



**Contract Documents**  
**for**  
**MT. GOLF COURSE CART PATH RESTORATION - PHASE II**  
IVGID Project Number 3241LI1903  
PWP No. WA-2022-307

Issued for Bidding  
**March 10, 2023**

Prepared for:  
**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT**  
*Public Works Department*

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# ADVERTISEMENT FOR BIDS

Sealed proposals will be received at the offices of the Incline Village General Improvement District (IVGID or District) Public Works Department, located at 1220 Sweetwater Road, Incline Village, Washoe County, Nevada, until **2:00 p.m., April 6, 2023**, at which time they will be publicly opened and read for:

**Mountain Golf Course Cart Path Restoration, Phase II**  
**IVGID Project #: 3241LI2001**  
**PWP WA – 2023-291**

The Project includes the following Work:

*The Project is located at 690 Wilson Way, in Incline Village, Washoe County, Nevada. The Base Bid scope of work includes replacing approximately 4,705 SF of existing asphalt pavement and base, 143 LF of AC curb replacement, 235 SF of Rock Slope Protection, 30,870 LF of crack seal, and approximately 86,125 SF of slurry seal throughout the entirety of the cart path.*

Owner anticipates that the Project's total Base Bid price will be approximately **\$251,800**. The Project has an expected duration of **60 working days, with an anticipated start date of Sept. 5, 2023.**

Bidding Documents, including Plans and Specifications, may be obtained at the Owner's Planet Bids website (<https://www.planetbids.com/portal/portal.cfm?CompanyID=30437>). Prospective Bidders are urged to register with the designated website as a plan holder, even if Bidding Documents are obtained from a plan room or source other than the designated website in either electronic or paper format. The designated website will be updated periodically with addenda, lists of registered plan holders, reports, and other information relevant to submitting a Bid for the Project. All official notifications, addenda, and other Bidding Documents will be offered only through the designated website. Neither Owner nor Engineer will be responsible for Bidding Documents, including addenda, if any, obtained from sources other than the designated website.

This is a Prevailing Wage Public Works project. In accordance with the provisions of NRS 338, the IVGID Board of Trustees has ascertained from the Labor Commissioner the general prevailing wage in the locality of the District for each craft and type of workman, and the CONTRACT will contain in express terms the hourly and daily rate of such prevailing wage. *The PWP number for this project is WA-2023-291.*

No proposal will be accepted from a Contractor who is not licensed in accordance with the laws of this State to perform the work herein described. IVGID reserves the right to reject any or all bids pursuant to Nevada Law; to award a contract for less than all the work if funds now available are insufficient for completion of the total project; to waive any informalities or irregularities therein; and/or to award the bid to the lowest responsible bidder. *The Contractor must bid all schedules.*

A **mandatory pre-bid conference** will be held on **March 23, 2023 at 2:00 p.m. at the IVGID Public Works office**. All potential bidders are required to attend.

All questions and RFIs should be directed through the District's Planet Bids portal. For assistance with Planet Bids or downloading of documents, contact the IVGID Engineering office at 775-832-1267.

# INSTRUCTIONS TO BIDDERS

## ARTICLE 1—DEFINED TERMS

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

## ARTICLE 2—BIDDING DOCUMENTS

- 2.01 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder's responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.02 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project, and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.
- 2.03 Owner has established a Bidding Documents Website as indicated in the Advertisement or invitation to bid. Owner recommends that Bidder register as a plan holder with the Issuing Office at such website, and obtain a complete set of the Bidding Documents from such website. Bidders may rely that sets of Bidding Documents obtained from the Bidding Documents Website are complete, unless an omission is blatant. Registered plan holders will receive Addenda issued by Owner.
- 2.04 Plan rooms (including construction information subscription services, and electronic and virtual plan rooms) may distribute the Bidding Documents, or make them available for examination. Those prospective bidders that obtain an electronic (digital) copy of the Bidding Documents from a plan room are encouraged to register as plan holders at the Bidding Documents Website. Owner is not responsible for omissions in Bidding Documents or other documents obtained from plan rooms, or for a Bidder's failure to obtain Addenda from a plan room.
- 2.05 *Electronic Documents*
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified above.
1. Bidding Documents will be provided in Adobe PDF (Portable Document Format) (.pdf) that is readable by Adobe Acrobat Reader Version XI Standard or later. It is the intent of the Engineer and Owner that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Owner and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Contractor's means of reproduction of such documents, the Owner and Engineer cannot and do not



guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.

- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.05.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.

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

3.01 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within 48 hours of Owner's request, Bidder must submit the following information:

- A. Written evidence establishing its qualifications such as financial data, previous experience, and present commitments.
- B. A written statement that Bidder is authorized to do business in the state where the Project is located, or a written certification that Bidder will obtain such authority prior to the Effective Date of the Contract.
- C. Washoe County Business License prior to commencing construction.
- D. Such licenses as may be required by the laws of the State of Nevada for the performance of work specified in the Contract Documents. Such licenses are required at the time of submitting bid. One time raise in licensing monetary limits shall be approved by the State of Nevada prior to the time of submitting bid and shall be submitted with the bid.
- E. Each Bidder submitting a Bid Proposal to the Owner on a public work project whose estimated cost exceeds \$250,000 is responsible for ascertaining whether the Bidder intends to utilize the referenced statute for five percent (5%) preference and is also eligible for the bidder preference and other matters relating thereto provided in NRS Chapter 338.0117. The Bidder claiming the bid preference shall submit with their Bid Form:
  - 1. Certificate of Eligibility: A valid "Certificate of Eligibility" issued by the State of Nevada Contractor's Board, and
  - 2. Public Works Bidder's Preference Affidavit: A fully-executed copy of the Public Works Bidder's Preference Affidavit as proof of the Contractor's compliance with the provisions of NRS 338.

Failure to submit the Certificate of Eligibility and Affidavit with your Bid shall result in a waiver of any Bidder preference.

3.02 *Bid Form:*

- A. Bidder is to submit the following information with its Bid, to demonstrate Bidder's qualifications to perform the Work. Bids without such documentation included will be deemed Non-Responsive:
  - 1. A list of all first-tier subcontractors, equipment, and materials suppliers that will supply more than five percent (5%) of the bid amount. If the Contractor intends to self-perform any portion of the Work exceeding five percent (5%) of the Bid Amount, the Contractor

must also include the Contractor's name and identify the labor or portion of the Work the Contractor will self-perform in the list, as required by NRS 338.141.

2. Within two (2) hours after the opening of Bids, those bidders submitting the three lowest Bids must submit the names of each first-tier subcontractor, equipment and material supplier that will supply more than 1% of the bid amount, or Fifty Thousand Dollars (\$50,000), whichever is greater. If the Contractor intends to self-perform any portion of the Work exceeding one percent (1%) of the Bid Amount or Fifty Thousand Dollars (\$50,000), whichever is greater, the Contractor must also include the Contractor's name and identify the labor or portion of the Work the Contractor will self-perform in the list, as required by NRS 338.141.
  3. A list of similar projects previously completed by Bidder, including contact person with their telephone number and email, and the date the project was completed.
    - a. Contractor is required to have successfully performed three (3) projects of similar scope within the last five (5) years, including a minimum project total cost of \$350,000, contract time of 15 to 30 days, and preferably work performed in the Lake Tahoe basin.
  4. Work history of Job Foreman/Superintendent.
    - a. Contractor is required to staff project with a Job Foreman/Superintendent with minimum of five (5) years' experience with similar project work and five (5) projects within five (5) years greater than \$350,000.
  5. Bidder's state or other contractor license number, if applicable.
- 3.03 A Bidder's failure to submit required qualification information within the times indicated will result in the Bid being deemed Non-Responsive.
- 3.04 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

#### **ARTICLE 4—PRE-BID CONFERENCE**

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

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

##### *5.01 Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

## 5.02 Existing Site Conditions

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

1. The Supplementary Conditions identify the following regarding existing conditions at or adjacent to the Site:
    - a. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data.
    - b. Those drawings known to Owner of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data.
    - c. Reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
    - d. Technical Data contained in such reports and drawings.
  2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
  3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.
  4. *Geotechnical Baseline Report/Geotechnical Data Report*: If necessary to the Work, the Bidding Documents will contain a Geotechnical Baseline Report (GBR) and Geotechnical Data Report (GDR).
    - a. As set forth in the Supplementary Conditions, the GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (“Baseline Conditions”). The GBR is a Contract Document.
    - b. The Baseline Conditions in the GBR are intended to reduce uncertainty and the degree of contingency in submitted Bids. However, Bidders cannot rely solely on the Baseline Conditions. Bids should be based on a comprehensive approach that includes an independent review and analysis of the GBR, all other Contract Documents, Technical Data, other available information, and observable surface conditions. Not all potential subsurface conditions are baselined.
    - c. Nothing in the GBR is intended to relieve Bidders of the responsibility to make their own determinations regarding construction costs, bidding strategies, and Bid prices, nor of the responsibility to select and be responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs incident thereto.
    - d. As set forth in the Supplementary Conditions, the GDR is a Contract Document containing data prepared by or for the Owner in support of the GBR.
- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05 of the General Conditions, and not in the drawings referred to in

Paragraph 5.02.A of these Instructions to Bidders. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

5.03 *Other Site-related Documents*

A. In addition to the documents regarding existing Site conditions referred to in Paragraph 5.02.A, the following other documents relating to conditions at or adjacent to the Site are known to Owner and made available to Bidders for reference:

1. None

Owner will make copies of these other Site-related documents available to any Bidder on request.

B. Owner has not verified the contents of these other Site-related documents, and Bidder may not rely on the accuracy of any data or information in such documents. Bidder is responsible for any interpretation or conclusion Bidder draws from the other Site-related documents.

C. The other Site-related documents are not part of the Contract Documents.

D. Bidders are encouraged to review the other Site-related documents, but Bidders will not be held accountable for any data or information in such documents. The requirement to review and take responsibility for documentary Site information is limited to information in (1) the Contract Documents and (2) the Technical Data.

5.04 *Site Visit and Testing by Bidders*

A. It is recommended that Bidder visit the Site and become familiar with and satisfy Bidder as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder general access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site. Bidder is responsible for establishing access needed to reach specific selected test sites.

D. Bidder must comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

E. Bidder must fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

5.05 *Owner's Safety Program*

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

5.06 *Other Work at the Site*

A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the

Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

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

### **6.01** *Express Representations and Certifications in Bid Form, Agreement*

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

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

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

## **ARTICLE 8—BID SECURITY**

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

or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

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

#### **ARTICLE 9—CONTRACT TIMES**

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.
- 9.02 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

#### **ARTICLE 10—SUBSTITUTE AND “OR EQUAL” ITEMS**

- 10.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 10.02 All prices that Bidder sets forth in its Bid will be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

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

- 11.01 If the Instructions to Bidders require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required.
- 11.02 If requested by Owner, such list must be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor or Supplier. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor or Supplier, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder will submit a substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.
- 11.03 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors and Suppliers. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor or Supplier, so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.07 of the General Conditions.

- 11.04 Contractor shall not be required to employ any Subcontractor, Supplier, individual or entity against whom Contractor has reasonable objection.

## **ARTICLE 12—PREPARATION OF BID**

- 12.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form must be completed in ink and the Bid Form signed in ink. Erasures or alterations must be initialed in ink by the person signing the Bid Form. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 12.02 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a paper copy of the Bid Form printed from the Electronic Documents version of the Bidding Documents. The printed copy of the Bid Form must be clearly legible, printed on 8½ inch by 11-inch paper and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the original paper version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 12.03 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown.
- 12.04 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership must be shown.
- 12.05 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06 A Bid by an individual must show the Bidder’s name and official address.
- 12.07 A Bid by a joint venture must be executed by an authorized representative of each joint venture in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must be shown.
- 12.08 All names must be printed in ink below the signatures.
- 12.09 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 12.10 Postal and e-mail addresses and telephone number for communications regarding the Bid must be shown.
- 12.11 The Bid must contain evidence of Bidder’s authority to do business in the state where the Project is located, or Bidder must certify in writing that it will obtain such authority within the time for acceptance of Bids and attach such certification to the Bid.
- 12.12 If Bidder is required to be licensed to submit a Bid or perform the Work in the state where the Project is located, the Bid must contain evidence of Bidder’s licensure, or Bidder must certify in writing that it will obtain such licensure within the time for acceptance of Bids and attach such

certification to the Bid. Bidder's state contractor license number, if any, must also be shown on the Bid Form.

### **ARTICLE 13—BASIS OF BID**

- 13.01 The basis of Bid is set in Section 3 – Bid Form. Description of the various basis of Bid are as follows:
- A. If Bid is Lump Sum
    - 1. Bidders must submit a Bid on a lump sum basis as set forth in the Bid Form.
  - B. If bid is a Base Bid with Alternates
    - 1. Bidders must submit a Bid on a lump sum basis for the base Bid and include a separate price for each alternate described in the Bidding Documents and as provided for in the Bid Form. The price for each alternate will be the amount added to or deleted from the base Bid if Owner selects the alternate.
    - 2. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form.
  - C. If bid is a Unit Price
    - 1. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
    - 2. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity,” which Owner or its representative has set forth in the Bid Form, for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
    - 3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

### **ARTICLE 14—SUBMITTAL OF BID**

- 14.01 The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 2 of the Bid Form.
- 14.02 A Bid must be received no later than the date and time prescribed and at the place indicated in the Advertisement or invitation to bid and must be enclosed in a plainly marked and sealed opaque envelope with the Project title, and, if applicable, the designated portion of the Project for which the Bid is submitted, the name and address of Bidder, and must be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid must be enclosed in a separate package plainly marked on the outside with the notation “BID ENCLOSED.” A mailed Bid must be addressed to the location designated in the Advertisement.
- 14.03 The Bidder assumes the sole responsibility for timely delivery of its Bid, regardless of the method of delivery. Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.



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

- 15.01 An unopened Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 15.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 15.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 15.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

## **ARTICLE 16—OPENING OF BIDS**

- 16.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.
- 16.02 All Bids will remain subject to acceptance for forty-five (45) 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 the end of this period.

## **ARTICLE 17—EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 17.01 Owner reserves the right to reject any or all Bids pursuant to Nevada state law, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner also reserves the right to waive all minor Bid informalities not involving price, time, or changes in the Work.
- 17.02 Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible.
- 17.03 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Owner or Engineer, then Owner will reject the Bid as nonresponsive.
- 17.04 If Owner awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.
- 17.05 *Evaluation of Bids*
  - A. In evaluating Bids, Owner will consider whether 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.
  - B. If the Unit Bid Item prices and/or schedule of values of a prospective Bidder's Bid are obviously unbalanced, either in excess or below the reasonable cost analysis values, the Bid may be rejected. All bids with separately-priced line items shall be analyzed to determine if the prices are unbalanced. A Bid may be rejected if Owner determines that the lack of balance poses an unacceptable risk to Owner. A Bid with unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing

exists when, despite an acceptable total evaluated price, the price of one or more bid items is significantly over- or understated, as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:

1. Overpricing of startup work, mobilization, or early items of work (“front-end loading”) would cause a Bidder to receive substantial up-front payment;
  2. Base quantities and option quantities are separate line items;
  3. The quantities as bid are incorrect and the contract cost will be increased when quantities are corrected; and/or
  4. On items when the quantities may vary, if the anticipated variation in quantity would result in the lower Bidder not remaining as the low bidder.
- C. More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- D. 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.
- E. In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- F. Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
- G. If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interest of the Project.
- H. Owner reserves the right to reduce the Scope of Work up to twenty-five percent (25%) of the total Bid price by deleting items and/or reducing the Scope of Work without invalidating the Bid, if necessary, to reduce the cost of the project to within the Engineer’s Estimate and/or Owner’s budget.
- I. Any Bidder which submitted a Bid to Owner may protest the recommendation of award in accordance with procedures as set forth in NRS 338.

## **ARTICLE 18—BONDS AND INSURANCE**

18.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the

Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by one (1) copy of each of the required bonds and insurance documentation.

- 18.02 Article 8, Bid Security, of these Instructions, addresses any requirements for providing bid bonds as part of the bidding process.

#### **ARTICLE 19—SIGNING OF AGREEMENT**

- 19.01 When Owner issues a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Owner. Within 20 days thereafter, Owner will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

#### **ARTICLE 20—SALES AND USE TAXES**

- 20.01 Owner is exempt from Nevada state sales and use taxes on materials and equipment to be incorporated in the Work (Exemption No. 88-760004K). Per Section 15, Chapter 338 of the NRS, each contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the Work will comply with the requirements of all applicable state and local laws, including, without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the Work. Said taxes must not be included in the Bid. Refer to Paragraph SC-7.10 of the Supplementary Conditions for additional information.

#### **ARTICLE 21—NEVADA REVISED STATUTES**

- 21.01 Each and every provision of Chapters 332, 338 and 339 of the Nevada Revised Statutes (NRS) and other laws required to be inserted in these Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though they are included herein.
- 21.02 In accordance with NRS 338, the Successful Contractor shall report the name and address of each subcontractor to the Owner and Washoe County Labor Commissioner if the estimated total price of the Contract exceeds \$100,000.
- 21.03 Bidder's attention is directed to Chapter 527, Statutes of Nevada 2019, enacted by the Nevada Legislature by passage of Senate Bill 207, an act relating to apprentices, requiring contractor and subcontractors to comply with certain requirements relating to the use of apprentices on public works projects. *The two lowest responsive bidders will be required to fill out and submit a copy of the project Workforce Checklist, a sample copy of which follows this Section.*

#### **ARTICLE 22—HISTORICAL AND ARCHAEOLOGICAL**

- 22.01 If, during the course of construction, evidence of deposits of historical or archaeological interest is found, the Contractor shall cease operation(s) affecting the find and shall notify the Owner. No

further disturbance of the deposits shall ensue until the Owner has notified the Contractor that he may proceed.

**ARTICLE 23—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION**

- 23.01 These construction documents are to be governed at all times by applicable provisions of the Federal Law, including but not limited to the latest amendment of the following:
- A. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 94-596
  - B. Part 1910 -- Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations
  - C. Part 1926 -- Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations.

**END OF INSTRUCTIONS**

## SECTION 3 - BID FORM

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

### ARTICLE 1—OWNER AND BIDDER

1.01 This Bid is submitted to:

Incline Village General Improvement District  
Public Works Department  
1220 Sweetwater Road  
Incline Village NV 89451  
775-832-1267

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

### ARTICLE 2—ATTACHMENTS TO THIS BID

2.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security;
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;
- D. Evidence of authority to do business in the state of Nevada, or a written covenant to obtain such authority within the time for acceptance of Bids;
- E. Contractor's license number as evidence of Bidder's State Contractor's License, or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
- F. Required Bidder Qualification Statement with supporting data; and
- G. Completed Bid Form



**ARTICLE 3—BASIS OF BID – UNIT PRICES BID**

3.01 Bidder will complete the Work in accordance with the Contract Documents for the following Unit Price(s):

**Phase II - UNIT PRICE SCHEDULE**

Item No.	Description	Unit	Qty	Unit Price	Total Price
1	Mobilization/Demobilization	LS	1	\$ 5,000.00	\$ 5,000.00
2	Temporary Erosion Control	LS	1	\$ 2,741.75	\$ 2,741.75
3	Full Depth AC Pavement & Base Removal	SF	4,705	\$ 5.00	23,525.00
4	Full Depth AC Pavement & Base Replacement	SF	4,705	\$ 13.00	\$ 61,165.00
5	AC Curb	LF	143	\$ 55.00	\$ 7,865.00
6	Crack Sealing	LF	30,870	\$ 0.45	\$ 13,891.50
7	Slurry Sealing	SF	86,125	\$ 0.75	\$ 64,593.75
8	Rock Slope Protection	SF	235	\$ 35.00	\$ 8,225.00
<b>TOTAL BASE BID IN NUMBERS:</b>					\$ 187,007.00
<b>TOTAL BASE BID IN WORDS:</b>		One hundred eighty seven thousand seven dollars			
		NO CENTS			

*Quantities are not guaranteed. Final Payment will be based upon actual quantity of work performed.*

A. Bidder acknowledges that:

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

**ARTICLE 4—TIME OF COMPLETION**

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

4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

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

5.01 *Bid Acceptance Period*

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

5.02 *Instructions to Bidders*

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

5.03 *Receipt of Addenda*

A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
#1	3/15/23

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

6.01 *Bidder’s Representations*

- A. In submitting this Bid, Bidder represents the following:
1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
  2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder’s (Contractor’s) safety precautions and programs.
  7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are

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

8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### 6.02 *Bidder's Certifications*

##### A. The Bidder certifies the following:


1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
  - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
  - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
  - c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
  - d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.



BIDDER hereby submits this Bid as set forth above:

**Bidder:**

Sierra Nevada Construction, Inc.  
*(typed or printed name of organization)*


By:   
*(individual's signature)*

Name: Kevin L. Robertson  
*(typed or printed)*

Title: President  
*(typed or printed)*

Date: 4/6/2023  
*(typed or printed)*

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

Attest:   
*(individual's signature)*

Name: Marc T. Markwell  
*(typed or printed)*

Title: Secretary/Treasurer  
*(typed or printed)*

Date: 4/6/2023  
*(typed or printed)*

Address for giving notices:

P.O. Box 50760  
Sparks, NV 89435

Bidder's Contact:

Name: Kevin L. Robertson  
*(typed or printed)*

Title: President  
*(typed or printed)*

Phone: (775) 355-0420

Email: bids@snc.biz

Address:

Sierra Nevada Construction, Inc.  
P.O. Box 50760  
Sparks, NV 89435

Bidder's Contractor License No.: (if 25565)

**ADDITIONAL INFORMATION REQUIRED AT BID**  
**Refer to Section 2, Instructions to Bidders**

List three (3) similar projects completed by Contractor within the last 5 years:

Contact Name & Phone No.	Description of Work	Date Complete	Cost
See attached			

**Work Experience:** List years of experience with similar projects, project descriptions, locations and costs, for proposed Job Foreman/ Superintendent:

Forman/Super's Name	Title	Years' Experience	
Dave Duggins	General Superintendent	23	
Name & Location of Project	Description	Project Cost	Date Completed
See attached			
Name & Location of Project	Description	Project Cost	Date Completed
Name & Location of Project	Description	Project Cost	Date Completed
Name & Location of Project	Description	Project Cost	Date Completed

**NRS 338.141: List of Subcontractors and Contractor Self Performance Exceeding Five Percent (5%) of Bid Amount**

List below the name, address and contractor's or business license number of each first tier subcontractor, equipment or materials supplier who will provide labor, equipment or supplies on the project for which the subcontractor or supplier will be paid an amount exceeding five percent (5%) of the contractor's base bid. For each subcontractor/ supplier listed, also describe the kind of work, equipment or materials the subcontractor/ supplier will provide. (Use an additional sheet, if necessary.)

Prime Contractor's Name, Address & Phone No.	Nevada Contractor License No./License Limit
Sierra Nevada Construction, Inc. P.O. Box 50760 Sparks, Nevada 89435 (775) 355-0420	#25565, Unlimited
Kind of Work/Supplies	% of Work/Supplies
Description of work being self-performed by Contractor: All remaining work except those not required to be listed per NRS 338.141.	94.65%

Subcontractor or Supplier Name, Address & Phone No.	Nevada Contractor License No./License Limit
All American Asphalt Sealing Inc. 1565 Trainer Way, Reno, Nevada 89512 775-329-3003	0058135A 950,000
Kind of Work/Supplies	% of Work/Supplies
crack seal	5.35%

Subcontractor or Supplier Name, Address & Phone No.	Nevada Contractor License No./License Limit
Kind of Work/Supplies	% of Work/Supplies

Subcontractor or Supplier Name, Address & Phone No.	Nevada Contractor License No./License Limit
Kind of Work/Supplies	% of Work/Supplies

Subcontractor or Supplier Name, Address & Phone No.	Nevada Contractor License No./License Limit
Kind of Work/Supplies	% of Work/Supplies

**NRS 338.141: List of Subcontractors and Contractor Self Performance Exceeding One Percent (1%) of Bid Amount or \$50,000, whichever is greater (Two Hour List)**

List below the name, address and contractor's or business license number of each first tier subcontractor, equipment or materials supplier who will provide labor, equipment or supplies on the project for which the subcontractor or supplier will be paid an amount exceeding one percent (1%) of the contractor's base bid. For each subcontractor/ supplier listed, also describe the kind of work, equipment or materials the subcontractor/ supplier will provide. (Use an additional sheet, if necessary.)

<b>Prime Contractor's Name, Address &amp; Phone No.</b>	<b>Nevada Contractor License No./License Limit</b>
Sierra Nevada Construction, Inc. P.O. Box 50760 Sparks, Nevada 89435 (775) 355-0420	#25565, Unlimited
<b>Kind of Work/Supplies</b>	<b>% of Work/Supplies</b>
Description of work being self-performed by Contractor: All remaining work except those not required to be listed per NRS 338.141.	94.65%

<b>Subcontractor or Supplier Name, Address &amp; Phone No.</b>	<b>Nevada Contractor License No./License Limit</b>
All American Asphalt Sealing Inc. 1565 Trainer Way, Reno, Nevada 89512 775-329-3003	0058135A 950,000
<b>Kind of Work/Supplies</b>	<b>% of Work/Supplies</b>
crack seal	5.35%

<b>Subcontractor or Supplier Name, Address &amp; Phone No.</b>	<b>Nevada Contractor License No./License Limit</b>
<b>Kind of Work/Supplies</b>	<b>% of Work/Supplies</b>

<b>Subcontractor or Supplier Name, Address &amp; Phone No.</b>	<b>Nevada Contractor License No./License Limit</b>
<b>Kind of Work/Supplies</b>	<b>% of Work/Supplies</b>

<b>Subcontractor or Supplier Name, Address &amp; Phone No.</b>	<b>Nevada Contractor License No./License Limit</b>
<b>Kind of Work/Supplies</b>	<b>% of Work/Supplies</b>

**PUBLIC WORKS BIDDERS PREFERENCE AFFIDAVIT**

I, Kevin L. Robertson, on behalf of Sierra Nevada Construction, Inc. ("Contractor"), hereby certify and affirm under penalty of perjury, for purposes of qualifying for a preference in bidding under Nevada Revised Statutes Chapter 338 on Project No. 3241LI1903, Project Name: Mountain Golf Course Cart Path Reconstruction, Phase II ("Project"), that the following requirements will be adhered to, documented and attained for the duration of the Project:

1. At least fifty percent (50%) of workers employed on the Project (including Subcontractors) hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
2. All vehicles used primarily for the Project will be (a) registered and (where applicable) partially apportioned to Nevada; or (b) registered in Nevada;
3. At least fifty percent (50%) of the design professionals who work on the Project (including subcontractors) hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles;
4. The Contractor shall maintain and make available for inspection within Nevada all payroll records related to this Project.

Contractor recognizes and accepts that failure to comply with the requirements herein shall be a material breach of the contract and entitle the Incline Village General Improvement District ("Authority") to liquidated damages in the amount set by statute. In addition, the Contractor recognizes and accepts that failure to comply with any requirements herein may lose its certification for preference in bidding for five (5) years and/or the ability to bid on any contracts for public works for one (1) year pursuant to NRS Chapter 338.

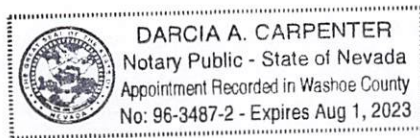
Signature: 

Print Name: Kevin L. Robertson

Title: President Date: 4/6/2023

State of Nevada )  
 )ss.  
County of Washoe )

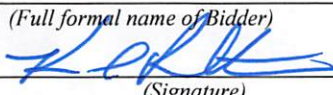
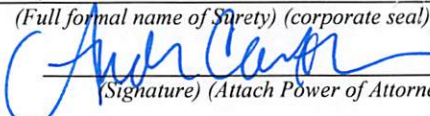
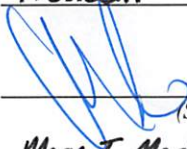

This instrument was acknowledged before me on 6th day of April, 2023, by Kevin L. Robertson (name of person making statement).



  
Notary Signature

NOTARY STAMP

## SECTION 4 - BID BOND

<p><b>Bidder</b>                  Name: Sierra Nevada Construction, Inc.                   Address <i>(principal place of business)</i>:                  2055 East Greg Street                  Sparks, NV 89431</p>	<p><b>Surety</b>                  Name: Liberty Mutual Insurance Company                   Address <i>(principal place of business)</i>:                  175 Berkeley Street                  Boston, MA 02116</p>
<p><b>Owner</b>                  Name: <b>Incline Village GID</b>                   Address <i>(principal place of business)</i>:  <b>Public Works Department</b>  <b>1220 Sweetwater Road</b>  <b>Incline Village, NV 89451</b>  <b>775-832-1267</b></p>	<p><b>Bid</b>                  Project <i>(name and location)</i>:  <b>IVGID Mt. Golf Course Cart Path Restoration</b>  <b>Phase II</b>  <b>687 Wilson Way</b>  <b>Incline Village, NV 89451</b>                   Bid Due Date: <b>April, 2023</b></p>
<p><b>Bond</b>                  Bond Five Percent of Total Amount Bid (5% of Total Amount Bid)                  Date of Bond: March 24, 2023</p>	
<p>Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Bidder                  Sierra Nevada Construction, Inc.  <i>(Full formal name of Bidder)</i></p>	<p>Surety                  Liberty Mutual Insurance Company  <i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By:   <i>(Signature)</i></p>	<p>By:   <i>(Signature) (Attach Power of Attorney)</i></p>
<p>Name: <u>Kevin L. Robertson</u>  <i>(Printed or typed)</i></p>	<p>Name: <u>Andrea Cantlon</u>  <i>(Printed or typed)</i></p>
<p>Title: <u>President</u></p>	<p>Title: <u>Attorney-In-Fact</u></p>
<p>Attest:   <i>(Signature)</i></p>	<p>Attest:   <i>(Signature)</i></p>
<p>Name: <u>Marc T. Markwell</u>  <i>(Printed or typed)</i></p>	<p>Name: <u>Carey Morgan</u>  <i>(Printed or typed)</i></p>
<p>Title: <u>Secretary/Treasurer</u></p>	<p>Title: <u>Witness</u></p>
<p><i>Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i></p>	



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



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8207614-976312

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Andrea Cantlon, Carey Morgan, Dena VanDeVanter, Nicholas D. Rossi, Patricia Owen, Shelly Demaray, Teri L. Nowak, Teri L. Wood

all of the city of Reno state of NV each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 8th day of April, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 8th day of April, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 24th day of March, 2023.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD  
OF DIRECTORS AND SHAREHOLDERS  
OF  
SIERRA NEVADA CONSTRUCTION, INC.  
MARCH 2, 2020**

The undersigned, being all the directors and shareholders of Sierra Nevada Construction, Inc., a Nevada corporation (the "Corporation"), do hereby unanimously approve, adopt, make, ratify and confirm the following:

WHEREAS, Kevin L. Robertson acts in the capacity of President, Craig D. Holt acts in the capacity of Vice President, and Marc T. Markwell acts in the capacity of Treasurer, Chief Financial Officer, and Secretary of Sierra Nevada Construction, Inc.

WHEREAS, Kevin L. Robertson, Craig D. Holt, and Marc Markwell as officers of this Corporation may be required from time to time to execute agreements on behalf of Sierra Nevada Construction, Inc.

NOW THEREFORE, the undersigned directors and shareholders of Sierra Nevada Construction, Inc., resolve as follows:

RESOLVED, that the following individuals are appointed to service as officers of the Corporation in the specified capacities:

Kevin L. Robertson	President
Craig D. Holt	Vice President
Marc T. Markwell	Chief Financial Officer/Secretary/Treasurer

RESOLVED, that Kevin L. Robertson, Craig D. Holt and Marc T. Markwell as officers of this Corporation are authorized to execute agreements into, between or among Sierra Nevada Construction, Inc., and third parties without further authorization from the directors and/or shareholders.

and, further

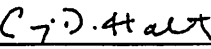
RESOLVED, that Kevin L. Robertson, Craig D. Holt and Marc T. Markwell in their capacities as officers of this Corporation are authorized to take all necessary and appropriate steps on behalf of the Corporation to effectuate the proposed amendments to the Articles of Incorporation and the Bylaws of the Corporation.

IN WITNESS WHEREOF, the directors and shareholders have executed this instrument effective March 2, 2020.

Directors:

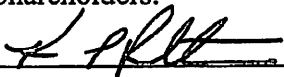


Kevin L. Robertson

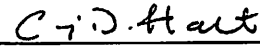


Craig D. Holt

Shareholders:



Kevin L. Robertson



Craig D. Holt

## STATEMENT OF EXPERIENCE

Agency	Job Name	Contract Amount	Type of Contract	Completion Date	Contact Person	Phone #	Address
Incline Village General Improvement District	Diamond Peak & Ski Way	\$ 67,206.00	Slurry Seal Crack Seal	09/30/22	Randolph McLean	775-833-8323	893 Southwood Boulevard, Incline Village, NV 89451
Incline Village General Improvement District	Mountain & Championship Golf Courses	\$ 28,355.00	Slurry Seal Crack Seal	09/30/22	Randolph McLean	775-833-8324	894 Southwood Boulevard, Incline Village, NV 89451
Incline Village General Improvement District	Parks & Rec Facilities	\$ 48,380.00	Slurry Seal Crack Seal	09/30/22	Randolph McLean	775-833-8325	895 Southwood Boulevard, Incline Village, NV 89451
Town of San Anselmo	2022 Slurry Seal	\$ 402,007.00	Slurry Seal, Micro-Surfacing, Striping	07/13/22	Scott Schneider	415-258-4653	525 San Anselmo Avenue, San Anselmo, CA 94960
City of Rancho Cordova	Rancho Cordova - International Dr Surface Project	\$ 609,006.95	AC Patch, Slurry Seal, Crack Seal, Striping	06/10/22	Victor Ramos	916-851-8948	3303 Luyung Drive, Rancho Cordova, CA 95742
City of Reno	City of Reno - 2021 Reno Preventative Maintenance	\$ 3,074,007.00	Slurry Seal, Chip Seal, AC Patch, Striping	05/27/22	Kaitlin Redmon	775-334-3307	PO Box 1900, Reno, NV 89505
Regional Transportation Commission	RTC - 2021 Preventive Maintenance	\$ 5,761,007.00	Slurry Seal, Chip Seal, AC Patch, Striping	03/10/22	Scott Gibson	775-335-1874	1105 Terminal Way, Reno, Nevada 89502
Washoe County	2021/2022 Slurry Seal	\$ 2,382,518.50	Chip Seal/Slurry Seal	11/02/21	Stephen Hein	775-328-2319	1001 East Ninth Street, Reno, Nevada 89512
Nevada Department of Transportation	NDOT #3879 - Wells CIR/Double Chip	\$ 1,714,007.00	Cold-in-Place, Chip Seal, Striping	10/08/21	John England	775-777-2703	1951 Idaho Street, Elko, NV 89801
Nevada Department of Transportation	NDOT 3853 SR 208/338 Slurry	\$ 1,044,007.00	Micro-surfacing, Striping	09/24/21	Reid Kaiser	775-337-4700	310 Galletti Way, Sparks, NV 89431
City Of Elko	2021 Micro Slurry Project	\$ 560,782.00	Slurry/Micro	08/13/21	Dennis Strickland	775-777-7100	1751 College Avenue, Elko, Nevada 89801
O'Grady Paving - Santa Clara 2021 Rehab	Santa Clara 2021 Rehab	\$ 377,007.00	Slurry Seal	08/11/21	Kyle Kincaid	650-966-1926	2513 Wyandotte Street, Mountain View, CA 94043
City of Fernley	FY 19/20 PMP Maintenance	\$ 594,007.00	Slurry, Striping	06/25/21	Jessica Dover	775-784-9866	595 Silver Lace Boulevard, Fernley, NV 89408
Mono County	Twin Lakes Road Maintenance	\$ 469,007.00	Slurry Seal, Striping	6/23/2021	Kalen Dodd	760-932-5452	P.O. Box 457, Bridgeport, California 93517
Fresno County	2021 Bituminous Seal Coats	\$ 1,264,007.00	Chip Seal	06/16/21	Robert Hendrickson	559-289-8855	2220 Tulare Street, 6th Floor, Fresno, CA 93721
City of Reno	2020 Reno Preventative Maintenance	\$ 3,344,007.00	Slurry Seal, Chip Seal, AC Patch, Striping	05/19/21	Kaitlin Redmon	775-334-3307	PO Box 1900, Reno, NV 89505
Eureka County	2020 Road and Airport Maintenance	\$ 3,414,007.00	Paving/Patching/Slurry Seal	10/05/20	Jeb Rowley	775-237-5372	701 S. Main Street, Eureka, Nevada 89316
Graniterock - Santa Cruz Rail Trail	Santa Cruz Rail Trail	\$ 154,007.00	Slurry Seal	10/01/20	Brian Ashford	831-768-2734	350 Technology Drive, Watsonville, CA 95076
City of Sparks	2020 Street Preventative Maintenance	\$ 304,031.00	Slurry, Striping	07/18/20	Bob Schricker	775-353-2273	431 Prater Way, Sparks, NV 89431
City of Fernley	FY 19/20 PMP Maintenance	\$ 684,007.00	Slurry, Striping	07/02/20	Jessica Dover	775-784-9919	595 Silver Lace Boulevard, Fernley, NV 89408
Carson City	Roop Street Pavement Micro-Surfacing	\$ 234,007.00	Slurry, Patch, Striping	06/26/20	Jeff Freeman	775-636-0802	201 N. Carson Street #2, Carson City, NV 89701
Lyon County	2019 County Roadway Resurfacing	\$ 1,634,007.00	Chip Seal/Slurry Seal	11/08/19	Dustin Homan	775-302-7179	34 Lakes Blvd., Dayton, NV 89403
Washoe County	2019-2020 Washoe County Slurry Seal	\$ 2,774,007.00	Chip Seal/Slurry Seal	10/31/19	Megan Sizelove	775-328-2316	1001 E. 9th Street, Reno, Nevada 89512
Nevada Department of Transportation	NDOT #3782 - Humboldt Chip	\$ 4,091,007.00	Chip Seal	10/23/19	Trent Averett	775-653-8070	705 E. 4th Street, Winnemucca, NV 89445
Q&D - Watsonville Airport Crack and Slurry	Runway 9-27 & Taxiways B and C	\$ 138,007.00	Crack, Slurry Seal	10/13/19	Marc Leone	775-786-2677	1050 S. 21st Street, Sparks, NV 89431
City of Reno	2019 Pavement Maintenance	\$ 3,321,007.00	Slurry Seal	09/30/19	Teri Martinetti	775-225-7287	PO Box 1900, Reno, NV 89505
City of Davis	Slurry Seal	\$ 1,296,007.00	Slurry Seal	07/31/19	Michael Mitchell	530-628-0086	23 Russell Blvd., Davis, CA 95616
City of Hayward	FY19 Pavement Rehab	\$ 191,007.00	Slurry Seal	07/13/19	Brett Kincaid	650-966-1926	O'Grady Paving, 2513 Wyandotte Street, Mountainview
Q&D - Watsonville Airport Crack and Slurry	Runway 2-20 & Taxiways A, C, D and E	\$ 280,825.00	Crack, Slurry Seal	05/20/19	Marc Leone	775-786-2677	1050 S. 21st Street, Sparks, NV 89431
City of Santa Clarita	2017-18 Slurry Seal	\$ 1,888,950.82	Slurry/Micro-Surfacing	01/03/19	Nelson Vasquez	661-670-9823	23920 Valencia Blvd., Santa Clarita, CA 91355
City of Clayton	2018 Neighborhood Streets	\$ 784,007.00	Slurry Seal	11/19/18	Scott Alman	925-683-5025	6000 Heritage Trail, Clayton, CA 94517
San Joaquin County	Chip Seal 2017-2018	\$ 2,267,007.00	Chip Seal	10/29/18	Awni Taha	209-953-7619	1810 E. Hazelton Avenue, Stockton, CA 95205
City of Reno	2018 Preventative Maintenance	\$ 2,894,192.75	Slurry/Micro-Surfacing/Asphalt Patching	10/01/18	Teri Martinetti	775-334-2148	P.O. Box 1900, Reno NV 89505
San Luis Obispo County	2017-18 Surface Treatment Various County Roads	\$ 2,177,807.00	Slurry Seal/Fog Seal	09/14/18	Pete Newell	805-440-6791	County Govt Center, Room 206, SLO, CA 93408
City of Clovis	Rubberized Cape Seal 2018	\$ 824,007.00	Cape Seal	06/25/18	Thomas Cheng	559-324-2374	1033 Fifth Street, Clovis, CA 93612
City of Reno	2017 Reno Surface Treatment Project	\$ 782,007.00	Microsurfacing/AsphaltPatching/Cape Seal	12/01/17	Kerrie Koski	775-830-3976	P.O. Box 1900, Reno NV 89505

Nevada Department of Transportation	NDOT #3685 SR 225 Elko	\$ 856,007.00	Chip Seal/Fog Seal	12/01/17	Regina Pierce	775-777-7768	1951 Idaho Street, Elko, NV 89801
City of Sparks	2018 Street Preventive Maintenance	\$ 439,105.00	Microsurfacing	11/30/17	Bob Schrickler	775-353-2273	P.O. Box 857, Sparks, NV 89432-0857
County of San Luis Obispo	2016-17 Surface Treatment Various County Roads	\$ 526,007.00	Slurry/Micro/Fog Seal	11/30/17	Simon Hernandez	805-509-5705	County Govt Center, Room 206, S.I.O, CA 93408
Lyon County	2017 Pavement Maintenance Project	\$ 857,007.00	Slurry Seal	11/30/17	Brian Harer	775-827-6111	18 Hwy 95A North, Yerington, NV 89447
Washoe County	2017/2018 Roadway & Parking Lot Repairs	\$ 3,165,007.00	Chip Seal/Microsurfacing/Cape Seal/Asphalt Paving	11/30/17	Greg Belancio	775-328-2041	1001 E. 9th Street, Reno, Nevada 89520
City of Carson City	Carson City Pavement Preservation-Micro-Surfacing	\$ 664,007.00	Slurry/Micro	11/30/17	Rick Cooley	775-887-2133	201 North Carson Street, Carson City, NV 89701
City of Santa Clarita	2016-17 Slurry Seal	\$ 1,496,000.00	Slurry Seal/Microsurfacing	11/07/17	Nelson Vasquez	661-294-2538	23920 Valencia Blvd., Santa Clarita, CA 91355
Nevada Department of Transportation	NDOT #3689 McCarran Slurry	\$ 459,007.00	Slurry/Micro	11/03/17	Brad Durski	775-888-3024	1263 S. Stewart Street, Carson City, NV 89712
City of Elko	Micro Slurry Project - 2017	\$ 492,007.00	Slurry/Micro	11/01/17	Dennis Strickland	775-777-7100	1751 College Avenue, Elko, NV 89801
County of Sierra	Sierraville Dearwater Airport Slurry Seal and Re-Stripe Runway Project	\$ 86,007.00	Slurry Seal	10/31/17	Bryan Davey	530-289-3201	P.O. Box 98, Downieville, CA 95936
Douglas County	2017 Road Seal	\$ 419,007.00	Chip Seal/Slurry Seal	10/31/17	Jon Erb	775-782-6233	P.O. Box 218, Minden, NV 89423
Topaz Ranch Estates GID	Topaz Ranch Estates GID Phase 1B - Waterline Improvements	\$ 228,486.00	Slurry Seal	10/21/17	Aspen Developers: Jon Winfield	775-788-3310	2340 East 5th Street, Reno, NV 89512
County of San Joaquin	Chip Seal 2016-2017	\$ 1,721,007.00	Chip Seal	10/01/17	Awni Taha	209-953-7619	1810 E. Hazelton Avenue, Stockton, CA 95205
Eureka County	Eureka County 2017 Streets Maintenance Project	\$ 2,338,418.20	Chip Seal/Slurry Seal	10/01/17	Loren Hunewill	775-623-2888	P.O. Box 714, Eureka, NV 89316
City of Davis	2016 Pavement Rehabilitation	\$ 565,000.00	Slurry Seal	10/01/17	Michael Mitchell	530-757-5686	1717 5th Street, Davis, CA 95616
Nevada Department of Transportation	NDOT #3670 SR 341	\$ 341,007.00	Scrub Seal	09/30/17	John Angel	775-720-4526	123 W. Nye Lane, Carson City, NV 89708
City of Hanford	FY 16/17 Fiberized Micro Surfacing Pavement Treatment Project	\$ 191,007.00	Fiberized Micro	09/30/17	Steve Coodey	559-489-7715	315 N. Douty Street, Hanford, CA 93230
Santa Barbara County	2016-17 Countywide Preventive Maintenance Project	\$ 865,400.00	Cape Seal/Microsurfacing	09/30/17	Andrew Rose	805-739-6794	620 W. Foster Rd., Santa Maria, CA 93455
Regional Transportation Commission	2016 Pavement Maintenance Project	\$ 5,137,007.00	Chip Seal/Microsurfacing/Crack Seal/Asphalt Paving	07/31/17	Doug Maloy	775-335-1865	1105 Terminal Way, Ste 108, Reno, NV 89502
County of Fresno	Slurry Seals in Various Locations No. 16-14-C	\$ 464,469.50	Slurry Seal	07/31/17	Keith Eckert	559-862-5024	2220 Tulare Street, 6th Floor, Fresno, CA 93721
Washoe County	2016/2017 Slurry Seal of Selected Streets	\$ 3,938,404.00	Chip/Slurry Seal	10/31/16	Greg Belancio	775-328-2041	1001 E. 9th Street, Reno, Nevada 89520
City of Visalia	2016 Reclamite Seal	\$ 976,676.61	Reclamite Seal	10/14/16	Norm Goldstrom	559-713-4166	336 N. Ben Maddox, Visalia, CA 93292
San Joaquin County	Slurry Seal of Local Roads 2015-16	\$ 637,997.90	Slurry Seal	09/23/16	Awni Taha	209-953-7619	1810 E. Hazelton Avenue, Stockton, CA 95205
Lander County	Battle Mountain 2016 Road Maintenance Project	\$ 3,087,916.00	Chip/Slurry Seal	09/15/16	Burt Ramos	775-635-2728	50 State Route 305, Battle Mountain, NV 89820
City of Rocklin	2016 High Density Mineral Bond Resurfacing	\$ 695,548.40	High Density Mineral Bond	09/02/16	Zach Bosch	916-625-5511	4081 Alvis Court, Rocklin, CA 95677
Nevada Department of Transportation	NDOT #3603 Denio	\$ 2,527,366.00	Chip Seal with Flush Coat	09/01/16	Dave Schwartz	775-623-8070	795 E. Fourth Street, Winnemucca, NV 89445
City of Santa Clarita	2015-16 Annual Slurry Seal Project	\$ 832,318.05	Slurry Seal / Micro-Surfacing	08/19/16	Nelson Vasquez	661-670-8823	23920 Valencia Blvd., Santa Clarita, CA 91355
City of Brentwood	2016 Preventive Maintenance Program and Trail Pavement Management	\$ 1,142,817.00	Slurry Seal	08/11/16	James Campero	925-516-5158	150 City Park Way, Brentwood, CA 94513
City of Clovis	2016 Rubberized Cape Seal	\$ 844,007.00	Slurry / Rubberized Chip/Cape Seal	06/30/16	Thomas Cheng	559-324-2374	1033 Fifth Street, Clovis, CA 93612
Nevada Department of Transportation	NDOT #3563 Various Counties Chip Seal	\$ 4,958,680.00	Double Chip Seal	10/30/15	Randy Hesterlee	775-289-1703	1263 S. Stewart St, Carson City, NV 89712
City of Manteca	2015 Pavement Maintenance	\$ 1,833,735.00	Slurry Seal	09/30/15	Matiel Holloway	209-456-8411	1001 W. Center Street, Manteca, CA 95337
Contra Costa County	2015 Contra Costa Cape Seal	\$ 504,278.00	Slurry Seal	09/15/15	Dante Morabe	925-313-2008	255 Glacier Drive, Martinez, CA 94553
City of Clovis	Clovis Rubberized Cape Seal	\$ 1,392,865.00	Cape Seal	08/30/15	Steve White	559-324-2060	1033 Fifth Street, Clovis, CA 93612
Gardnerville Ranchos GID	2015-2016 Street Maintenance	\$ 388,367.80	Slurry Seal	08/30/15	Robert Spellberg	775-285-2048	831 Mitch Drive, Gardnerville, NV 89410
County of Fresno	Fresno County Slurry Seal	\$ 477,135.00	Slurry Seal	06/30/15	D'Andra Buchanan	559-696-9769	2220 Tulare Street, 6th Floor, Fresno, CA 93721
Regional Transportation Commission	2014 Preventive Maintenance	\$ 2,322,007.11	Slurry/Micro/Chip Seal	01/01/15	Scott Gibson	775-348-0171	1105 Terminal Way, Ste 108, Reno, NV 89502
Nevada Department of Transportation	NDOT #3569 Pyramid Hwy Chip	\$ 2,567,569.00	Double Chip Seal	12/31/14	Sam Lompa	775-888-3040	1263 S. Stewart St, Carson City, NV 89712

City of Rocklin	2014 Resurfacing Project	\$ 2,208,709.95	Slurry/Micro/Asphalt Rubber Chip Seal	12/19/14	Justin Nartker	916-625-5500	4081 Alvis Court, Rocklin, CA 95677
Contra Costa County	2014 Slurry Seal (Saranap Area)	\$ 407,000.00	Slurry Seal	10/01/14	Dante Morabe	925-313-2006	255 Glacier Drive, Martinez, CA 94553
Washoe County	2014/2015 Slurry Seal	\$ 1,528,450.00	Slurry/Micro/Chip Seal	10/01/14	Greg Belanchio	775-328-2041	1001 E. 9th Street, Reno, Nevada 89520
Contra Costa County	2014 Discovery Bay Asphalt Rubber Cape Seal - Subcontractor to American Pavement Systems	\$ 603,000.00	Slurry Seal	08/01/14	Dante Morabe	925-313-2006	255 Glacier Drive, Martinez, CA 94553
City of Brentwood	2014 Pavement Management Project	\$ 534,748.82	Slurry Seal	07/21/14	Anthony Salam	925-516-5168	150 City Park Way, Brentwood, CA 94513
City of Carson	2013 Street Maintenance Program	\$ 686,007.00	Slurry/Micro	10/15/13	John Platt	775-887-2355	201 N. Carson Street #3, Carson City, NV 89701
Town of Mammoth	2013 Micro Surfacing Project	\$ 233,277.73	Slurry/Micro	10/15/13	Ron Fransler	760-934-8989	P.O. Box 1609, Mammoth Lakes, CA 93546
City of Reno	2013 Surface Treatment	\$ 488,007.00	Street Maintenance	10/01/13	Kerrie Koski	775-830-3976	P.O. Box 1900, Reno NV 89505
California Department of Transportation	Caltrans 02-4E9704 Tehama	\$ 1,088,007.00	Slurry/Rubberized Chip Seal	09/30/13	Anthony Granados	530-949-1611	1727 - 30th Street, Sacramento, CA 95816
City of Sparks	2013 Preventative Maintenance Program	\$ 391,004.10	Micro Seal	09/20/13	Brent Quilici	775-671-7013	P.O. Box 857, Sparks, NV 89432-0857
City of Carlin	2013 City of Carlin Street Maintenance	\$ 301,488.65	Rubberized Cape Seal	09/15/13	Carlos Esparza	775-397-5720	810 Oak Street, Carlin, NV 89822
City of Elko	Microsurface Project 2013	\$ 182,007.00	Slurry/Micro	08/30/13	Dennis Strickland	775-777-7241	1751 College Avenue, Elko, NV 89801
Regional Transportation Commission	2013 Preventive Crack & Maint.	\$ 1,073,007.00	Crack and Patch	08/30/13	Scott Gibson	775-348-0400	P.O. Box 30002, Reno NV 89520
California Department of Transportation	Caltrans 03-3M8304 I-80 Truckee	\$ 7,159,007.00	Bonded Wearing Course	10/19/12	Jaret Montplaisier	530-682-5837	1727 - 30th Street, Sacramento, CA 95816
California Department of Transportation	Caltrans 02-3E9204 RT 70 & 89 Overlay	\$ 2,696,007.00	Asphalt Overlay	08/31/12	Michael Holtrigel	530-283-2492	1727 - 30th Street, Sacramento, CA 95816
Regional Transportation Commission	RTC Reno Consolidated 11-02 Phase 1 (Brinkby)	\$ 1,737,007.00	Street Reconstruction	08/30/12	Michele Dennis	775-348-0171	1105 Terminal Way, Ste 108, Reno, NV 89502
Nevada Department of Transportation	NDOT D3-041-10 CIR & CHIP	\$ 6,077,007.00	Double Chip Seal	07/31/12	Dave Schwartz	775-623-8070	795 E. Fourth Street, Winnemucca, NV 89445
City of Reno	City of Reno 2012 Street Rehab - Unit G	\$ 2,157,007.00	Street Reconstruction	07/30/12	Bob Schricker	775-827-6111	P.O. Box 1900, Reno, NV 89505
Regional Transportation Commission	RTC 2012 Preventive Maintenance, Patching	\$ 733,007.00	Asphalt Maintenance	07/15/12	Scott Gibson	775-348-0171	1105 Terminal Way, Ste 108, Reno, NV 89502
California Department of Transportation	Caltrans 03-4M3204 RT 70 Micro	\$ 619,007.00	Street Reconstruction	07/13/12	Bryan Johnson	530-895-5245	1727 - 30th Street, Sacramento, CA 95816
Reno/Sparks Convention Visitors Auth.	Reno Sparks Livestock Events Center - RV Spaces	\$ 409,007.00	Asphalt Overlay	06/30/12	Laura Tabman	775-827-7960	1283 S. Stewart St, Carson City, NV 89712
Nevada Department of Transportation	NDOT D3-008-11 Chip Seal	\$ 6,087,451.00	Chip Seal	06/21/12	Boyde Ratcliff	775-777-2701	1283 S. Stewart St, Carson City, NV 89712
Nevada Department of Transportation	NDOT D2-047-10 CIR & CHIP	\$ 3,373,007.00	Double Chip Seal	12/31/11	Larry Boge	775-687-3378	310 Gallatti Way, Sparks, NV 89431
Nevada Department of Transportation	NDOT D1-005-11 SR 147 & US 93 CHIP	\$ 1,811,007.00	Chip Seal	12/31/11	Glenn Petrenko	702-671-8860	123 E. Washington Street, Las Vegas, NV 89101
Nevada Department of Transportation	NDOT D3-008-11 Double Chip Seal	\$ 6,685,007.00	Double Chip Seal	12/31/11	Boyd Ratliff	775-777-2700	1951 Idaho Street, Elko, NV 89801
Nevada Department of Transportation	NDOT D2-011-11 Double Micro Surfacing	\$ 958,007.00	Microsurface	12/01/11	Steve Lani	775-720-4528	1283 S. Stewart Street, Carson City, NV 89712
Nevada Department of Transportation	NDOT D2-032-10 CHIP SEALS	\$ 687,007.00	Chip Seal	10/31/11	John Angel	775-687-3378	310 Gallatti Way, Sparks, NV 89431
City of Carson City	2011 Carson City Street Maintenance	\$ 504,007.00	Slurry Seal	10/01/11	John Platt	775-887-2355	3505 Butti Way, Carson City, NV 89701
Valley Slurry Seal	RTC 2011 Preventative Maintenance	\$ 589,724.00	Slurry Seal	10/01/11	Jon James	916-416-6061	P.O. Box 881330, West Sacramento, CA 95788
Nye County	Beatty/Amarosa Slurry Seal	\$ 129,007.00	Slurry Seal	11/01/10	Judy Dodge	775-482-7256	P.O. Box 1952, Tonopah, NV 89049
Eureka County	2010 ARRA Street Maintenance	\$ 398,007.00	Asphalt Maintenance	08/20/10	Ron Damele	775-237-5265	10 S. Main Street, Eureka, NV 89316
White Pine County	Ely-White Pine County Airport	\$ 173,855.72	Asphalt Maintenance	11/30/09	Dana Hertshom	303-782-0882	957 Campton Street, Ely, NV 89301
City of Yerington	FY 09-10 Street Project	\$ 262,007.00	Chip Seal	11/30/09	Roy McDonald	775-463-3511	102 S. Main Street, Yerington, NV 89447
Lander County	Battle Mountain Airport	\$ 228,007.00	Asphalt Maintenance	10/15/09	Greg Riley	775-835-2885	315 S Humboldt Street, Battle Mountain, NV 89820
Douglas County	2009 Road Seal	\$ 279,007.00	Chip Seal	10/15/09	Ed Mason	775-782-6201	P.O. Box 218, Minden, NV 89423
Eureka County	Street Maintenance 2009	\$ 1,248,007.00	Paving and Slurry Seal	10/01/09	Tom Young	775-237-5265	10 S. Main Street, Eureka, NV 89316
Wilson/Gardnerville Ranchos Improv. Dist.	Gardnerville Ranchos General Improv. 2009	\$ 126,582.26	Slurry Seal	09/01/09	John Bird	775-265-2230	812 Short Court, Gardnerville, NV 89460

**Sierra Nevada Construction, Inc.**  
**PO Box 50760**  
**Sparks, NV 89435**  
**775-355-0420**

Name	Position	Date Started with this organization	Date started in construction	Prior positions and experience in construction
Kevin L. Robertson	President	2001	1993	Project Engineer, Project Manager, Chief Estimator, Area Manager - 8 years; \$30M to \$50M per year, President - 12 years.
Craig D. Holt	Vice President	2001	1994	Business Manager - 7 years; \$100M in civil construction & materials per year, Vice President - 12 years.
Marc Markwell	Secretary/Treasurer	2012	1999	Project Manager. Business Manager - Up to 100M in civil construction and vertical construction
Jeremiah Merritt	Safety & Risk Director	2014	2000	Safety & Risk Manager - 19 years; Occupational Safety & Health
Alex Faust	Vice President AC Maintenance	2002	2000	Project Engineer, Project Manager, Estimator, Senior Vice-President
Justin Tenpenney	Construction Manager of Pavement Maintenance	2013	2000	Operator, Foreman, Superintendent, Construction Manager
Nicholas Bacher	Estimator / Project Manager	2016	2015	Project Manager, Estimator
Osvaldo Arias	Estimator / Project Manager	2022	2016	Project Engineer, Project Manager, Estimator
Dave Duggins	AC Maintenance Superintendent	2013	2000	General Superintendent
Justin McVay	AC Maintenance Superintendent	2013	2008	Slurry Worker, Operator, Foreman, Superintendent
Larry Ryan	AC Maintenance Superintendent	2013	2001	Slurry Worker, Operator, Foreman, Superintendent
Lender Aguirre-Carpio	AC Maintenance Superintendent	2016	2005	Slurry Worker, Operator, Foreman, Superintendent

# Resume - Dave Duggins General Superintendent

## **Project Experience**

- Sierra Nevada Construction 2013-2017  
Superintendent  
Oversee daily crew production  
Ordering and coordinating material deliveries  
Daily Safety and Weekly Safety for the crew  
Oversee Equipment Maintenance  
Daily costs & Schedules  
  
General Superintendent 2018-Current  
Oversee daily crew production  
Ordering and coordinating material deliveries  
Daily Safety and Weekly Safety for the crew  
Oversee Equipment Maintenance  
Daily costs & Schedules  
Daily crew schedule  
Strategic Planning  
Management & Estimating
- Western Pavement Solutions 2012-2013  
Superintendent  
Oversee daily crew production  
Ordering and coordinating material deliveries  
Daily Safety and Weekly Safety for the crew  
Oversee Equipment Maintenance  
Daily costs & Schedules
- Intermountain Slurry Seal, Inc. 2001-2012  
Foreman  
Oversee daily crew production  
Ordering and coordinating material deliveries  
Daily Safety and Weekly Safety for the crew  
Maintenance for Equipment  
  
Superintendent  
Oversee daily crew production  
Ordering and coordinating material deliveries  
Daily Safety and Weekly Safety for the crew  
Oversee Equipment Maintenance  
Daily costs & Schedules  
Day to Day construction activities

## **Education**

Butte College, 1992-1994





# NEVADA STATE CONTRACTORS BOARD

5390 KIETZKE LANE, SUITE 102, RENO, NEVADA, 89511 (775) 688-1141 FAX (775) 688-1271, INVESTIGATIONS (775) 688-1150  
8400 WEST SUNSET ROAD, SUITE 150, LAS VEGAS, NEVADA, 89113, (702) 486-1100 FAX (702) 486-1190, INVESTIGATIONS (702) 486-1110

## CERTIFICATE OF ELIGIBILITY PER NRS 338.147 and NRS 338.1389

CERTIFICATE NUMBER: **BPC-00-01-27-0032**

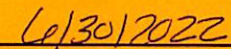
**SIERRA NEVADA CONSTRUCTION, INC.** (HEREIN THE "GENERAL CONTRACTOR") NEVADA STATE CONTRACTORS' LICENSE NUMBER **0025565** ORIGINAL ISSUE DATE: **07/05/1988** BUSINESS TYPE: **CORPORATION** CLASSIFICATION: **A-GENERAL ENGINEERING** MONETARY LICENSE LIMIT: **UNLIMITED** STATUS: **ACTIVE**, IS HEREBY ISSUED THIS CERTIFICATE BY THE NEVADA STATE CONTRACTORS' BOARD, BASED UPON THE INFORMATION CONTAINED IN THE STATEMENT OF COMPLIANCE WITH NEVADA REVISED STATUTES (NRS) 338.147 AND NRS 338.1389 AND THE AFFIDAVIT OF CERTIFIED PUBLIC ACCOUNTANT SUBMITTED TO THE NEVADA STATE CONTRACTORS BOARD AS PROOF OF CONTRACTOR'S COMPLIANCE WITH THE PROVISIONS OF NRS 338.147 AND NRS 338.1389, ATTACHED HERETO. IN ACCORDANCE WITH THE PROVISIONS OF NRS 338.147(3), THE ABOVE-NAMED GENERAL CONTRACTOR AND A CERTIFIED PUBLIC ACCOUNTANT HAVE SUBMITTED FULLY EXECUTED AND NOTARIZED SWORN AFFIDAVITS AS PROOF OF PREFERENTIAL BIDDER STATUS, UNDER PENALTY OF PERJURY, CERTIFYING THAT THE GENERAL CONTRACTOR IS QUALIFIED TO RECEIVE A PREFERENCE IN BIDDING AS SET FORTH IN NRS 338.147 AND NRS 338.1389 AND OTHER MATTERS RELATING THERETO.

THIS CERTIFICATE OF ELIGIBILITY IS ISSUED ON **AUGUST 1, 2022** AND EXPIRES ON **JULY 31, 2023** UNLESS SOONER REVOKED OR SUSPENDED BY THE NEVADA STATE CONTRACTORS BOARD.





NANCY MATHIAS, LICENSING ADMINISTRATOR  
FOR MARGI GREIN, EXECUTIVE OFFICER



DATE

The Nevada State Contractors Board assumes no liability or responsibility for the accuracy or validity of the information contained in the Contractors Statement of Compliance with NRS 338.147 or the Affidavit of Certified Public Accountant as Proof of Contractors Compliance with the Provisions of NRS 338.147. The above-named General Contractor shall bear the responsibility to ascertain the accuracy and validity of the affidavits provided to support the issuance of this certificate.



# SECRETARY OF STATE



## NEVADA STATE BUSINESS LICENSE SIERRA NEVADA CONSTRUCTION, INC.

**Nevada Business Identification # NV19881009372**  
**Expiration Date: 03/31/2024**

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

Valid until the expiration date listed unless suspended, revoked or cancelled in accordance with the provisions in Nevada Revised Statutes. License is not transferable and is not in lieu of any local business license, permit or registration.

**License must be cancelled on or before its expiration date if business activity ceases. Failure to do so will result in late fees or penalties which, by law, cannot be waived.**



Certificate Number: B202303063449362  
You may verify this certificate  
online at <http://www.nvsos.gov>

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed the Great Seal of State, at my  
office on 03/06/2023.

FRANCISCO V. AGUILAR  
Secretary of State



RECEIVED

APR 22 2022

Sierra Nevada Construction, Inc.

**LICENSE NUMBER**

W16967A-LIC

**LICENSE TYPE**

General Business License

LICENSE - NOT TRANSFERRABLE  
POST IN A CONSPICUOUS PLACE



This license cannot be transferred or assigned. It is valid only for the licensee and location shown below.

**YEAR LICENSE VALID**

Expires on 04/30/2023

**LICENSE FEE PAID**

THIS CERTIFIES THAT  
IN THE NAME OF  
LOCATED AT

SIERRA NEVADA CONSTRUCTION INC  
Kevin Robertson  
2055 E GREG ST, SPARKS, NV

SIERRA NEVADA CONSTRUCTION INC  
Kevin Robertson  
PO BOX 50760

SPARKS, NV 89435

This license certifies that the name above has paid the required fees to the license collector of Washoe County and is hereby authorized to conduct business and is subject to the provisions of law.



Southern Nevada Office  
2310 Corporate Circle, Suite 200  
Henderson, Nevada 89074  
(702) 486-1100

Northern Nevada Office  
5390 Kietzke Lane, Suite 102  
Reno, Nevada 89511  
(775) 688-1141

## STATE CONTRACTORS BOARD

The Nevada State Contractors Board certifies that  
**SIERRA NEVADA CONSTRUCTION INC**

Licensed since July 05, 1988

License No. **0025565**

Is duly licensed as a contractor in the following classification(s):

**PRINCIPALS:**

KEVIN ROBERTSON, President, QI  
MARC MARKWELL, CFO  
CRAIG HOLT, Vice President

**A General Engineering**

**LIMIT: Unlimited**  
**EXPIRES: 07/31/2023**

  
Chair, Nevada State Contractors Board



### STATE OF NEVADA CONTRACTOR'S LICENSE



THIS IS TO CERTIFY THAT THE COMPANY OR PERSON LISTED BELOW IS  
LICENSED IN THE STATE OF NEVADA FOR THE CLASSIFICATION(S) SHOWN

LICENSE#: **0025565** EXPIRES: **7/31/2023**  
**SIERRA NEVADA CONSTRUCTION INC**  
**P O BOX 50760,**  
**SPARKS, NV 89435-0760**

LIMIT: **Unlimited**  
CLASS: **A**

## Project Workforce Checklist

Contract No.: WA-2022-307 Project Name: MT. Golf Course Cart Path Restoration - Phase 2

Contractor/Subcontractor: Sierra Nevada Construction, Inc.

Craft/Trade	More than 3 Employees Anticipated?			Anticipate Needing Waiver?	
<b>Air Balance Technician</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Alarm Installer</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Bricklayer</b> , can also include tile setter, terrazzo workers and marble masons.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Carpenter</b> , can also include cement masons, floor coverer, millwright and piledriver (non-equipment), plasterers and terrazzo workers.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Cement Mason (See Laborers)</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Electrician</b> , includes communication technician, line, neon sign and wireman. Can also include alarm installer.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Elevator Constructor</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Floor Coverer</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Glazier (see also Painters and Allied Trades)</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Hod Carrier (See Laborers)</b> , includes brick-mason tender and plaster tender.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Iron Worker</b> , can also include fence erectors (steel/iron)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Laborer</b> , can also include brick mason tender, cement mason, fence erector (non-steel/iron), flag person, highway stripier, landscaper, plastic tender, and traffic barrier erector	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Lubrication and Service Engineer</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Mechanical Insulator</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Millwright</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Operating Engineer</b> , can also include equipment greaser, piledriver, soils and material tester, steel fabricator/erector (equipment) and surveyor (non-licensed) and well driller.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Painters and Allied Trades</b> , can also include glaziers, floor coverers, and tapers.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Pile Driver (non-equipment)</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Plasterer</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Plumber/Pipefitter</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

<b>Refrigeration</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Roofer (not sheet metal)</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Sheet Metal Worker</b> , can also include air balance technician.	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Soils and Materials Tester</b> , includes certified soil tester	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Sprinkler Fitter</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Surveyor (non-licensed)</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Taper</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Tile/Terrazzo Worker/Marble Mason</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Traffic Barrier Erector (See Laborers)</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Truck Driver</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Well Driller (see also Operating Engineer)</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
<b>Other*:</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>
	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Yes</b>	<b>No</b>

I affirm I am fully authorized to acknowledge, on behalf of the Contractor listed above, the anticipated workforce, and acknowledge that changes to the anticipated workforce which may have an impact on compliance with the Nevada Apprenticeship Utilization Act, 2019 will require the submittal of a revised form within ten (10) working days of such change.

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

Name and Title: \_\_\_\_\_

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

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

## **SECTION 5**

# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT**

This Agreement is by and between the **Incline Village General Improvement District** (“Owner”) and **Sierra Nevada Construction, Inc.**, a Domestic Corporation with principle place of business located at 2055 E. Greg Street in Sparks, Nevada (“Contractor”). This Agreement will be effective on \_\_\_\_\_, which is the Effective Date of the Contract. Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

### **ARTICLE 1—WORK**

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

*The Project is located at 690 Wilson Way, in Incline Village, Washoe County, Nevada. The Base Bid scope of work includes replacing approximately 4,705 SF of existing asphalt pavement and base, 143 LF of AC curb replacement, 235 SF of Rock Slope Protection, 30,870 LF of crack seal, and approximately 86,125 SF of slurry seal throughout the entirety of the cart path.*

### **ARTICLE 2—THE PROJECT**

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

Mt. Golf Course Cart Path Restoration – Phase II

### **ARTICLE 3—ENGINEER**

- 3.01 IVGID’s Engineering Division is to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by the IVGID Engineering Division.

### **ARTICLE 4—CONTRACT TIMES**

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
  - B. The OWNER anticipates issuing the Notice to Proceed on or about **May 15, 2023**.
  - C. The Work is to be performed within 60 consecutive business days (Monday – Friday) between **Sept. 5, 2023 and Nov. 4, 2023**.

4.02 *Contract Times: Dates*

- A. The Work will be substantially complete on or before **Nov. 4, 2023**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **Nov. 24, 2023**

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner **\$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,250** for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

**ARTICLE 5—CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work as shown on the Bid Form. The total estimated Contract Price is **One Hundred Eighty-Seven Thousand and Seven Dollars (\$187,007.00)**.

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

## **ARTICLE 6—PAYMENT PROCEDURES**

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

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

### **6.02 *Progress Payments; Retainage***

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment, as recommended by Engineer, on or about the first day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

- a. Ninety-five percent (95%) of the value of the Work completed (with the balance being retainage).

- 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage.

- b. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to ninety-seven and one-half percent (97.5%) of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### **6.03 *Final Payment***

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

### **6.04 *Consent of Surety***

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

### **6.05 *Interest***

- A. All amounts not paid when due will bear interest at the rate of six percent (6%) per annum.



## **ARTICLE 7—CONTRACT DOCUMENTS**

### **7.01** *Contents*

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.
  - 2. Contractor's Bid dated **April 6, 2023**.
  - 3. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  - 4. General Conditions.
  - 5. Supplementary Conditions.
  - 6. Specifications as listed in the table of contents of the project manual (copy of list attached).
  - 7. Drawings (not attached but incorporated by reference) consisting of 15 sheets with each sheet bearing the following general title: **Mt. Golf Course Cart Path Restoration – Phase II**.
  - 8. Addenda Number 1.
  - 9. Exhibits to this Agreement (enumerated as follows):
    - a. Documentation submitted by Contractor prior to Notice of Award
    - b. For all projects over \$100,000, State of Nevada Prevailing Wage Rates, Washoe County, current edition as of Award date of project.
  - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01** *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

**8.02** *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to

establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

- 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
- 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, in the Supplementary Conditions.

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

**OWNER:**  
**INCLINE VILLAGE G. I. D.**  
Agreed to:

\_\_\_\_\_  
Matthew Dent, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Noble, Secretary

\_\_\_\_\_  
Date

Reviewed as to Form:

\_\_\_\_\_  
Joshua Nelson  
District Legal Counsel

\_\_\_\_\_  
Date

OWNER'S address for giving notice:

**CONTRACTOR:**  
**SIERRA NEVADA CONSTRUCTION**  
Agreed To:

By:   
 \_\_\_\_\_  
*Signature of Authorized Agent*

\_\_\_\_\_  
Kevin L. Robertson, President  
*Print or Type Name and Title*

\_\_\_\_\_  
April 27, 2023  
*Date*

If CONTRACTOR is a Corporation, attach evidence of authority to sign.

CONTRACTOR'S address for giving notice:

**Sierra Nevada Construction**  
 2055 E. Greg Street  
 Sparks, Nevada 89431  
 775-355-0420

**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD  
OF DIRECTORS AND SHAREHOLDERS  
OF  
SIERRA NEVADA CONSTRUCTION, INC.  
MARCH 2, 2020**

The undersigned, being all the directors and shareholders of Sierra Nevada Construction, Inc., a Nevada corporation (the "Corporation"), do hereby unanimously approve, adopt, make, ratify and confirm the following:

WHEREAS, Kevin L. Robertson acts in the capacity of President, Craig D. Holt acts in the capacity of Vice President, and Marc T. Markwell acts in the capacity of Treasurer, Chief Financial Officer, and Secretary of Sierra Nevada Construction, Inc.

WHEREAS, Kevin L. Robertson, Craig D. Holt, and Marc Markwell as officers of this Corporation may be required from time to time to execute agreements on behalf of Sierra Nevada Construction, Inc.

NOW THEREFORE, the undersigned directors and shareholders of Sierra Nevada Construction, Inc., resolve as follows:

RESOLVED, that the following individuals are appointed to service as officers of the Corporation in the specified capacities:

Kevin L. Robertson	President
Craig D. Holt	Vice President
Marc T. Markwell	Chief Financial Officer/Secretary/Treasurer

RESOLVED, that Kevin L. Robertson, Craig D. Holt and Marc T. Markwell as officers of this Corporation are authorized to execute agreements into, between or among Sierra Nevada Construction, Inc., and third parties without further authorization from the directors and/or shareholders.

and, further

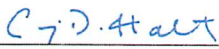
RESOLVED, that Kevin L. Robertson, Craig D. Holt and Marc T. Markwell in their capacities as officers of this Corporation are authorized to take all necessary and appropriate steps on behalf of the Corporation to effectuate the proposed amendments to the Articles of Incorporation and the Bylaws of the Corporation.

IN WITNESS WHEREOF, the directors and shareholders have executed this instrument effective March 2, 2020.

Directors:

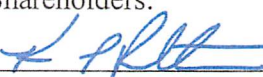


Kevin L. Robertson

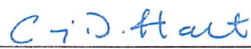


Craig D. Holt

Shareholders:



Kevin L. Robertson



Craig D. Holt

**INCLINE VILLAGE G. I. D.**  
893 Southwood Boulevard  
Incline Village, Nevada 89451  
775-832-1267- Engineering Division

***END OF AGREEMENT***

## PERFORMANCE BOND

<p><b>Contractor</b></p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p><b>Surety</b></p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p><b>Owner</b></p> <p>Incline Village General Improvement District</p> <p>Mailing address <i>(principal place of business)</i>:                  Public Works Division; 1220 Sweetwater Road; Incline Village, NV 89451</p>	<p><b>Contract</b></p> <p>Description <i>(name and location)</i>:                  Mt. Golf Course Cart Path – Phase II</p> <p>Contract Price: _____</p> <p>Effective Date of Contract: _____</p>
<p><b>Bond</b></p> <p>Bond Amount: _____</p> <p>Date of Bond: _____  <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:  <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

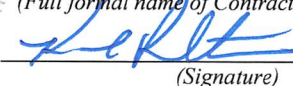
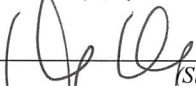
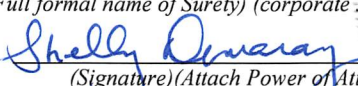

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
    - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner

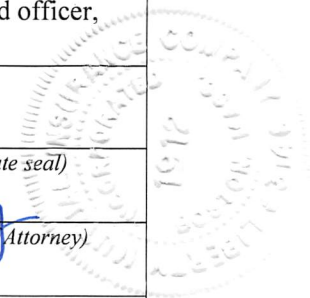


to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

- 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
  9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
  11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
  12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
  13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
  14. Definitions
    - 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
    - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
    - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
    - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
    - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
  15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
  16. Modifications to this Bond are as follows: None [**Describe modification or enter "None"**]

### PERFORMANCE BOND

<p><b>Contractor</b></p> <p>Name: Sierra Nevada Construction, Inc.</p> <p>Address <i>(principal place of business)</i>:                  2055 East Greg Street                  Sparks, NV 89431</p>	<p><b>Surety</b></p> <p>Name: Liberty Mutual Insurance Company</p> <p>Address <i>(principal place of business)</i>:                  1001 4th Ave., Ste. 3800                  Seattle, WA 98154</p>
<p><b>Owner</b></p> <p>Incline Village General Improvement District</p> <p>Mailing address <i>(principal place of business)</i>:                  Public Works Division; 1220 Sweetwater                  Road; Incline Village, NV 89451</p>	<p><b>Contract</b></p> <p>Description <i>(name and location)</i>:                  Mt. Golf Course Cart Path – Phase II                  Incline Village, NV</p> <p style="text-align: center;">One Hundred Eighty-Seven Thousand Seven and 00/100 Dollars</p> <p>Contract Price: \$187,007.00</p> <p>Effective Date of Contract:</p>
<p><b>Bond</b></p> <p>Bond Amount: One Hundred Eighty-Seven Thousand Seven and 00/100 Dollars (\$187,007.00)</p> <p>Date of Bond: April 27, 2023  <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:  <input checked="" type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Contractor as Principal</p> <p style="text-align: center;">Sierra Nevada Construction, Inc.  <i>(Full formal name of Contractor)</i></p> <p>By: <u></u>  <i>(Signature)</i></p> <p>Name: <u>Kevin L. Robertson</u>  <i>(Printed or typed)</i></p> <p>Title: <u>President</u></p> <p>Attest: <u></u>  <i>(Signature)</i></p> <p>Name: <u>Marc T. Markwell</u>  <i>(Printed or typed)</i></p> <p>Title: <u>Secretary/Treasurer</u></p>	<p>Surety</p> <p style="text-align: center;">Liberty Mutual Insurance Company  <i>(Full formal name of Surety) (corporate seal)</i></p> <p>By: <u></u>  <i>(Signature) (Attach Power of Attorney)</i></p> <p>Name: <u>Shelly Demaray</u>  <i>(Printed or typed)</i></p> <p>Title: <u>Attorney-In-Fact</u></p> <p>Attest: <u></u>  <i>(Signature)</i></p> <p>Name: <u>Carey Morgan</u>  <i>(Printed or typed)</i></p> <p>Title: <u>Witness</u></p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

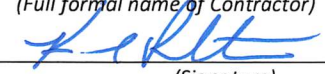
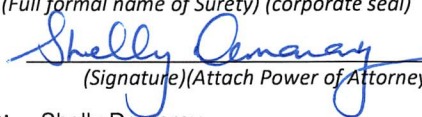
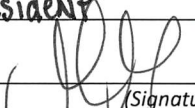



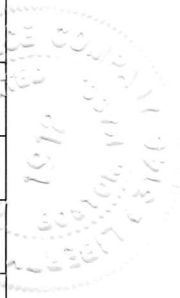
1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
    - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner

to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

- 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
  9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
  11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
  12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
  13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
  14. Definitions
    - 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
    - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
    - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
    - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
    - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
  15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
  16. Modifications to this Bond are as follows: None [**Describe modification or enter "None"**]

**SECTION 7 - PAYMENT BOND**

<p><b>Contractor</b></p> <p>Name: Sierra Nevada Construction, Inc.</p> <p>Address (principal place of business): 2055 East Greg Street Sparks, NV 89431</p>	<p><b>Surety</b></p> <p>Name: Liberty Mutual Insurance Company</p> <p>Address (principal place of business): 1001 4th Ave., Ste. 3800 Seattle, WA 98154</p>
<p><b>Owner: Incline Village General Improvement District</b></p> <p>Mailing address (principal place of business): Public Works Department; 1220 Sweetwater Road, Incline Village, NV 89451</p>	<p><b>Contract</b></p> <p>Description (name and location): Mt. Golf Course Cart Path – Phase II Incline Village, NV</p> <p style="text-align: center;">One Hundred Eighty-Seven Thousand Seven and 00/100 Dollars</p> <p>Contract Price: \$187,007.00</p> <p>Effective Date of Contract:</p>
<p><b>Bond</b></p> <p>Bond Amount: One Hundred Eighty-Seven Thousand Seven and 00/100 Dollars (\$187,007.00)</p> <p>Date of Bond: April 27, 2023</p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form: <input checked="" type="checkbox"/> None <input type="checkbox"/> See Paragraph 18</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Contractor as Principal</p> <p>Sierra Nevada Construction, Inc.</p> <p><i>(Full formal name of Contractor)</i></p>	<p>Surety</p> <p>Liberty Mutual Insurance Company</p> <p><i>(Full formal name of Surety) (corporate seal)</i></p>
<p>By: </p> <p style="text-align: center;"><i>(Signature)</i></p>	<p>By: </p> <p style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></p>
<p>Name: <u>Kevin L. Robertson</u></p> <p style="text-align: center;"><i>(Printed or typed)</i></p>	<p>Name: <u>Shelly Demaray</u></p> <p style="text-align: center;"><i>(Printed or typed)</i></p>
<p>Title: <u>President</u></p>	<p>Title: <u>Attorney-In-Fact</u></p>
<p>Attest: </p> <p style="text-align: center;"><i>(Signature)</i></p>	<p>Attest: </p> <p style="text-align: center;"><i>(Signature)</i></p>
<p>Name: <u>Marc T. Markwell</u></p> <p style="text-align: center;"><i>(Printed or typed)</i></p>	<p>Name: <u>Carey Morgan</u></p> <p style="text-align: center;"><i>(Printed or typed)</i></p>
<p>Title: <u>Secretary/Treasurer</u></p>	<p>Title: <u>Witness</u></p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	



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

- whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
  14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
  15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
  16. Definitions
    - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
      - 16.1.1. The name of the Claimant;
      - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
      - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
      - 16.1.4. A brief description of the labor, materials, or equipment furnished;
      - 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
      - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
      - 16.1.7. The total amount of previous payments received by the Claimant; and
      - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
    - 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
    - 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
    - 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
    - 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
  17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
  18. Modifications to this Bond are as follows: None **[Describe modification or enter "None"]**





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8207614-976312

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Andrea Cantlon, Carey Morgan, Dena VanDeVanter, Nicholas D. Rossi, Patricia Owen, Shelly Demaray, Teri L. Nowak, Teri L. Wood

all of the city of Reno state of NV each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 8th day of April, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY

On this 8th day of April, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of April, 2023.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



**SECTION 6 - APPLICATION AND CERTIFICATION FOR PAYMENT**

**TO OWNER:**

Incline Village G. I. D., Engineering Dept.  
1220 Sweetwater Road, Incline Village, NV  
775-832-1267

**PROJECT:** Mt. Golf Course Cart  
Path Restoration, Phase II

**APPLICATION NO:**

**PERIOD TO**

**Distribution to:**

<input type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	ENGINEER
<input type="checkbox"/>	

**FROM CONTRACTOR:**

**P.O. Number**

CIP Number 3241LI2001  
PWP WA-2023-291  
CONTRACT DATE:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	-
2. Net change by Change Orders	\$	-
3. CHANGE IN UNIT PRICE QUANTITIES	\$	-
4. CONTRACT SUM TO DATE (Line 1 ± 3)	\$	-
5. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	-
6. RETAINAGE:		
a. <u>5</u> (Column D + E on G703)	\$	-
b. _____ (Column F on G703)	\$	-
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	-
7. TOTAL EARNED LESS RETAINAGE (Line 5 Less Line 6 Total)	\$	-
8. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	-
9. CURRENT PAYMENT DUE	\$	-
10. BALANCE TO FINISH, INCL. RETAINAGE (Line 4 less Line 7)	\$	-

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by OWNER:	\$ -	\$ -
Total approved this Month:	\$ -	\$ -
<b>TOTALS:</b>	\$ -	\$ -
<b>NET CHANGES by Change Order:</b>	\$	-

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:**

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

State of: \_\_\_\_\_ County of: \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
Notary Public:  
My Commission expires:

**ENGINEER'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Engineer certifies to the Owner that to the best of the Engineer's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED . . . . . \$ -

*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)*  
OWNER:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/26/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> L/P Insurance Services LLC 300 East 2nd Street Suite 1300 Reno NV 89501	<b>CONTACT NAME:</b> Mary Hearron <b>PHONE (A/C, No, Ext):</b> (775)996-6000 <b>E-MAIL ADDRESS:</b> mary.hearron@lpins.net	<b>FAX (A/C, No):</b> (775)473-9288
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Sierra Nevada Construction, Inc. P O Box 50760 Sparks NV 89435	<b>INSURER A:</b> Travelers Indemnity Co	<b>NAIC #</b> 25658
	<b>INSURER B:</b> Travelers Property Casualty Co of Ameri	<b>NAIC #</b> 25674
	<b>INSURER C:</b> Arch Insurance Co	<b>NAIC #</b> 11150
	<b>INSURER D:</b> St. Paul Surplus Lines Ins Co	<b>NAIC #</b> 30481
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 2022 GL/Auto/Exc/WC

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			VTC2KCO4R62982AIND22	7/1/2022	7/1/2023	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	<input checked="" type="checkbox"/> \$100,000 BI/PD Deductible						MED EXP (Any one person)	\$ 5,000
	<input checked="" type="checkbox"/> Electronic Data Liab \$1M						PERSONAL & ADV INJURY	\$ 1,000,000
D	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			ZCE16P29934	7/1/2022	7/1/2023	PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input checked="" type="checkbox"/> OTHER: Pollution/Professional						Poll \$7,000,000/ Prof\$3,000,000	\$ 25,000 Ded
B	AUTOMOBILE LIABILITY			VTJCAP5644B123TIL22	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input type="checkbox"/>					PROPERTY DAMAGE (Per accident)	\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		CUP4R6293572225	7/1/2022	7/1/2023	EACH OCCURRENCE	\$ 20,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$ 20,000,000
	DED <input checked="" type="checkbox"/>	RETENTION \$ 10,000						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			ZAWCI9449802	10/1/2022	10/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
B	Installation Floater			QT6304H597086TIL22	7/1/2022	7/1/2023	Installation Limit	1,000,000
B	Leased/Rented Equipment			QT6304H597086TIL22	7/1/2022	7/1/2023	Leased/Rented Equip Limit	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Job #58259 Incline Village GID - Mt. Golf Course Path Restoration Ph II

See Attached Additional Comments/Remarks page for information regarding additional coverage terms and Additional Insured status.

**CERTIFICATE HOLDER**

rlr@ivgid.org

Incline Village General Improvement  
 District (IVGID)  
 893 Southwood Boulevard  
 Incline Village, NV 89451

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mary Hearron/MARY

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ACORD 25 (2014/01)

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INS025 (201401)

## COMMENTS/REMARKS

Continued from Description of Operations Section:

NAMED INSURED: SIERRA NEVADA CONSTRUCTION, INC.

When Named Insureds operations are performed for Certificate Holder and/or entities listed in Description of Operations on the Acord 25 form pursuant to a valid written contract or agreement executed by Named Insured prior to loss, in accordance with the noted policy(ies):

Additional Insured Status is determined by attached GL Form #CGD246 04/19, CG T1 00 02 19, Auto Form #CAT3530215.

Waiver of Subrogation Status is determined by GL Form #CGD316 02/19, Auto Form #CAT353 02/15, Workers Compensation Form #WC000313 4/84 & WC040306;

Primary and Non-Contributory Status is determined by GL Form #CGT100 02/19 (Section D) & Auto Form #CAT499 02/16.

Electronic Data as per contract # CGD 823 0219, attached.

Evidence of Pollution and Professional Liability as per attached Form #RP 10 00 11 21.

Waiver of Subrogation Status is determined by Form RP 10 00 11 21, Primary and

Non-Contributory Status is determined by Form #RP 10 03 21.

## Additional Named Insureds

### Other Named Insureds

C & K Property Investments, LLC	Limited Liability Company, Additional Named Insured
Holt ILIT	Additional Named Insured
Mustang Assests, LLC	Limited Liability Company, Additional Named Insured
Mustang Assets Company LLC	Limited Liability Company, Additional Named Insured
Pacific Equipment Leasing,LLC	Limited Liability Company, Additional Named Insured
Robertson ILIT	Additional Named Insured
SNC Asset Management, LLC	Additional Named Insured
SNC Leasing Company, LLC	Limited Liability Company, Additional Named Insured
SNC Liquidity Investments, LLC	Limited Liability Company, Additional Named Insured

jurisdiction because we are not licensed to provide insurance in such country or jurisdiction; or

- (2) The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

**11. Representations**

By accepting this policy, you agree that:

- a. All statements in the *Travelers ECP Custom* Declarations are accurate and complete;
- b. All such statements are based upon representations made by the "First Named Insured";
- c. All statements and representations made in the application for this policy, including all information provided with the application for this policy, are accurate and complete; and
- d. We have issued this policy in reliance upon all such statements and representations.

**12. Service Of Suit**

In the event that we fail to pay any amount claimed to be due under this policy and the "insured" sues us to recover such amount we shall honor the decision of the court that is authorized to hear the case.

However, we have the right to appeal that decision.

Service of process for any such lawsuit brought against us may be made upon us by serving our President, or our President's designee, at One Tower Square, Hartford, Connecticut 06183, and such person shall be authorized to receive the papers on our behalf.

However, the "insured" may also serve or send papers involving such lawsuit to the Commissioner, Director or Superintendent of Insurance for the state in which the lawsuit is being filed. We designate that appropriate officer, or that person's successor, to mail a copy of the papers to us.

For the State of California, service of process for any such lawsuit brought against us may be made upon:

CSC-Lawyers Incorporating Service  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, California 95833

For the State of Rhode Island, service of process for any such lawsuit brought against us may be made upon:

Corporation Service Company  
222 Jefferson Blvd., Suite 200  
Warwick, Rhode Island 02888

**13. Separation Of Insureds**

Except with respect to the limits of insurance, and any rights or duties specifically assigned in this policy to the "First Named Insured", this insurance applies:

- a. As if each "named insured" were the only "named insured"; and
- b. Separately to each "insured" against whom a "claim" is made.

**14. Transfer Of Control Of Defense**

If the available limits of insurance are used up, we will notify the "First Named Insured" in writing of all outstanding "claims" so that you can arrange to take control of the defense. Before the available limits of insurance are used up, you may take over control of the defense of any outstanding "claim" only if we agree that you may take over such defense.

We will take whatever steps are necessary during a transfer of control of defense of an outstanding "claim" to continue that defense and avoid a default judgment during such transfer. You agree to repay the reasonable expenses we incur for any such steps taken after the available limit of insurance is used up. When we take such steps, you agree that we do not give up any rights.

**15. Transfer Or Assignment Of This Policy**

This policy may not be transferred or assigned, except with our written consent, or in the case of death of a "named insured" that is an individual.

If such "named insured" dies, that "named Insured's" rights and duties will be transferred to that "named insured's" legal representative but only while acting within the scope of duties as such legal representative. Until such legal representative is appointed, anyone having proper temporary custody of such "named insured's" property will have such "named insured's" rights and duties but only with respect to that property.

**16. Transfer Of Rights Of Recovery Against Others To Us**

If the "insured" has rights to recover from others all or part of any payment we have made under this policy, those rights are transferred to us. The "insured" must do nothing after the loss to impair them, and under any Contractors Indemnity For Design

Professional's Liability Coverage and any Contractors Indemnity For Subcontractor's Pollution Liability Coverage, no "named insured" can agree in a contract or agreement to:

- a. Waive any "named insured's" right of recovery against any "design professional" or "specified subcontractor"; or
- b. Limit the liability of the "design professional" or "specified subcontractor" to a maximum amount unless such limitation is an "authorized agreed limitation of liability".

At our request, the "insured" will bring suit or initiate an alternative dispute resolution proceeding to enforce those rights or will help us enforce them.

We will apply any amounts recovered in enforcing those rights of recovery in the following order until the total amount recovered is used up:

- a. We will reimburse any person or organization, including us or the "insured", any amount that person or organization has paid in excess of the limits of insurance.
- b. We will retain an amount equal to the amount we have paid under this policy.
- c. We will pay to the "insured" any remaining portion, including any amounts within any applicable deductible or self-insured retention.

If any amounts are recovered in enforcing those rights of recovery, reasonable expenses incurred in enforcing such rights will be shared among all persons or organizations receiving amounts recovered. Each such person's or organization's share of those expenses is based on the ratio of its amount recovered to the total amounts recovered by all such persons or organizations in enforcing such rights.

If the "insured" has agreed in a contract or agreement to waive that "insured's" right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make for:

- a. "Loss" to which any of the following applies caused by an act, error or omission committed subsequent to the execution of the contract or agreement:
  - (1) Any Contractors Professional Liability Coverage; or

(2) Any Contractors Professional Liability Loss Mitigation Expenses Coverage;

- b. "Loss" to which any "Pollution Liability Coverage" applies resulting from "pollution conditions" that commence subsequent to the execution of the contract or agreement; or
- c. "Loss" to which any Contractors Pollution Loss Mitigation Expenses Coverage applies resulting from "faulty work incidents" that are not first discovered by any "insured" until subsequent to the execution of the contract or agreement.

**SECTION IX – DEFINITIONS**

- 1. "Agreed mediation":
  - a. Means a voluntary and non-binding process that:
    - (1) Is agreed to by us; and
    - (2) Involves a qualified professional mediator facilitating an attempted settlement of the "claim" between the "insured" and the person or organization making the "claim".
  - b. Does not include any mediation or alternative dispute resolution that is:
    - (1) Ordered or imposed by a court; or
    - (2) Otherwise legally required.
- 2. "Asbestos pollution conditions":
  - a. Means any "pollution conditions" that are:
    - (1) The disturbance of asbestos or asbestos fibers if the "pollution conditions" result from any activity that is performed on behalf of any "named insured" by a subcontractor under a written contract or agreement with such "named insured"; or
    - (2) The inadvertent disturbance of asbestos or asbestos fibers if the "pollution conditions" do not result from any activity that is performed on behalf of any "named insured" by a subcontractor under a written contract or agreement with such "named insured". As used in this provision, inadvertent disturbance does not include any discharge, dispersal, seepage, migration, release or escape of asbestos or asbestos fibers during or as a result of asbestos abatement operations or any other operations to test for, monitor, clean up,

described in Paragraphs (a)(i) or (ii) above; or

(b) "Property damage" to, or "pollution clean-up costs" for, property:

(i) Owned, occupied or used by; or

(ii) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

any "named insured" or any of its "employees", any "named insured's" partners or members (if it is a partnership or joint venture), or any "named insured's" members (if it is a limited liability company). For the purposes of any Contractors Professional Liability Coverage, this exclusion does not apply to "property damage" to any premises, site or location that is temporarily rented or occupied by, or temporarily loaned to, the "named insured" exclusively for any job site where operations are being performed by or on behalf of such "named insured" that are part of such "named insured's" contractor business. For the purposes of any Contractors Pollution Liability Coverage and any Contractors Asbestos Pollution Liability Coverage, this exclusion does not apply to "property damage" to, or "pollution clean-up costs" for, any premises, site or location that is temporarily rented or occupied by, or temporarily loaned to, the "named insured" exclusively for any job site where "covered operations" are being performed;

d. Only for the purposes of:

(1) Any Contractors Professional Liability Coverage, and only with respect to the conduct of the "named insured's" contractor business; and

(2) Any Contractors Pollution Liability Coverage, any Contractors Asbestos Pollution Liability Coverage, and any Non-Owned Disposal Site Pollution Legal Liability Coverage if the "non-owned disposal site pollution conditions" are "contractor waste non-owned

disposal site pollution conditions", and only with respect to the conduct of "covered operations" for the "named insured's" business;

the following persons or organizations:

(1) The "named insured's" former or retired partners who are individuals and whom such "named insured" hires or retains as independent contractors in a contract or agreement with that former or retired partner if such "named insured" is designated in the *Travelers ECP Custom* Declarations as a partnership, but only for their performance of duties under such contract or agreement;

(2) The "named insured's" former or retired members who are individuals and whom such "named insured" hires or retains as independent contractors in a contract or agreement with that former or retired member if such "named insured" is designated in the *Travelers ECP Custom* Declarations as a limited liability company but only for their performance of duties under such contract or agreement; and

(3) The "named insured's" former or retired "employees" that such "named insured" hires or retains as independent contractors in a contract or agreement with that former or retired "employee" but only for their performance of duties under such contract or agreement.

However, none of these "employees" are "insureds" for:

(a) "Loss" because of "bodily injury" described in Paragraph c.(7)(a) above; or

(b) "Property damage" or "pollution clean-up costs" described in Paragraph c.(7)(b) above; and

e. Only for the purposes of:

(1) Any Contractors Pollution Liability Coverage;

(2) Any Contractors Asbestos Pollution Liability Coverage; and

(3) Any Non-Owned Disposal Site Pollution Legal Liability Coverage if the "non-owned disposal site pollution conditions" are "contractor



waste non-owned disposal site pollution conditions”;

any person or organization that the “named insured” agreed in a written contract or agreement to include as an additional insured under this insurance.

However, such person or organization is an “insured” only for “bodily injury”, “property damage” or “pollution clean-up costs” arising out of “covered operations” performed by or on behalf of any “named insured” and only to the extent that the “pollution conditions” are caused by acts or omissions of any “named insured” or any of such “named insured’s” subcontractors.

Also, the insurance provided to such person or organization is subject to the following provisions:

- (1) The limits of insurance provided to such person or organization will be the minimum limits which the “named insured” agreed to provide in the written contract or agreement, or the limits shown in the *Travelers ECP Custom* Declarations, whichever are less.
- (2) The insurance provided to such person or organization does not apply to any:
  - (a) “Bodily injury”, “property damage” or “pollution clean-up costs” resulting from:
    - (i) “Pollution conditions” that commenced before the written contract or agreement was signed by the “named insured”; or
    - (ii) “Pollution conditions”, or any incident, condition or other circumstance which could become “pollution conditions”, that was known, or reasonably should have been known, by such person or organization or by any of that organization’s employees, and that was not previously disclosed to a “responsible person” before the written contract or agreement was signed by the “named insured”; or
  - (b) “Bodily injury”, “property damage” or “pollution clean-up costs” arising out of any “named insured’s” operation, maintenance, or use of

equipment rented or leased from that person or organization if the “pollution conditions” commenced after the equipment lease expires.

39. “Insured contract” means that part of any contract or agreement pertaining to “covered operations” or “your contractor professional services” under which the “named insured” assumes the “tort liability” of another to pay “loss” sustained or incurred by others.
40. “Lead pollution conditions” means any “pollution conditions” that are the discharge, dispersal, seepage, migration, release or escape of lead, lead compounds or any material or substance that contains or incorporates lead.
41. “Leased worker”:
  - a. Means a person hired from a labor leasing firm under an agreement between the hirer and that firm to perform duties related to the conduct of the hirer’s business.
  - b. Does not include a “temporary worker”.
42. “Loading or unloading” means the handling of property:
  - a. After it is moved from the place where it is accepted for movement into or onto an “auto”, aircraft or watercraft or into or onto a wheeled vehicle designed for travel on railroad tracks;
  - b. While it is in or on an “auto”, aircraft or watercraft or in or on a wheeled vehicle designed for travel on railroad tracks; or
  - c. While it is being moved from an “auto”, aircraft or watercraft or from a wheeled vehicle designed for travel on railroad tracks to the place where it is finally delivered;

but “loading or unloading” does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the “auto”, aircraft or watercraft or to the wheeled vehicle designed for travel on railroad tracks.
43. “Loss” means:
  - a. For the purposes of any Contractors Professional Liability Coverage:
    - (1) Compensatory damages; and
    - (2) Punitive or exemplary damages if such damages are insurable under applicable law.

**3. Other Insurance**

a. As used anywhere in this policy, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (1) Another insurance company;
- (2) Us or any of our affiliated insurance companies;
- (3) Any risk retention group; or
- (4) Any self-insurance method or program, in which case the "insured" will be deemed to be the provider of other insurance.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown for this insurance in the *Travelers ECP Custom* Declarations.

b. If valid and collectible other insurance is available to the "insured" for a loss covered under this insurance, our obligations are limited as follows:

(1) This insurance is primary except when Paragraph (2) below applies. When this insurance is primary:

(a) If any other insurance is issued to any "named insured" by us, or any of our affiliated insurance companies, this insurance is primary to that other insurance, and we will not share with such other insurance; and

(b) If any other insurance not described in Paragraph (a) above is also primary, we will share with all that other insurance as follows:

(i) If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each provider of insurance contributes equal amounts until it has paid its applicable limit of insurance or none of the "loss" remains, whichever comes first.

(ii) If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, the share of each provider of insurance is based on the

ratio of its applicable limit of insurance to the total applicable limits of insurance of all providers of insurance.

(2) This insurance is excess over any valid and collectible other insurance, whether such other insurance is primary, excess, contingent or on any other basis:

(a) If the "pollution conditions" that caused the "loss" are "auto transportation pollution conditions";

(b) That only covers one or more projects specifically described in it. This paragraph does not apply to any other insurance that is available to any person or organization that:

(i) Is an "insured" under Paragraph e. of the definition of "insured"; or

(ii) Is an "insured" under any additional insured endorsement issued by us as part of this policy;

(c) That is available to the "insured" when the "insured" is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance; or

(d) That is available to any person or organization that:

(i) Is an "insured" under Paragraph e. of the definition of "insured"; or

(ii) Is an "insured" under any additional insured endorsement issued by us as part of this policy.

However, if the "named insured" specifically agrees in a written contract or agreement that the insurance provided to such person or organization must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such person or organization which covers that person or organization as a named insured, and we will not share with that other insurance, provided that the "bodily injury", "property damage" or "pollution clean-up costs" for

which coverage is sought result from "pollution conditions" that commence after the written contract or agreement was signed by the "named insured".

- (3) When this insurance is excess, we will have no duty to defend the "insured" against any "claim" if any provider of other insurance has a duty to defend the "insured" against that "claim". But we will have the right to associate in the defense and control of any "claim" that we reasonably believe is likely to involve this insurance. If no provider of other insurance defends any "claim" for "loss" to which this insurance applies, we will undertake to do so, but we will be entitled to the "insured's" rights against all those providers of other insurance.
- (4) When this insurance is excess, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
  - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self-insured amounts under all such other insurance.

**SECTION III – DEFINITIONS**

- 1. "Contractors Pollution Liability Coverage":
  - a. Means Contractors Pollution Liability Coverage.
  - b. Includes Contractors Pollution Liability coverage that is part of any policy that provides Contractors Pollution Liability coverage and any other coverage.
- 2. "Coverage territory" means anywhere in the world.
- 3. "Financial interest" means the insurable interest in a "foreign insured organization" because of:
  - a. Sole ownership of, or majority ownership interest in, such "foreign insured organization", either directly or through one or more intervening subsidiaries;
  - b. Indemnification of, or an obligation to indemnify:
    - (1) Such "foreign insured organization" for a "foreign pollution legal liability loss" or "foreign

- emergency response costs loss"; or
- (2) Any other "insured" for whom such "foreign insured organization" is liable for a "foreign pollution legal liability loss"; or
- c. An obligation to obtain insurance for such "foreign insured organization".
- 4. "Foreign emergency response costs loss" means "loss" that is "emergency response costs" incurred by or on behalf of any "named insured" and to which Emergency Response Costs of this insurance would have applied but for the fact that such "named insured" is located in any country or jurisdiction in which we are not licensed to provide this insurance and where providing this insurance would violate the laws or regulations of such country or jurisdiction.
- 5. "Foreign insured organization" means any organization that:
  - a. Is:
    - (1) An "insured" under Pollution Legal Liability; or
    - (2) A "named insured" under Emergency Response Costs; of this insurance; and
  - b. Is located in a country or jurisdiction in which we are not licensed to provide this insurance and where providing this insurance would violate the laws and regulations of such country or jurisdiction.
- 6. "Foreign pollution legal liability loss" means:
  - a. "Loss" the "insured" is legally obligated to pay and to which Pollution Legal Liability of this insurance would have applied; or
  - b. "Defense expenses" that we would have paid to defend the insured against any "claim" for "loss" that we would have defended under Pollution Legal Liability of this insurance; but for the fact that such "insured" is located in any country or jurisdiction in which we are not licensed to provide this insurance and where providing this insurance would violate the laws or regulations of such country or jurisdiction.
- 7. "Our first coverage inception date" means the date stated in Item 3. of the *Travelers ECP Custom* Declarations, which is the beginning date from which

## POLLUTION LIABILITY

we, or any of our affiliated insurance companies, first provided to any "named insured" "Contractors Pollution Liability" coverage that requires the "bodily injury", "property damage" and "environmental damage" to occur during its policy period. If no "our first coverage inception date" is stated in the *Travelers ECP Custom* Declarations, "our first coverage inception date" will be deemed to be the first day of the "policy period".

- 8.** "Radioactive or nuclear material" means:
  - a.** Any radioactive material; and
  - b.** Any of the following materials defined in the Atomic Energy Act of 1954 or any of its amendments:
    - (1)** Source material;
    - (2)** Special nuclear material; or
    - (3)** By-product material.

POLICY NUMBER: **ZAWCI9449802**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be \_\_\_\_\_ % of the California workers' compensation premium otherwise due on such remuneration.

**SCHEDULE**

**PERSON OR ORGANIZATION**

**JOB DESCRIPTION**

**AS AGREED PER WRITTEN CONTRACT OR WRITTEN AGREEMENT**

**ALL JOBS UNDER CONTRACT**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **10-01-22** Policy No. **ZAWCI9449802**

Endorsement No. \_\_\_\_\_

Insured **SIERRA NEVADA CONSTRUCTION,**

Premium \$ **INCL.**

Insurance Company **ARCH INSURANCE COMPANY**

Countersigned By \_\_\_\_\_

DATE OF ISSUE: **10-01-22**

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POLICY NUMBER: ZAWCI9449802

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**AS AGREED PER WRITTEN CONTRACT OR WRITTEN AGREEMENT**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 10/01/2022      Policy No. ZAWCI9449802  
Insured SIERRA NEVADA CONSTRUCTION, INC.  
Insurance Company ARCH INSURANCE COMPANY

Endorsement No.  
Premium INCL.

DATE OF ISSUE: 10-01-22

Countersigned By

*Shawna Murphy*

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED – PRIMARY AND  
NON-CONTRIBUTORY WITH OTHER INSURANCE –  
CONTRACTORS**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

**PROVISIONS**

1. The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph **B.5., Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph **a.** and paragraph **d.** of this part **5. Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is a named insured when a written contract or agreement with you, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.



COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

**N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph B.2. Concealment, Misrepresentation, Or Fraud, of SECTION IV-BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

**G. WAIVER OF DEDUCTIBLE - GLASS**

The following is added to Paragraph **D., Deductible, of SECTION III - PHYSICAL DAMAGE COVERAGE** :

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE - INCREASED LIMIT**

The following replaces the last sentence of Paragraph **A.4.b., Loss Of Use Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE** :

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

**I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT**

The following replaces the first sentence in Paragraph **A.4.a., Transportation Expenses, of SECTION III - PHYSICAL DAMAGE COVERAGE** :

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**J. PERSONAL PROPERTY**

The following is added to Paragraph **A.4., Coverage Extensions, of SECTION III - PHYSICAL DAMAGE COVERAGE** :

**Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph **B.3., Exclusions, of SECTION III - PHYSICAL DAMAGE COVERAGE** :

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph **A.2.a., of SECTION IV - BUSINESS AUTO CONDITIONS** :

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV - BUSINESS AUTO CONDITIONS** :

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

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### COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

#### E. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

#### F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE - INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., Policy Period, Coverage Territory, of SECTION IV - BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II - COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

**GENERAL DESCRIPTION OF COVERAGE** - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- A. BROAD FORM NAMED INSURED
- B. BLANKET ADDITIONAL INSURED
- C. EMPLOYEE HIRED AUTO
- D. EMPLOYEES AS INSURED
- E. SUPPLEMENTARY PAYMENTS - INCREASED LIMITS
- F. HIRED AUTO - LIMITED WORLDWIDE COVERAGE - INDEMNITY BASIS
- G. WAIVER OF DEDUCTIBLE - GLASS
- H. HIRED AUTO PHYSICAL DAMAGE - LOSS OF USE - INCREASED LIMIT
- I. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES - INCREASED LIMIT
- J. PERSONAL PROPERTY
- K. AIRBAGS
- L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS
- M. BLANKET WAIVER OF SUBROGATION
- N. UNINTENTIONAL ERRORS OR OMISSIONS

### PROVISIONS

#### A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II - COVERED AUTOS LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV - BUSINESS AUTO CONDITIONS:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ELECTRONIC DATA LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **ELECTRONIC DATA LIABILITY SCHEDULE**

**Loss Of Electronic Data Limit \$ 1,000,000**

#### **PROVISIONS**

1. The following replaces Exclusion **p.**, **Electronic Data**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

However, this exclusion does not apply to liability for damages because of "bodily injury".

2. The following is added to **SECTION III – LIMITS OF INSURANCE:**

Subject to Paragraph 5. above, the Loss of Electronic Data Limit shown in the Electronic Data Liability Schedule is the most we will pay under Coverage A for damages because of "property damage":

- a. Arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that results from physical injury to tangible property; and
- b. Arising out of any one "occurrence".

If the Loss of Electronic Data Limit is left blank in the Electronic Data Liability Schedule, the Loss of Electronic Data Limit will be deemed to be equal to the Each Occurrence Limit or \$1,000,000, whichever is less.

3. The following replaces the definition of "property damage" in the **DEFINITIONS** Section:

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use will be deemed to occur at the time of the "occurrence" that caused it; or
- c. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data" that results from physical injury to tangible property. All such loss of, loss of use of, damage to, corruption of, inability to access or inability to properly manipulate "electronic data" will be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**F. DAMAGE TO PREMISES RENTED TO YOU**

The following replaces the definition of "premises damage" in the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

**C. INCIDENTAL MEDICAL MALPRACTICE**

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b.** An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a)** "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician or paramedic; or

- (b)** First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph **5.** of **SECTION III – LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph **2.**, **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of

pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a.** Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or

- b.** The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph **4.b.**, **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph **2.a.(1)** of Section II – Who Is An Insured.

**D. BLANKET WAIVER OF SUBROGATION**

The following is added to Paragraph **8.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a.** "Bodily injury" or "property damage" that occurs; or

- b.** "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

**E. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

- c.** Any easement or license agreement;



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **XTEND ENDORSEMENT FOR CONTRACTORS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |  |   |
|--|---|
| <p><b>A.</b> Who Is An Insured – Unnamed Subsidiaries</p> <p><b>B.</b> Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations</p> | <p><b>C.</b> Incidental Medical Malpractice</p> <p><b>D.</b> Blanket Waiver Of Subrogation</p> <p><b>E.</b> Contractual Liability – Railroads</p> <p><b>F.</b> Damage To Premises Rented To You</p> |
|--|---|

**PROVISIONS**

**A. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a.** You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b.** Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a.** Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b.** After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a.** An organization other than a partnership, joint venture or limited liability company; or

- b.** A trust;

as indicated in its name or the documents that govern its structure.

**B. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a.** Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b.** Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

## COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
  - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED**  
**(Includes Products-Completed Operations If Required By Contract)**

This endorsement modifies insurance provided under the following:  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART

**PROVISIONS**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
- (b) Supervisory, inspection, architectural or engineering activities.

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
  - (a) How, when and where the "occurrence" or offense took place;
  - (b) The names and addresses of any injured persons and witnesses; and
  - (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

- a. We have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

**SECTION II – WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer

workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- (2) "Property damage" to property:
  - (a) Owned, occupied or used by;
  - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
    - you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization, while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.

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- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
  - e. Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:
    - (1) 50 feet long or less; and
    - (2) Not being used to carry any person or property for a charge.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

- a. An organization, other than a partnership, joint venture or limited liability company; or
  - b. A trust;
- as indicated in its name or the documents that govern its structure.
4. Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that:
- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
  - b. The insurance provided to such premises owner, manager or lessor does not apply to:
    - (1) Any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
    - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.
5. Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" that:
- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
  - b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after the equipment lease expires.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint

venture or limited liability company that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section II – Who Is An Insured.

**SECTION III – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and "advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C;

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part; or
  - b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

**1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

**2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";



# EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

4/26/2023

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY L/P Insurance Services LLC 300 East 2nd Street Suite 1300 Reno NV 89501	PHONE (A/C. No. Ext): (775)996-6000	COMPANY Travelers Property Casualty Co of America
FAX (A/C. No.): (775)473-9288	E-MAIL ADDRESS: mary.hearron@lpins.net	
CODE: 0CWV32	SUB CODE:	
AGENCY CUSTOMER ID #: 00000290		
INSURED Sierra Nevada Construction, Inc. P O Box 50760 Sparks NV 89435	LOAN NUMBER	POLICY NUMBER QT6304H597086TIL22
	EFFECTIVE DATE 7/1/2022	EXPIRATION DATE 7/1/2023
	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
	THIS REPLACES PRIOR EVIDENCE DATED:	

## PROPERTY INFORMATION

### LOCATION/DESCRIPTION

Job #58259 Incline Village GID - Mt. Golf Course Path Restoration Ph II  
Reporting Form Builders Risk

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

## COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk - Any Job Site - Special Form, Replacement Cost	5,000,000	1,000
Builders Risk - Any Job Site - Flood, Replacement Cost	5,000,000	50,000
Builders Risk - Any Job Site - Earthquake, Replacement Cost	5,000,000	25,000

## REMARKS (Including Special Conditions)

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## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

## ADDITIONAL INTEREST

NAME AND ADDRESS  Incline Village General Improvement District (IVGID) 893 Southwood Boulevard Incline Village, NV 89451	MORTGAGEE	<input checked="" type="checkbox"/>	ADDITIONAL INSURED
	LOSS PAYEE	<input type="checkbox"/>	
	LOAN #		
AUTHORIZED REPRESENTATIVE			
Mary Hearron/MARY			



# SECTION 9 - GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

- seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.



35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

See SC-1.01

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *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 of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
- b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

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

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the

design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

- B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

See SC-2.01

2.02 *Copies of Documents*

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

See SC-2.02

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

## 2.05 *Acceptance of Schedules*

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

## 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## **ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. ~~Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.~~

### See SC-3.01

- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

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

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

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

- 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
- 2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity,

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

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

*B. Resolving Discrepancies*

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

*3.04 Requirements of the Contract Documents*

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

*3.05 Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. ~~In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.~~

See SC-4.01

### 4.02 *Starting the Work*

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

### 4.03 *Reference Points*

- A. ~~Owner shall provide engineering surveys to establish reference points 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.

See SC-4.03

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

See SC-4.04



4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
  - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  - 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  - 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  - 1. The circumstances that form the basis for the requested adjustment;
  - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### *5.01 Availability of Lands*

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

### *5.02 Use of Site and Other Areas*

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

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

See SC -5.02

- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly

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

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

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
  - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
  - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. ~~*Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.~~

See SC-5.03

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their

officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. The contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. Any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

See SC-5.03

#### 5.04 *Differing Subsurface or Physical Conditions*

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

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

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

See SC-5.04

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question,

addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

- D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;
  3. Verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and

conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

- ~~1. Those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;~~
- ~~2. Drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and~~
- ~~3. Technical Data contained in such reports and drawings.~~

~~B. Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of~~

~~their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:~~

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

See SC-5.06

- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.



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

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of

Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

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

#### See SC-6.02

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

block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

See SC-6.02

- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

See SC-6.03

- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  - 4. not seek contribution from insurance maintained by the additional insured; and
  - 5. As to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

See SC-6.03

#### 6.04 *Builder's Risk and Other Property Insurance*

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

See SC-6.04

- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Article 6, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Article 6 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as

builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Article 6 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Article 6 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

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

## **ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES**

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

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

### *7.02 Supervision and Superintendence*

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

### *7.03 Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.

See SC 7.03

### *7.04 Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the



performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

See SC-7.04

#### 7.05 “Or Equals”

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



and Engineer determines that the proposed item is an “or-equal,” which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer’s Determination:* Neither approval nor denial of an “or-equal” request will result in any change in Contract Price. The Engineer’s denial of an “or-equal” request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 *Substitutes*

- A. *Contractor’s Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be similar in substance to the item specified; and
      - 3) be suited to the same use as the item specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from the item specified; and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

#### 7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

#### See SC-7.07

- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such

- proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
  - F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
  - G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
  - H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
  - I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
  - J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
  - K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
  - L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
  - M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *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 an 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 will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents,

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

#### 7.09 *Permits*

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

See SC-7.09

#### 7.10 *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.

#### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance

of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

See SC-7.11

#### 7.12 *Record Documents*

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

#### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

See SC-7.13

- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Hazard Communication Programs*

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

#### 7.15 *Emergencies*

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

#### 7.16 *Submittals*

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

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

- 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
- c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
  3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted



or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
  - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;

7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will 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.

See SC-7.18

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

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

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

### **8.01 *Other Work***

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

report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

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

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

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

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

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

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

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

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

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

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

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

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

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

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

### **9.06 *Insurance***

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

See SC-9.12

## **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

- A. ~~Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03. See SC-10.05~~

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

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

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

See SC-10.07

#### 10.08 *Compliance with Safety Program*

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

### **ARTICLE 11—CHANGES TO THE CONTRACT**

#### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

See SC-11.07

#### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or

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Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

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

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

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

proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such

subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
  - 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
  - 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
    - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
    - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
  4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

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

## ARTICLE 12—CLAIMS

### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a

Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

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

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

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
    - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. *Construction Equipment Rental*
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
    - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with

Article 6), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

D. *Contractor's Fee*

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



- 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

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

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations

on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

#### 14.03 *Defective Work*

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

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

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

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

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

- d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

*D. Payment Becomes Due*

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

*E. Reductions in Payment by Owner*

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

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

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

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of



Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

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

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
  - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 6 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
  2. The final Application for Payment must be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents;
    - b. consent of the surety, if any, to final payment;
    - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
    - d. a list of all duly pending Change Proposals and Claims; and
    - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
  3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which

case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall

- pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
  - E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
  - F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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

### *16.01 Owner May Suspend Work*

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

### *16.02 Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.

- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act

on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

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

### *17.01 Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. If no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

See SC-17.02

## **ARTICLE 18—MISCELLANEOUS**

### *18.01 Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

**END OF GENERAL CONDITIONS**