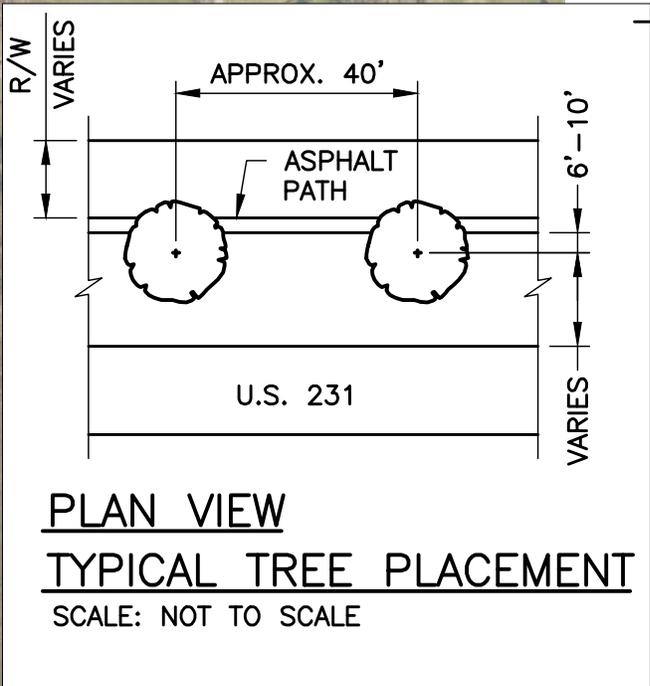
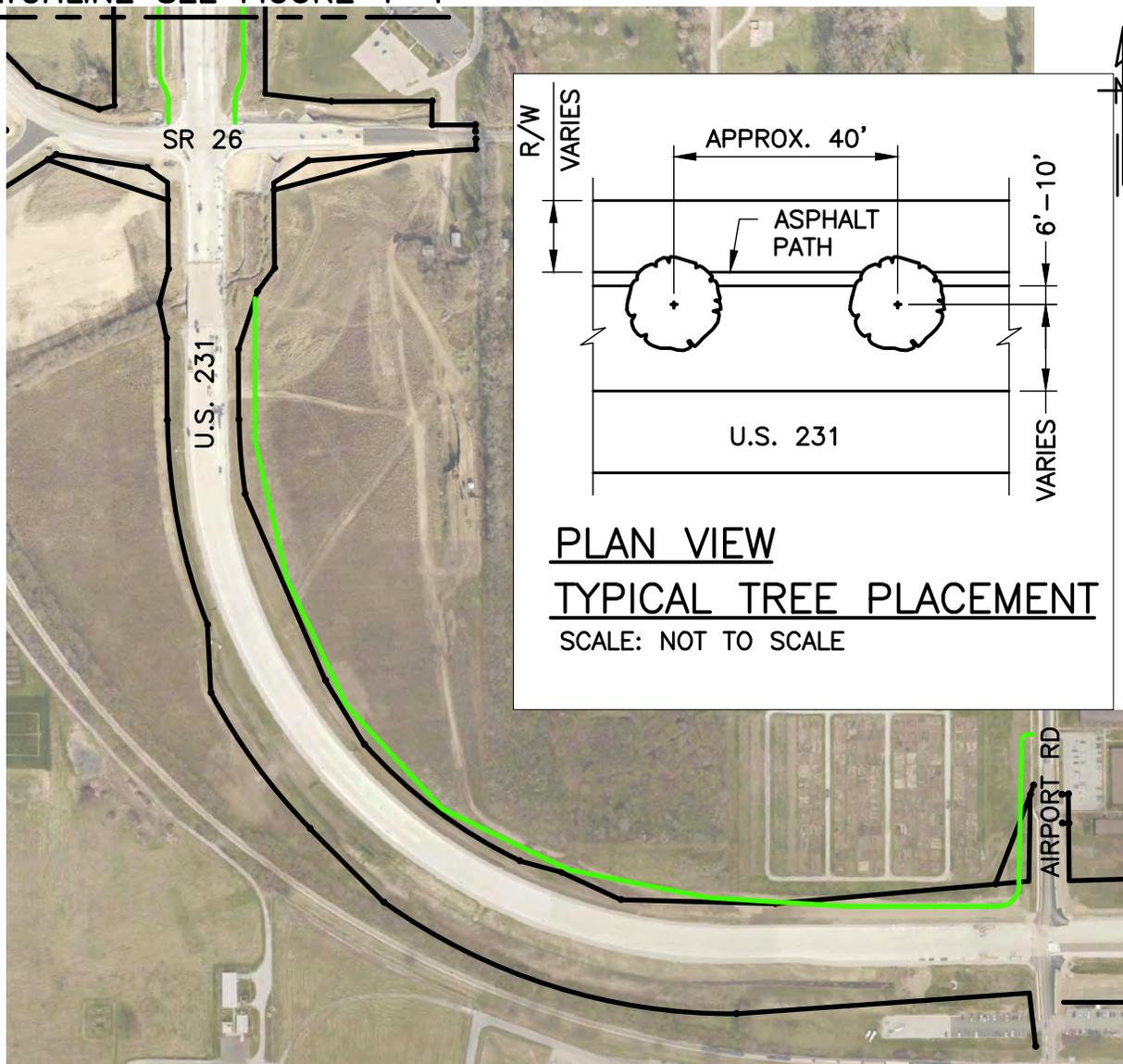


GREELEY AND HANSEN

WEST LAFAYETTE, INDIANA
U.S. 231 TREE PLANTINGS

MATCHLINE SEE FIGURE 1-4

FIGURE 1-5



NOTES:

1. PLANT IN SINGLE ROW EVENLY SPACED WITH SPECIES MIXED RANDOMLY APPROX 6'-10' FROM TRAIL.
2. PLANT ON OTHER SIDE OF ASPHALT PATH WHERE REQUIRED WITH CITY APPROVAL. PLANT ALL TREES OUTSIDE OF LIMITED ACCESS RIGHT OF WAY.
3. WHERE EXISTING PLANTINGS ARE 6'-10' FROM ASPHALT PATH, MOVE UP OR DOWN TO THE NEXT OPEN AREA FOR PLANTING.
4. NOTES AND PLAN VIEW DETAIL APPLY TO ALL FIGURES.



PLAN
SCALE: 1"=500'

LEGEND

— — RIGHT-OF-WAY

— — TREE PLANTING AREA

FILE: J:\Projects\07914 West Laf Western Sanitary\21 CADD Files\21.50 General Studies and Reports - Design\07914OR01_TREE 1:1 01/20/14 11:33 GH-H



WEST LAFAYETTE, INDIANA
U.S. 231 TREE PLANTINGS

Notes:

Prune the tree at planting only to remove crossover limbs and broken or dead branches.

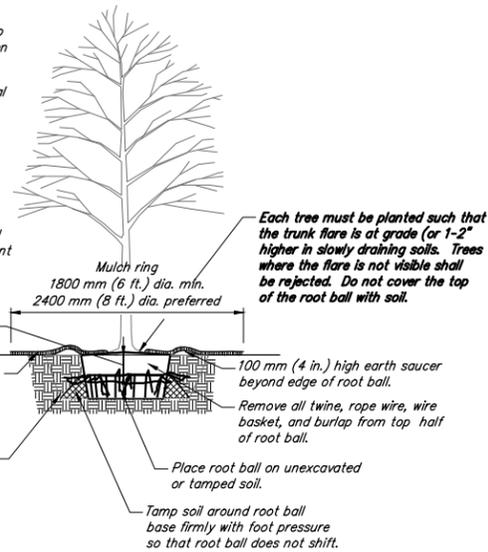
Stake trees only upon the approval of the landscape architect see staking detail.

Remove all tags, tape, and twine from the above-ground portion of the tree.

For dimensions of planting areas, types of soil amendments, or soil replacement, see "Soil Improvement Details."

75 mm (3 in.) mulch. Do not place mulch in contact with tree trunk. Maintain the mulch weed-free for a minimum of three years after planting.

Excavate an area 2-3 times the root ball diameter.



TREE PLANTING DETAIL FOR B&B IN ALL SOIL TYPES

Not To Scale

Notes:

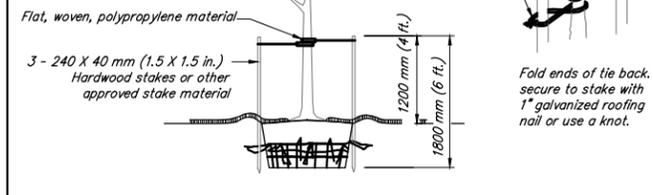
Staking and guying material is to be 3/4" wide, flat woven, polypropylene material. 900 lb. break strength. Fasten to stakes in a manner which permits tree movement and supports the tree.

Stake only when needed, i.e., evergreens or windy site or sandy soil or tree is crown-heavy.

All stakes shall be driven outside the edge of the root ball. The first stake shall be directly southwest of the tree trunk.

Flat, woven, polypropylene material

3 - 240 X 40 mm (1.5 X 1.5 in.)
Hardwood stakes or other approved stake material



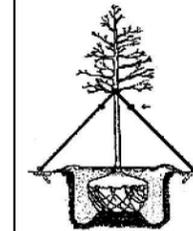
TREE STAKING DETAIL, TREES 3" CALIPER OR LESS

Not To Scale

Knot instructions

The guying knot expands to allow for girdle free growth.

Typical guying using tie



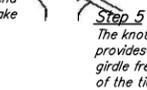
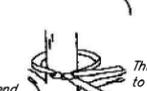
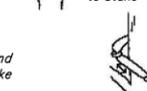
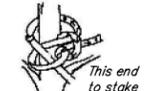
Step 1
Tie a simple knot 18"-24" (depending on the diameter of tree) from either end of the tie.

This end wrapped around tree after knot is tightened

Step 2
Wrap this end around tree. Begin a new knot below the knot that was tied in step 1.

Step 3

Follow motion of tie as shown, finishing the knot by pulling tightly on points A and B at the same time.



Step 4
Slide knot just completed up to the knot tied in step 1. Fasten free end to stake or anchor.



Step 5
The knot provides secure, girdle free attachment of the tie to tree.

TREE STAKING DETAIL - KNOT TYING INSTRUCTIONS

Not To Scale

Notes:

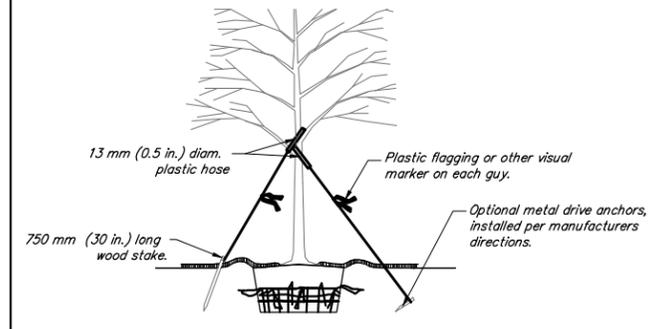
Staking and guying material is to be (as on Pg. 2)

Stake only when needed, i.e., evergreens or windy site or sandy soil or tree is crown-heavy.

Install three guys per tree, spaced evenly around the trunk.

All stakes shall be driven outside the edge of the root ball.

Remove all staking no later than the end of the first full growing season after planting. It shall be the contractor's responsibility to remove staking materials.



TREE STAKING DETAIL, TREES 3" CALIPER OR LARGER

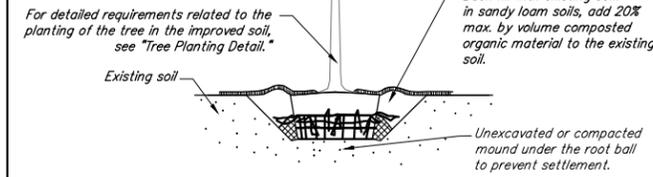
Not To Scale

Notes:

Loamy soils include the following usda textural classifications and have a clay content of between 15 to 27% loam, sandy loam and silt loam. Note that soils at the outer limits of the loam classifications may present special planting problems not anticipated by this detail.

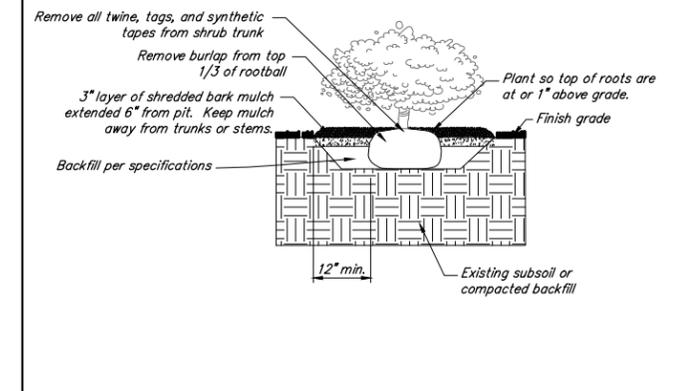
Loamy soils are defined as granular or blocky friable soils, a mixture of sand, silt and clay particles with a minimum of 1.5% by dry weight organic matter. The soil must not be so compacted as to impede root growth or drainage. The soil structure shall not be platy or massive. The soil must be tested for texture, drainage capability, ph, and nutrient values prior to determining any additional soil improvements.

For detailed requirements related to the planting of the tree in the improved soil, see "Tree Planting Detail."



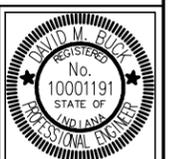
SOIL IMPROVEMENT DETAIL

Not To Scale



SHRUB DETAIL

Not To Scale



<p>CITY OF WEST LAFAYETTE</p>	<p>RECOMMENDED FOR APPROVAL <i>David M. Bick</i> 07/01/13 CITY ENGINEER DATE</p>
	<p>Date: JULY 1, 2013 Sheet 17 of 18</p>
<p>City Hall, 609 West Navajo West Lafayette, IN 47906</p>	<p>Holey Moley (800) 382-5544 City Engineer (765) 775-5130 Public Works Department (765) 775-5145 Development Department (765) 775-5160 Fire Department (765) 775-5175 Police Department (765) 775-5200</p>
<p>Landscaping Standard Details</p>	<p>Project Name Sheet Number of </p>

Exhibit B – INDOT Permit



GREELEY AND HANSEN



GREELEY AND HANSEN

Celebrating 100 YEARS: Quality · Vision · Future

7820 Innovation Boulevard, Suite 150
Indianapolis, Indiana 46278
p 317 924 3380
f 317 228 9368
www.greeley-hansen.com

January 22, 2014

Ms. Terri Griffin
Permit Section
INDOT Crawfordsville District
41 West 300 North
Crawfordsville, IN 47933

Subject: City of West Lafayette, Indiana
Tree Replacements for Western Sanitary Sewer Interceptor - Division II
U.S. 231 Right-of-Way – Request for Permit

Dear Ms. Griffin:

Enclosed is the City of West Lafayette's application for a construction permit in a Right-of-Way for the Tree Replacements for Western Sanitary Sewer Interceptor - Division II project. This includes application form, bond and/or permit fee waiver, construction drawings and specifications.

The Tree Replacements for Western Sanitary Sewer Interceptor - Division II project provides for the installation of approximately 800 new trees along the asphalt path running parallel with the new U.S. 231 corridor.

We look forward to your review and approval of this construction permit application. Please call if you have any questions or need additional information.

Yours very truly,

Greeley and Hansen

Tim Healy, P.E.

Enclosures

cc: Mr. David Henderson, Wastewater Treatment Utility Director



RIGHT OF WAY PERMIT

State Form 41769 (R5 / 3-00)

Approve by State Board of Accounts, 2000

Approved by Auditor of State, 2000

**STATE OF INDIANA
INDIANA DEPARTMENT OF TRANSPORTATION**

Type of Permit:		
<input checked="" type="checkbox"/> Excavation <input type="checkbox"/> Pole Line <input type="checkbox"/> Bridge Attachment <input type="checkbox"/> Miscellaneous		
District Crawfordsville	Subdistrict Fowler	Telephone number (888) 924-6368
Project locations: West Lafayette; Along U.S. 231 from Airport Road to U.S. 52		Reference pt. number
Project description: Project consists of installation of approximately 800 trees along the asphalt path (with in 6-10 feet of the path) paralleling U.S. 231.		
Project purpose: Beautification		
Bond required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, Penal Sum \$	Bond number
PERMIT FEE: (Make check or bank draft payable to "Indiana Department of Transportation") §		
SPECIAL PROVISIONS: See attached plans and specifications		
<small>THE APPLICANT AGREES TO INDEMNIFY, DEFEND, EXCULPATE, AND HOLD HARMLESS THE STATE OF INDIANA, ITS OFFICIALS AND EMPLOYEES FROM ANY LIABILITY DUE TO LOSS, DAMAGE, INJURIES, OR OTHER CASUALTIES OF WHATSOEVER KIND, OR BY WHOMSOEVER CAUSED, TO THE PERSON OR PROPERTY OF ANYONE ON OR OFF THE RIGHT-OF-WAY ARISING OUT OF, OR RESULTING FROM THE ISSUANCE OF THIS PERMIT OR THE WORK CONNECTED THEREWITH, OR FROM THE INSTALLATION, EXISTENCE, USE, MAINTENANCE, CONDITIONS, REPAIRS, ALTERATION, OR REMOVAL OF ANY EQUIPMENT OR MATERIAL, WHETHER DUE IN WHOLE OR IN PART TO THE NEGLIGENT ACTS OR OMISSIONS (1) OF THE STATE, ITS OFFICIALS, AGENTS, OR EMPLOYEES; OR (2) OF THE APPLICANT, HIS AGENTS, OR EMPLOYEES, OR OTHER PERSONS ENGAGED IN THE PERFORMANCE OF THE WORK, OR (3) THE JOINT NEGLIGENCE OF ANY OF THEM; INCLUDING ANY CLAIMS ARISING OUT OF THE WORKMEN'S COMPENSATION ACT OR ANY OTHER LAW, ORDINANCE, ORDER, OR DECREE. THE APPLICANT ALSO AGREES TO PAY ALL REASONALBE EXPENSES AND ATTORNEY'S FEES INCURRED BY OR IMPOSED ON THE STATE IN CONNECTION HEREWITH IN THE EVENT THAT THE APPLICANT SHALL DEFAULT UNDER THE PROVISIONS OF THIS PARAGRAPH.</small>		
Signature of permit applicant 	Printed name of permit applicant David S. Henderson	
Name of company organization City of West Lafayette	Telephone number (765) 775-5145	
Address (number and street, city, state, ZIP code) 500 South River Road, West Lafayette, IN 47906		
Inspector		
District Regulatory Supervisor		
District Director		

Application number

Road number

County number

Expiration date

Issue date

Permit number

State of Indiana
Department of Transportation
GENERAL PROVISIONS

1. All work described in the permit shall be subject to the inspection of the Department of Transportation and the permittee shall adjust or stop operations upon direction of any police officer or Department of Transportation employee.
2. The permit may be rescinded at any time by the Department of Transportation at its discretion or for noncompliance with any and/or all provisions of said permit.
3. The permittee shall notify the Department of Transportation Subdistrict five (5) working days preceding the beginning of any work activity.
4. The permittee shall notify the Department of Transportation Subdistrict that the work is complete and this notice is to be provided within seven (7) days from completion of all work on this permit.
5. The permittee shall have the permit complete with drawings and special provisions in their possession during work operations and will show said permit on demand, to any police officer or authorized Department of Transportation employee.
6. The permittee shall pay the Department of Transportation for any inspection costs where it is necessary to assign a Department of Transportation employee to inspect the work. The permittee shall immediately reimburse the State upon receipt of an itemized statement.
7. The permit is valid through the stated expiration date. If work is not completed within the allotted time, the permit is automatically cancelled unless an extension is requested prior to the expiration date and said request is approved by the Department of Transportation. If a permit is cancelled, a new application must be submitted and approved before the proposed work can be accomplished.
8. The permittee shall erect and maintain all necessary signs, barricades, detour signs, and warning devices required to safely direct traffic over or around the part of the highway where permitted operations are to be done so long as the work does not interfere with traffic, in accordance with Section "VI" of the Indiana Manual of Uniform Traffic Control Devices.
9. All construction and materials used within the highway right-of-way must conform to the current Department of Transportation "Standard Specifications" with the permittee being considered in the same status as the contractor.
10. The permitted operations shall not interfere with any existing structure on the Department of Transportation right-of-way without specific permission in writing from the Department of Transportation. In the event that any buildings, railings, traffic control devices, or other structures are damaged, said cost of the removal and/or damage shall be borne by the permittee.
11. This permit does not apply to any State roads or bridges that are closed for construction purposes, or to any county roads or city streets.
12. Approval of the permit application shall be subject to the permittee obtaining all necessary authorizations from local authorities and complying with all applicable laws. The issuance of the permit shall in no way imply Department of Transportation approval of, or be intended to influence any action pending before a local board, commission, or agency.
13. The permitted operations shall be allowed on state highway right-of-way only between sunrise and sunset and shall not be performed on Saturdays, Sundays, or during the period beginning at 12:00 Noon on the last weekday (Monday through Friday) preceding and continuing until Sunrise on the day following: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.
14. In accordance with the notice requirements of Indiana Code 4-22-1-25, any objection to the conditions and provisions of an approved permit must be submitted in writing to the Department of Transportation within fifteen (15) days from the issue date.



BOND AND/OR PERMIT FEE WAIVER

State Form 35483 (R4/8-04)

Approved by State Board of Accounts, 2004

STATE OF INDIANA
DEPARTMENT OF TRANSPORTATION

Type of permit:

Driveway Excavation Pole line Bridge attachment

Miscellaneous: _____

Application number

The following is made a part of the application for a Department of Transportation permit.

Performance bond is waived.

Permit fee is waived.

Applicant agrees to promptly restore the road surface, highway structures, right-of-way, or any other Department of Transportation property disturbed by the work incorporated in said application and permit, to as good condition as it was prior to the time of performing said work, and to the satisfaction of the Department of Transportation.

Applicant agrees to assume responsibility for all maintenance costs, if in the opinion of the Department of Transportation, said maintenance costs arise as a result of said work.

It is understood by the applicant that if the above provisions are not carried out to the satisfaction of the Department of Transportation, performance bonds and payment of permit fees will be required for future permits until such time that the above provisions are carried out satisfactorily.

Applicant agrees to maintain contractors bond until the Indiana Department of Transportation is satisfied with said work.

Road number

Signature of applicant 	Printed name of applicant David S. Henderson
Name of agency or organization City of West Lafayette	
Address (number, street, city, state, ZIP code) 500 South River Road, West Lafayette, IN 47906	
Telephone number (765) 775-5145	

Section

SECTION 01010

GENERAL REQUIREMENTS

PART 1 GENERAL

1.01 GENERAL

- A. Scope: Furnish, install and maintain eight hundred (800) trees at the locations shown and in accordance with Specification Section 02930.

1.02 CONTRACTOR'S USE OF PREMISES

- A. Contractor(s) shall confine his use of premises to the limits of construction shown on the Drawings or as directed by the Owner's Superintendent.
 - 1. Use of premises for work and storage shall be limited to allow for Owner's use.
 - 2. Access to the project area shall be coordinated with the Owner's Superintendent.

1.03 CONSTRAINTS

- A. Both U.S. 231 and the path running parallel to U.S. 231 shall remain in service and operate in a normal manner at all times during construction. Comply with the requirements of the obtained INDOT Right of Way Permit.
- B. Stake individual tree locations, identify species on stake, adjust locations when requested, and obtain Owner's acceptance of layout before planting.
- C. Planting Restrictions: Plant species during the following periods.
 - 1. Spring Planting: March 1 – May 30. The following species can only be planted in the Spring: Black Gum, Swamp White Oak, Northern Red Oak, Shumard Oak, Seedless Sweetgum, and Tulip.
 - 2. Fall Planting: September 15 – November 15 or as approved by owner. The following species can only be planted in the Fall: Male Kentucky Coffeetree.
 - 3. The following species can be planted in either the Spring or Fall planting period: Hackberry, Sugar Maple, Sterling Silver Linden, and Allee or Frontier Elm.

1.04 PROTECTION

- A. Existing Property:
 - 1. Protect existing property from damage during the work required by these Contract Documents. Any damage done to existing property shall be repaired satisfactorily to the approval of the Superintendent.
 - 2. Existing property includes, but shall not be limited to, buildings, sidewalks, curbs, asphalt trail, drainage ditches, lawns, grass, trees, and shrubs.

- B. Work in Progress:
 - 1. In the event of temporary suspension of work for inclement weather or for any other reason, the Contractor shall protect all work and materials against damage or injury. If damage or injury results from failure to protect, such work and materials shall be removed and replaced at no additional cost to the Owner.

- C. Utilities:
 - 1. All existing water and gas pipe, sewers, drains and other duly authorized structures shall be properly supported and protected by and at the expense of the Contractor during the construction of work under or near them and so as not to interfere with their use. They shall be left in as good condition on completion of the work as when found by the Contractor.

1.05 OWNER'S REPRESENTATIVE

- A. The terms "Owner's Representative" and "Superintendent" in these specifications refer to the individual designated by the Owner to inspect field work, serve as primary contact between the Owner and the Contractor, approve acceptance of work, and approve payments.

1.06 PRECONSTRUCTION CONFERENCE

- A. General: Prior to commencement of the Work, in accordance with paragraph 2.06 of the General Conditions, the OWNER will conduct a preconstruction conference to be held at a predetermined date and time in West Lafayette, Indiana. The purpose of the conference is to designate responsible personnel, to establish a working relationship among the parties and to identify the responsibilities of the OWNER, ENGINEER and the CONTRACTOR. Matters requiring coordination will be discussed and procedures for handling such matters, established.

END OF SECTION

SECTION 01200
CONTRACT ITEMS

PART 1 GENERAL

1.1 SUMMARY

- A. Section Includes: The items listed below refer to and are the same pay items listed in the bid. They constitute all the pay items for completion of the Work. No separate payment will be made for providing miscellaneous temporary or accessory work.

Each item 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.

- B. Furnish, install and maintain trees in accordance with Specification Section 02930.

PART 2 MATERIALS

Not Used

PART 3 CONTRACT ITEMS

3.1 DESCRIPTION

- A. The Work for Contract Items 1 – 11 shall include the following; furnishing all labor, delivery, storage, supervision, materials, equipment and supplies both temporary and permanent to install and maintain trees as shown and specified. Installation shall include a minimum 6-foot diameter mulch circle around trees, removal and disposal of (if necessary), brush, debris and other incidentals necessary to complete the Work as shown and specified.

3.2 CONTRACT ITEM 1 – 2" CALIPER HACKBERRY

- A. Description: Install and maintain 2" caliper Hackberry trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2" caliper Hackberry trees will be made at the Contract unit price.

3.3 CONTRACT ITEM 2 – 2" CALIPER SUGAR MAPLE

- A. Description: Install and maintain 2" caliper Sugar Maple trees in accord with description in Section 3.1.A.

- B. Payment: The Payment for 2” caliper Sugar Maple trees will be made at the Contract unit price.

3.4 CONTRACT ITEM 3 – 2” CALIPER STERLING SILVER LINDEN

- A. Description: Install and maintain 2” caliper Sterling Silver Linden trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Sterling Silver Linden trees will be made at the Contract unit price.

3.5 CONTRACT ITEM 4 – 2” CALIPER BLACK GUM

- A. Description: Install and maintain 2” caliper Black Gum trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Black Gum trees will be made at the Contract unit price.

3.6 CONTRACT ITEM 5 – 2” CALIPER SWAMP WHITE OAK

- A. Description: Install and maintain 2” caliper Swamp White Oak trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Swamp White Oak trees will be made at the Contract unit price.

3.7 CONTRACT ITEM 6 – 2” CALIPER NORTHERN RED OAK

- A. Description: Install and maintain 2” caliper Northern Red Oak trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Northern Red Oak trees will be made at the Contract unit price.

3.8 CONTRACT ITEM 7 – 2” CALIPER SHUMARD OAK

- A. Description: Install and maintain 2” caliper Shumard Oak trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Shumard Oak trees will be made at the Contract unit price.

3.9 CONTRACT ITEM 8 – 2” CALIPER ALLEE OR FRONTIER ELM

- A. Description: Install and maintain 2” caliper Allee or Frontier Elm trees in accord with description in Section 3.1.A.

- B. Payment: The Payment for 2” caliper Allee or Frontier Elm trees will be made at the Contract unit price.

3.10 CONTRACT ITEM 9 – 2” CALIPER SEEDLESS SWEETGUM

- A. Description: Install and maintain 2” caliper Seedless Sweetgum trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Seedless Sweetgum trees will be made at the Contract unit price.

3.11 CONTRACT ITEM 10 – 2” CALIPER MALE KENTUCKY COFFEETREE

- A. Description: Install and maintain 2” caliper Male Kentucky Coffeetree in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Male Kentucky Coffeetree will be made at the Contract unit price.

3.12 CONTRACT ITEM 11 – 2” CALIPER TULIP

- A. Description: Install and maintain 2” caliper Tulip trees in accord with description in Section 3.1.A.
- B. Payment: The Payment for 2” caliper Tulip trees will be made at the Contract unit price.

3.13 CONTRACT ITEM 12 – TREE STAKING

- A. Description: The Work under this Contract Item includes furnishing all labor, delivery, storage, supervision, materials, equipment and supplies to install and maintain Tree Staking. Installation shall also include removal of all Tree Staking and associated materials 1-year after installation, and other incidentals necessary to complete the Work as shown and specified.
- B. Payment: The Payment for Tree Staking will be made at the Contract unit price.

END OF SECTION

(NO TEXT FOR THIS PAGE)

SECTION 01500

TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.1 DESCRIPTION

- A. Temporary Water:
 - 1. Owner's existing service.
 - 2. Coordinate with Owner's Superintendent for point of source.
- B. Sanitary Facilities:
 - 1. Portable toilets, General Contractor to provide service if desired.
- C. Parking: As directed by the Superintendent.

1.2 COSTS OF TEMPORARY UTILITIES

- A. Temporary Water:
 - 1. Pay costs for installing, maintaining, and removing pipe and equipment for temporary water service, as required.
 - 2. Cost of water required for maintenance watering of trees to be paid for by Owner, the cost of water for all other uses to be paid for by Contractor.
 - 3. Contractor needs to use a backflow preventor on temporary water hookup.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

3.1 GENERAL

- A. Install in a neat and an orderly manner.
- B. Locate services to avoid interference with traffic, work and storage areas, material handling equipment and cranes.
- C. Maintain to provide continuous service.
- D. Modify service as work progress requires.

3.3 REMOVAL AND CLEANING

- A. Remove all temporary structures and materials completely upon completion of construction.
- B. Remove debris and clean area.

C. Repair all damage and restore to finish condition.

END OF SECTION

SECTION 02930
EXTERIOR PLANTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section includes the following:
 - 1. Trees.

1.3 DEFINITIONS

- A. Balled and Burlapped Stock: Exterior plants dug with firm, natural balls of earth in which they are grown, with ball size not less than diameter and depth recommended by ANSI Z60.1 for type and size of tree or shrub required; wrapped, tied, rigidly supported, and drum-laced as recommended by ANSI Z60.1.
- B. Balled and Potted Stock: Exterior plants dug with firm, natural balls of earth in which they are grown and placed, unbroken, in a container. Ball size is not less than diameter and depth recommended by ANSI Z60.1 for type and size of exterior plant required.
- C. Container-Grown Stock: Healthy, vigorous, well-rooted exterior plants grown in a container with well-established root system reaching sides of container and maintaining a firm ball when removed from container. Container shall be rigid enough to hold ball shape and protect root mass during shipping and be sized according to ANSI Z60.1 for kind, type, and size of exterior plant required.
- D. Finish Grade: Elevation of finished surface of planting soil.
- E. Planting Soil: Native or imported topsoil, manufactured topsoil, or surface soil modified to become topsoil; mixed with soil amendments.

- F. Subgrade: Surface or elevation of subsoil remaining after completing excavation, or top surface of a fill or backfill, before placing planting soil.

1.4 SUBMITTALS

- A. Product Data: For each type of product indicated.
- B. Samples for Verification: For each of the following:
 - 1. 1 lb of shredded hardwood bark mulch in a labeled plastic bag.
- C. Product Certificates: For each type of manufactured product, signed by product manufacturer, and complying with the following:
 - 1. Manufacturer's certified analysis for standard products.
 - 2. Analysis of other materials by a recognized laboratory made according to methods established by the Association of Official Analytical Chemists, where applicable.
- D. Planting Schedule: Indicating anticipated planting dates for exterior plants.

1.5 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified landscape installer whose work has resulted in successful establishment of exterior plants.
 - 1. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when exterior planting is in progress.
- B. Provide quality, size, genus, species, and variety of exterior plants indicated, complying with applicable requirements in ANSI Z60.1, "American Standard for Nursery Stock."
- C. Tree and Shrub Measurements: Measure according to ANSI Z60.1 with branches and trunks in their normal position. Do not prune to obtain required sizes. Take caliper measurements 6 inches above ground for trees up to 4-inch caliper size. Measure main body of tree or shrub for height and spread; do not measure branches or roots tip-to-tip.
- D. Observation: Owner may observe tree either at place of growth or at site before planting for compliance with requirements for genus, species, variety, size, and quality. Owner retains right to observe trees and shrubs further for size and condition of balls and root systems, insects, injuries, and latent defects and to reject unsatisfactory or defective material at any time during progress of work. Remove rejected trees or shrubs immediately from Project site.
 - 1. Notify Owner of sources of planting materials seven days in advance of delivery to site.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver exterior plants freshly dug.
- B. Do not prune trees before delivery, except as approved by Owner. Protect bark, branches, and root systems from sun scald, drying, sweating, whipping, and other handling and tying damage. Do not bend or bind-tie trees or shrubs in such a manner as to destroy their natural shape. Provide protective covering of exterior plants during delivery. Do not drop exterior plants during delivery.
- C. Handle planting stock by root ball.
- D. Deliver exterior plants after preparations for planting have been completed and install immediately. If planting is delayed more than six hours after delivery, set exterior plants in shade, protect from weather and mechanical damage, and keep roots moist.
 - 1. Set balled stock on ground and cover ball with soil, peat moss, sawdust, or other acceptable material.
 - 2. Water root systems of exterior plants stored on-site with a fine-mist spray. Water as often as necessary to maintain the root systems in a moist condition.

1.7 COORDINATION

- A. Planting Restrictions: Plant species during the following periods. Note certain species can be planted in both spring and fall. Coordinate planting periods with maintenance periods to provide required maintenance from date of Substantial Completion.
 - 1. Spring Planting: March 1 – May 30. The following species can only be planted in the Spring: Black Gum, Swamp White Oak, Northern Red Oak, Shumard Oak, Seedless Sweetgum, and Tulip.
 - 2. Fall Planting: September 15 – November 15 or as approved by owner. The following species can only be planted in the Fall: Male Kentucky Coffeetree.
 - 3. The following species can be planted in either the Spring or Fall planting period: Hackberry, Sugar Maple, Sterling Silver Linden, and Allee or Frontier Elm.
- B. Weather Limitations: Proceed with planting only when existing and forecasted weather conditions permit.
- C. Coordination with Lawns:

1. When planting trees and shrubs after lawns, protect lawn areas and promptly repair damage caused by planting operations.

1.8 WARRANTY

- A. Special Warranty: Warrant the following exterior plants, for the warranty period indicated, against defects including death and unsatisfactory growth, except for defects resulting from lack of adequate maintenance, neglect, or abuse by Owner, or incidents that are beyond Contractor's control.
 1. Warranty Period for Trees and Shrubs: One year from date of acceptance of Fall Planting.
 2. Remove dead exterior plants immediately. Replace immediately unless required to plant in the succeeding planting season.
 3. Replace plants that are more than 25 percent dead or in an unhealthy condition at end of warranty period.

1.9 MAINTENANCE

- A. Trees: Maintain for the following maintenance period by pruning, cultivating, watering, weeding, fertilizing, tightening and repairing stakes and guy supports, and resetting to proper grades or vertical position, as required to establish healthy, viable plantings. Spray as required to keep trees and shrubs free of insects and disease.
 1. Maintenance Period: One (1) year from date of acceptance of Fall Planting.

PART 2 - PRODUCTS

2.1 TREE AND SHRUB MATERIAL

- A. General: Furnish nursery-grown trees complying with ANSI Z60.1, with healthy root systems developed by transplanting or root pruning. Provide well-shaped, fully branched, healthy, vigorous stock free of disease, insects, eggs, larvae, and defects such as knots, sunscald, injuries, abrasions, and disfigurement.
- B. Grade: Provide trees of sizes and grades complying with ANSI Z60.1 for type of trees and shrubs required. Trees of a larger size may be used if acceptable to Owner, with a proportionate increase in size of roots or balls.
- C. Label each tree with securely attached, waterproof tag bearing legible designation of botanical and common name.

- D. Select stock for uniform height and spread, and number label to assure symmetry in planting.

2.2 SHADE AND FLOWERING TREES

- A. Shade Trees: Single-stem trees with straight trunk, well-balanced crown, and intact leader, of height and caliper indicated, complying with ANSI Z60.1 for type of trees required.
 - 1. Provide balled and burlapped trees.
 - 2. Branching Height: One-half of tree height.

2.3 TOPSOIL

- A. Source: To be provided by Contractor.
- B. Provide topsoil that is fertile, friable, natural loam, surface soil, reasonably free of subsoil, clay, limps, brush, weeds and other litter, and free of roots, stumps, stones larger than 1 inch in any direction, and other extraneous or toxic matter harmful to plant growth. Topsoil shall contain a minimum two percent (2%) organic matter.

The use of on-site native topsoil is encouraged, provided it meets the standard and can be modified to meet the requirements set out or specified for growing medium. Amended subsoil may be considered for use, provided that; additional organic matter is available, the soil structure is acceptable, and a soil test performed on the amended product prior to placement indicates the soil meets standard growing requirements.

2.5 FERTILIZER

- A. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:
 - 1. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing agency.

2.6 MULCHES

- A. Organic Mulch: Free from deleterious materials and suitable as a top dressing of trees and shrubs, consisting of one of the following:
 - 1. Type: Grade 'A' Shredded hardwood, bark Mulch.

2.7 STAKES AND GUYS

- A. Upright and Guy Stakes: Rough-sawn, sound, new hardwood, redwood, or pressure-preservative-treated softwood, free of knots, holes, cross grain, and other defects, 2 by 2 inches by length indicated, pointed at one end.
- B. Guy material: Flat woven, polypropylene material.
- C. Flags: Standard surveyor's plastic flagging tape, white, 6 inches long.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine areas to receive exterior plants for compliance with requirements and conditions affecting installation and performance. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 PREPARATION

- A. Protect structures, utilities, sidewalks, pavements, and other facilities, and lawns and existing exterior plants from damage caused by planting operations.
- B. Provide erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.
- C. **Stake individual tree locations, identify species, adjust locations when requested, and obtain Owner's acceptance of layout before planting.**

3.3 TREE AND SHRUB EXCAVATION

- A. Pits and Trenches: Excavate circular pits with sides sloped inward. Trim base leaving center area elevated slightly to support root ball and assist in drainage. Do not further disturb base. Scarify sides of plant pit smeared or smoothed during excavation.
 - 1. Excavate approximately two to three times as wide as ball diameter for balled and burlapped and container-grown stock.
- B. Subsoil removed from excavations may be used as backfill if it meets the requirements of Section 2.3.
- C. Obstructions: Notify Owner's Representative if unexpected rock or obstructions detrimental to trees are encountered in excavations.

1. Hardpan Layer: Drill 6-inch- (150-mm-) diameter holes into free-draining strata or to a depth of 10 feet (3 m), whichever is less, and backfill with free-draining material.

- D. Drainage: Notify Owner's Representative if subsoil conditions evidence unexpected water seepage or retention in tree or shrub pits.

3.4 TREE PLANTING

- A. Remove all soil from top of root ball to root flare. Set balled and burlapped stock plumb and in center of pit or trench with top of root flare flush with adjacent finish grades.

1. Remove burlap and wire baskets from top half of root balls and discard. Remove all twine from the root ball. Do not use planting stock if root ball is cracked or broken before or during planting operation. Do not turn burlap under and bury portions of burlap

2. Place planting soil mix around root ball in layers, tamping to settle mix and eliminate voids and air pockets. When pit is approximately one-half backfilled, water thoroughly before placing remainder of backfill. Water again after placing and tamping final layer of planting soil mix.

- B. Organic Mulching: Apply 3-inch (75-mm) average thickness of shredded hardwood bark mulch in minimum 6-ft diameter circle around the trees. Create 4-inch high earth saucer beyond edge of root ball, per City Standard Detail. Do not place mulch within 3 inches (75 mm) of trunks or stems.

- C. Fertilize per manufacturer's specifications.

- D. Verify plant locations with Owner's Representative.

3.5 TREE AND SHRUB PRUNING

- A. Prune, thin, and shape trees as directed by Owner.

- B. Prune, thin, and shape trees and shrubs according to standard horticultural practice. Unless otherwise indicated by Owner, do not cut tree leaders; remove only injured or dead branches from flowering trees.

3.6 GUYING AND STAKING

- A. Upright and Guy Staking: rough-sawn, sound, new hardwood, redwood, or pressure-preservative-treated softwood, free of knots, holes, cross grain, and other defects, 2 by 2 inches (50 by 50 mm) by length indicated, pointed at one end. Minimum length required: stake shall penetrate at least 24 inches below

bottom of backfilled excavation and extend at least 48 inches above grade. Set vertical stakes and space to avoid penetrating root balls or root masses.

- B. Wide webbing strap: polypropylene, woven, reinforced straps, 3/4" wide, 900 lb. breaking strength.
- C. **Remove stakes and guy wires after a period of one (1) full year after plant installation. Remove all tags, labels and strings from all plants at this time.**

3.7 CLEANUP AND PROTECTION

- A. During planting, keep adjacent pavings and construction clean and work area in an orderly condition.
- B. Protect plants from damage due to landscape operations, operations by other contractors and trades, and others. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged planting.

3.8 DISPOSAL

- A. Disposal: Remove surplus soil and waste material, including excess subsoil, unsuitable soil, trash, debris and legally dispose them off Owner's property.

END OF SECTION