CITY OF ELKO NEW MARKET
CITY COUNCIL WORK SESSION AGENDA
CITY OF ELKO NEW MARKET
601 MAIN STREET
ELKO NEW MARKET, MINNESOTA
THURSDAY, JULY 9, 2020

5:30 PM

The City Administrator has determined it is not practical or prudent to conduct an in-person City Council meeting due to the local state of emergency and social distancing guidelines. Accordingly, City Council will participate in this meeting via an electronic meeting and the City Council meeting will be conducted under Minnesota Statutes section 13D.021 at the date and time stated above. To the extent practical, members of the public may attend the meeting by utilizing this link: https://us02web.zoom.us/j/84225019802

1. **Call to Order**

2. **Presentations**

3. **Reports**

4. **General Discussion**
   a. Vision, Goals and Priority Policy Discussion Topics

5. **Reports (Cont'd)**
   a. Reports from the Business Agenda may be presented if time permits

6. **Adjournment**

STAFF MEMORANDUM

SUBJECT:	Council Special Meeting – Vision, Goals, Policy Topics and Priorities
MEETING DATE:	July 9, 2020
PREPARED BY:	Thomas Terry, City Administrator
REQUESTED ACTION:	Discussion and Direction

COMMUNITY VISION:

- ☒ A mature growing freestanding suburb of the Twin Cities Metropolitan Area, preserving historic landmarks and small town character while providing suburban amenities and services, as well as full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities for citizens and visitors
- ☒ Promote a diverse commercial base including light industrial and facilitating planned redevelopment which will be aesthetically pleasing with architectural standards that promotes quality development
- ☒ Provide a full range of municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community
- ☒ A comprehensive park and trails system that will have sufficient facilities, play fields and open space to meet the needs of residents
- ☒ An effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate
- ☒ Provide community oriented local government and be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on tax payers

5 YEAR GOALS:

- ☒ Diverse tax base, employment opportunities, additional businesses and services, promote high quality broad spectrum of residential development
- ☒ Advance “shovel ready” status of areas guided for commercial and industrial development
- ☒ Acquisition of land for public purposes, position City to take advantage of land acquisition opportunities
- ☒ Enhance quality of life through parks, trails, recreational programming and cultural events
- ☒ The development of residential lots and an increase in residential building permit activity

COMMUNITY ORIENTED LOCAL GOVERNMENT:

- ☒ Community Involvement
- ☒ Organizational Improvement
- ☒ Problem Solving
- ☒ Performance Measurement
- ☒ Professionalism

BACKGROUND

Annually, the City Council reviews the City's Vision Statement, Priority Goals identifies the priorities for policy discussions in the upcoming year.

The meeting format itself is intended to be informal, a Work Session in which the Council is requested to actively engage and interact in the discussion. The City Administrator and other Staff will help organize and facilitate the discussion. However, the Council is expected to lead the discussion. In the Work Session, the Council will be asked to:

- Review Community Vision
- Discuss Issues Impacting Elko New Market, City Operations and Service Delivery
- Review Priority Goals
- Identify and Prioritize Policy Discussion Topics

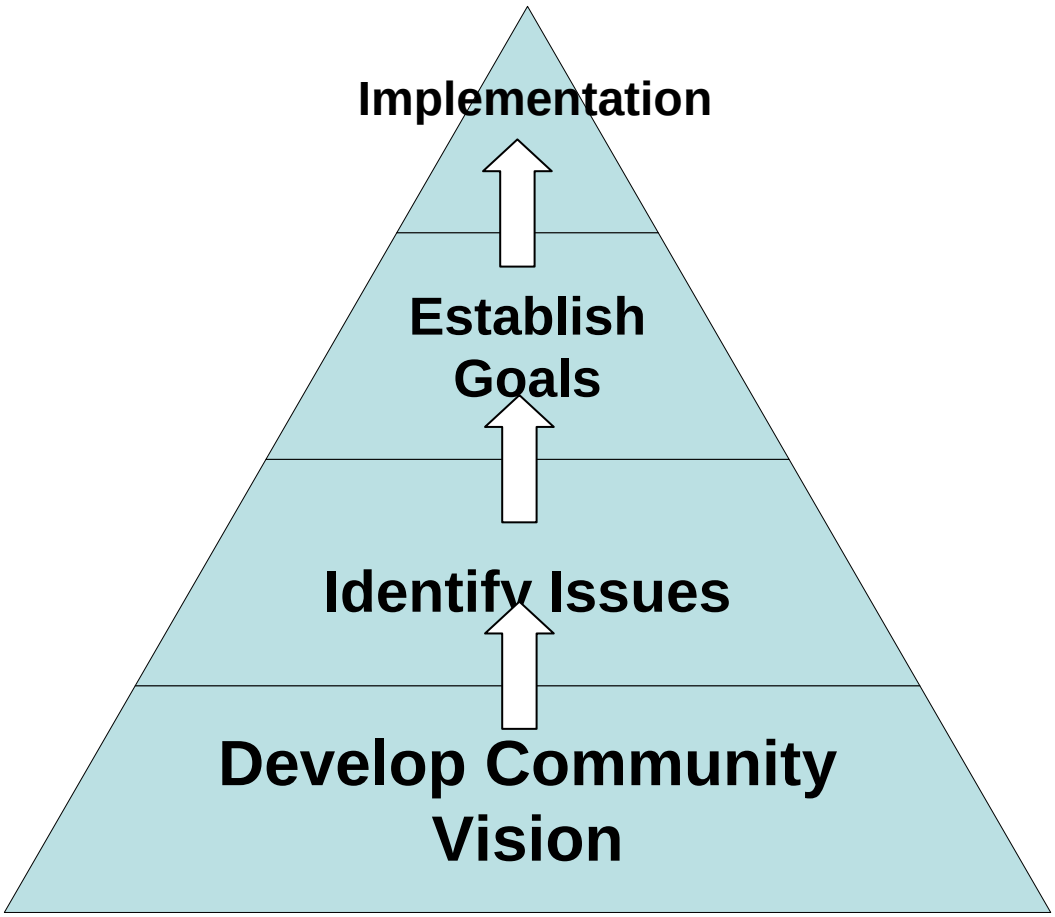
VISION AND GOALS

The visioning and goal setting process is a precursor to the formal process for the 2020 Budget. The workshop uses a simple but successful process to assist the City Council in identifying and discussing issues that are facing the City of Elko New Market. The process is used as a tool to help the Council establish and maintain a common vision and goals that will be used to provide a framework for shaping policy, setting priorities and budgeting.

Municipal government provides several basic public services and is responsible for numerous regulatory and statutory activities. The scope of local government activities includes, but is not limited to public safety, streets and transportation, land use, utilities, parks & recreation, environmental protection, licensing & permitting, elections and maintenance of public records. Each community must make decisions regarding the administration of city activities and the provision of services. However, the City has a finite or limited amount of resources (funding, staff time, etc.). Inevitably, the "wants and needs" of the community are greater than the City's ability to meet them all. Ultimately, the Council must make decisions regarding the allocation of the City's limited resources. The process is designed to help the Council focus their decisions regarding resource allocation.

As in past years, the discussion will be facilitated by the City Administrator. The workshop provides an informal forum to discuss issues that are facing the community and its future. This is a "quick and dirty" process that is intended to help the Council develop some consensus regarding community vision, issues, goals and priorities. The process is based on the concept of starting with "the big picture" and then working towards greater levels of detail.

The overall process involves four steps: (1) develop a common vision for community, (2) identify community issues, (3) establish goals, and (4) implementation.



First, the Council will be asked to discuss its vision for the community. The vision is a mental image of the community 20-30 years in the future that is both desirable and feasible. The vision is not so much an end product, as a direction in which the community should be moving. The discussion will help the Council to develop a consensus on that vision, which will serve as the foundation for the rest of the process. The current Vision Statement that was adopted by the City Council in May of 2019 will serve as the basis for the discussion.

The Council will then be asked to identify the most important issues that are facing the community within the next 10 years. For purposes of this discussion, issues are defined as problems, pressures, needs and other factors that significantly impact the community. Examples of issues may include development trends (up or down), city finances, city staffing and personnel, demands for services, city facilities, infrastructure reconstruction aging population, mental health, changing demands and expectations in services, etc. The issues identified last year have been included for reference. The community vision and issues that are identified by the Council will serve as the context or backdrop as the Council develops goals and staff prepares action items for implementation.

The Community Oriented Local Government philosophy that was adopted in May of 2019 has also been provided for reference. Strengthening the relationship between the philosophy and the Vision/Goals has been discussed since the adoption of the Community Oriented Local Government philosophy.

The Council will then be asked to establish a number of priority goals, approximately 5-7 in total. For the purposes of this process, goals are defined as projects or activities that merit special attention and/or focused resources. Goals should be easily defined and measurable for progress and/or completion. In addition, the goals should be reasonably achievable within a 1-5 year time frame. The current goals adopted in May of 2019 have been attached for reference. An update on the progress of each of the goals over the last year will be presented at the work session.

The goals will be used to provide a framework for shaping policy, setting priorities and budgeting. Since action items necessary to achieve the identified goals may require funding, this exercise will serve as an excellent lead-in to the City's annual budget process.

POLICY DISCUSSION TOPICS

The City Council is being asked to identify policy topics and their relative priority for policy discussions in the upcoming year. The intent is to develop a list of discussion items for the Council over the coming months for Council education, planning, and/or budgeting purposes. These discussions may simply be conveyance of information to provide Council with information and background in general or as a starting point for further Council discussion and possible action items. The intent is not to delve into the topics themselves, but rather identify policy topics for discussion at a future meeting.

As a starting point for the 2020 policy topics, Staff has compiled the list of policy topics identified in May of 2019. These topics were based on areas of common inquiry, past Council discussion or anticipated relevance by Staff. The following list includes the rank score of each topic, an update on whether or not the topics were discussed, and the status of the topic. The Council is may certainly add additional policy topics to the list at the meeting.

Policy Topics	Rank Score	Discussion Summary	Status
Funding Infrastructure to Support Development	33	Funding infrastructure to support development is an ongoing conversation that started in late 2019. The discussion primarily focused on the extension of water and sanitary sewer to the I-35 interchange. Discussion related to this topic also occurred with the discussion of development fees, factors related to development, and interchange development.	Completed.
Development Fees – Basis, Comparison, and Options for Change	29	Development fees were first discussed as part of the 2020 budget process in 2019. Fees were further discussed in February of 2020, when the Council approved a change in how water and sanitary sewer trunk fees are collected. Discussion related to this topic also occurred with the discussion of funding infrastructure to support development,	Completed.

		factors related to development, and interchange development.	
Factors Related to Development	27	Factors related to development have been discussed on numerous occasions over the past year. Often the discussion occurred in conjunction with other policy topics such as the funding of infrastructure, interchange development, development fees, etc.	Completed.
Staffing Needs	24	Near term staffing needs were discussed at the July 25, 2019 City Council meeting when the Council approved the job description for and authorized hire of a Planner I and at the February 27, 2020 City Council meeting when the Council approved job descriptions for and authorized hire of a Recreational Specialist and Assistant to the City Administrator.	Completed.
Interchange Development – Park I-35 and Adelmann Property	21	Development at the I-35 interchange is dependent on the extension of utilities to the Park I-35 and Adelmann properties. Discussion on this topic began with a joint City Council, Scott County Board, and CDA Board meeting. At subsequent City Council meetings the Council discussed options for financial participation in the extension of utilities to the interchange.	Completed.
Asset Management System	20	Not discussed.	Not Completed.
Affordable and Workforce Housing	17	Discussion regarding the housing market and an affordable housing toolbox was discussed at the June 25, 2020 City Council meeting. Tools to foster affordable housing will be further discussed with Planning Commission and City Council for consideration.	Completed.
Funding Public Works Equipment	16	The immediate funding of Public Works equipment was discussed as part of the 2019-2023 Capital Improvement Plan. The Plan resulted in the acquisition of two new plow trucks in May of 2020.	Partially Completed.
Financing Fire Department Apparatus	12	The financing of Fire Department apparatus was discussed as part of the 2019-2023 Capital Improvement Plan. The Plan resulted in the acquisition of a new fire truck in May of 2020. Long-	Completed.

		term financing of Fire Department apparatus was discussed in conjunction with Capital Improvement Plan.	
Public Communications	11	Not discussed.	Not Completed.
Public Facility Maintenance	10	Not discussed.	Not Completed.
Establish Metrics for Priority Goals	10	Not discussed.	Not Completed.
Police Department Staffing	9	Chief Juell presented a staffing needs study for the Police Department at the June 27, 2019 and May 28, 2020 City Council meetings. Based on the volume of calls and community oriented policing ideal, it was recommended by Staff that another officer be budgeted for 2021.	Completed Annually.
Farmers Market	7	Not discussed.	Not Completed.
Community Center	6	Not discussed.	Not Completed.
Fire Department Recruitment and Retention	6	Not discussed as an independent topic.	Not Completed.
Secondary Access to Woodcrest Neighborhood	4	Not discussed.	Not Completed.
Funding Park Infrastructure	3	The 2020-2025 Parks Department Capital Outlay Plan was presented at the June 11, 2020 City Council meeting. Long-term funding of park infrastructure such as a community park was not discussed and is included in this list as an independent topic.	Partially Completed.
Township Relations	3	Not discussed as an independent topic.	Not Completed.
Municipal Campus	2	The municipal campus has been discussed with the Council on numerous occasions in the past year. Two discussions were in association with land acquisitions and one was in association with the Police Department remodel.	Completed.
Code Enforcement	2	The topic of code enforcement was discussed at the April 23, 2020 meeting. At the meeting, the City Council provided support for a proactive, City wide code enforcement sweep.	Completed.
Regional Presence & Influence	2	Not discussed.	Not Completed.
Ordinances 101	1	Not discussed.	Not Completed.

EDA vs. EDC and Composition	0	Not discussed.	Not Completed.
Met Council SAC Surcharge	0	Not discussed.	Not Completed.
Transit	0	Not discussed.	Not Completed.
Community Park	0	Not discussed.	Not Completed.
Dog Park	0	Not discussed.	Not Completed.

Please contact the City Administrator with any questions regarding the matter in this memorandum (952-461-2777).

Attachments:
Vision Statement, adopted May 22, 2019
Priority Goals, adopted May 22, 2019
Community Oriented Local Government, adopted May 22, 2019

VISION STATEMENT

Elko New Market's vision statement inspires a clear direction for the community to move in. The City's official vision statement was discussed, developed, and agreed upon by the City Council, and it sets a mental image of the city's future that is both desirable and feasible. The vision statement is intended to serve as the foundation for decisions regarding goals, policies, and finances.

Elko New Market is envisioned to be a mature growing freestanding suburb of the Twin Cities Metropolitan Area. The community will preserve its historic landmarks and small town character while providing suburban amenities and services. A full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities will be available for the citizens and visitors.

Elko New Market will promote a diverse commercial and industrial base. The City will facilitate planned redevelopment. Development and redevelopment within the community will be aesthetically pleasing with architectural standards that promote quality development.

Elko New Market will have a comprehensive park and trails system. The park system will have sufficient facilities, play fields and open space to meet the needs of the community's residents.

Elko New Market will have an effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate.

Elko New Market will provide community oriented local government that promotes community involvement, organizational improvements, problem solving, performance measurement and professionalism. Elko New Market will provide a full range of high quality municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community. The City will be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on the tax payers of the City.

PRIORITY GOALS

- Develop a more diverse tax base, create more local employment opportunities and promote additional businesses and services within the community.

- Advance the “shovel ready” status of areas guided for commercial and industrial development through planning and where feasible, the procurement of supporting infrastructure.

- The acquisition of land for public purposes, including, but not limited to public utilities, library, parks and interchange rights-of-way. Position the City to take advantage of opportunities to acquire land for public purposes

- Enhance the quality of life in the community through the improvement and expansion of the parks and trails system, recreational programming and cultural events.

- Promote high quality residential development that includes a broad spectrum of housing choices in both type and cost. Facilitate the development of residential lots and an increase in residential building permit activity.

- Implement an asset management system for the long-term management, maintenance, and budgeting of municipal infrastructure.

COMMUNITY ORIENTED LOCAL GOVERNMENT

1. **Community Involvement** – The City of Elko New Market will incorporate community feedback in making participative, transparent decisions by:

   - Providing more opportunities for the public to have input on decisions that affect them.
   - Engaging the public in strategic planning initiatives, both short and long term.
   - Enabling the public to provide input on the effectiveness of public services and policies.
   - Working to develop leadership within the community.

2. **Organizational Improvements** – The City of Elko New Market will strive to elevate the level of customer service and service delivery through cost effective use of personnel, structure, and information systems by:

   - Developing an organizational climate that promotes innovation, creativity, collaboration and a customer-centered focus in providing community services, programs and projects.
   - Improve public services by reducing barriers between City departments in order to provide greater accessibility, flexibility, and efficiency in the delivery of public services.

3. **Problem Solving** – The City of Elko New Market will engage in the process of proactive and systematic examination of identified issues in order to evaluate effective policy decisions by:

   - Using available technology to improve the quality and accuracy of data used in decisions.
   - Provide the resources to develop and implement the most cost effective solutions.
   - Considering the long term costs and benefits in policy decisions.
   - Engaging in long-term financial planning to provide public services without undue burden on the tax payers of the city.

4. **Performance Measurement** – The City of Elko New Market will develop and utilize methods for measuring performance to evaluate progress and establish accountability for improving public services.

5. **Professionalism** – The City of Elko New Market will provide local government that is characterized by high technical and ethical standards. The City will conduct business and present itself in a manner that that promotes public confidence. The City will endeavor to recruit, train, and develop cohesive, high quality professional staff that will excel in providing public services.

CITY OF ELKO NEW MARKET
CITY COUNCIL AGENDA
ELKO NEW MARKET CITY HALL
601 MAIN STREET
ELKO NEW MARKET, MINNESOTA 55054
THURSDAY, JULY 9, 2020

BUSINESS MEETING
7:00 PM

The City Administrator has determined it is not practical or prudent to conduct an in-person City Council meeting due to the local state of emergency and social distancing guidelines. Accordingly, City Council will participate in this meeting via an electronic meeting and the City Council meeting will be conducted under Minnesota Statutes section 13D.021 at the date and time stated above. To the extent practical, members of the public may attend the meeting by utilizing this link: https://us02web.zoom.us/j/84225019802

1. **Call to Order**

2. **Pledge of Allegiance**

3. **Adopt/Approve Agenda**

4. **Presentations, Proclamations and Acknowledgements (PP&A)**

5. **Public Comment**
   Individuals may address the Council about any item not contained on the regular agenda. The Council may limit the time allotted to each individual speaker. A maximum of 15 minutes will be allotted for Public Comment. If the full 15 minutes are not needed for Public Comment, the City Council will continue with the agenda. The City Council will not normally take any official action on items discussed during Public Comment, with the exception of referral to staff or commission for future report.

6. **Consent Agenda**
   All matters listed under consent agenda are considered routine by the City Council and will be acted on by one motion in the order listed below. There may be an explanation, but no separate discussion on these items. If discussion is desired, that item will be removed from the consent agenda and considered separately.

   a. Approve June 25, 2020 Minutes of the City Council Meeting
   b. Approve Payment of Claims and Electronic Transfer of Funds
   c. Approve Plans and Specifications and Authorize Mayor to Sign Contract Webster Wetland Restoration
   d. Approve Plans and Specifications and Authorize Advertising for Bids - Rowena Park Outdoor Hockey Rink
   e. Authorize City Administrator to Sign and Submit CRF Certification Form to the State of Minnesota

7. **Public Hearings**

8. **General Business**

9. **Reports**
    a. Administration
        i. Council Meeting Format
        ii. Legislative Policy Committee Assignments
    b. Public Works
        i. Monthly Report - June 2020
    c. Police Department
        i. Monthly Report – June 2020
    d. Fire Department
    e. Engineering
    f. Community Development
    g. Parks Department
        i. Monthly Parks & Recreation Update – June 2020
    h. Community & Civic Events Committee (CCEC)
    i. Other Committee and Board Reports
        i. Scott County Association for Leadership and Efficiency (SCALE)
            - Executive Committee
            - Service Delivery Committee
            - Unified Transit Plan Steering Committee
        ii. Minnesota Valley Transit Authority (MVTA)
        iii. I35 Solutions Alliance
        iv. Chamber of Commerce

10. **Discussion by Council**

11. **Adjournment**

City Council Work Session MINUTES
JUNE 25, 2020

1) CALL TO ORDER

The meeting was called to order by Acting Mayor Timmerman at 5:30 p.m.
Members Present: Acting Mayor Timmerman, Councilmembers: Berg and Novak
Members Absent: Mayor Julius and Councilmember Seepersaud
Also Present: City Administrator/Clerk Terry, Police Chief Juell, Community Development Specialist Christianson, City Planner Sevening, Assistant City Administrator Nagel, City Attorney Poehler and City Engineer Revering

2) PRESENTATIONS

None.

3) REPORTS

None.

4) GENERAL DISCUSSION

Housing, Housing Market, and Housing Affordability

City Planner Sevening presented to Council general information about housing. The presentation covered key terms and definitions in the affordable housing industry, data regarding the current market in the Minneapolis-St. Paul metropolitan area, data regarding income and an affordable housing "toolbox" with programs and/or policies that the City has implemented or could implement to foster affordable housing. Staff sought direction from the City Council regarding what tools the Council would be interested in pursuing further. Councilmember Berg discussed a high interest in pursuing the As of Right/By Right Development tool. Councilmember Novak was interested in the Tiered Utility Development Fee Structure. Councilmember Berg also stated that creating the best opportunities for affordable housing is the Council's goal. The City Council directed Staff to further research all of the tools in the affordable housing toolbox not yet implemented by the City.

5) REPORTS (Continued)

No reports from the Business Agenda were presented.

6) ADJOURNMENT

The Work Session was adjourned at 7:00 p.m for the City Council Business Meeting and resumed at 7:44p.m.
MOTION by Councilmember Novak, second by Councilmember Berg to adjourn the Work Session at 8:12 p.m. **APIF. MOTION CARRIED**

1) CALL TO ORDER
The meeting was called to order by Acting Mayor Timmerman at 7:01 p.m.
Members Present: Acting Mayor Timmerman, Councilmembers: Berg and Novak
Members Absent: Mayor Julius and Councilmember Seepersaud
Also Present: City Administrator/Clerk Terry, Police Chief Juell, Community Development Specialist Christianson, City Planner Sevening, Assistant City Administrator Nagel, City Attorney Poehler and City Engineer Revering

2) PLEDGE OF ALLEGIANCE
Acting Mayor Timmerman led the Council and audience in the Pledge of Allegiance.

3) ADOPT/APPROVE AGENDA
City Administrator/Clerk Terry advised the Council that the Housing Presentation that was listed under Reports was moved to the Work Session and continued until after the Business Meeting.
MOTION by Councilmember Novak, second by Councilmember Berg to approve the agenda as revised.
APIF, MOTION CARRIED

4) PRESENTATION, PROCLAMATIONS AND ACKNOWLEDGEMENTS (PP&A)
None.

5) PUBLIC COMMENT
Scott County Commissioner Tom Wolf updated Council on Scott County events to include:

- Governor Walz signed off on the Senate version of the Cares Act which allows Cities and Counties to receive money for reimbursement for COVID-19 pandemic expenses.
- Construction on the CSAH 2 and 91 roundabout is moving along well.
- Scott County is slowly opening up. Libraries and Household Hazardous Waste facility should be opening up soon.

6) CONSENT AGENDA
MOTION by Councilmember Berg, second by Councilmember Novak to approve Consent Agenda.

a. Approve June 11, 2020 Minutes of the City Council Meeting
b. Approve Payment of Claims and Electronic Transfer of Funds
c. Adopt COVID-19 Preparedness Plan
d. Approve City Administrator Performance Evaluation Summary
e) Adopt Resolution 20-37 Reporting the Results of the City's Performance Measurement Program to the Office of the State Auditor

APIF, MOTION CARRIED

7) PUBLIC HEARINGS
None

8) GENERAL BUSINESS
None

9) REPORTS

a) Administration

Public Meeting Format

City Administrator/Clerk Terry advised the Council that with no new changes from Governor Walz in turning the dial, Staff does not have any recommendations in changing the current format of the City Council meetings. Council directed staff to continue with remote meetings and to place the item on the agenda for reevaluation at the next City Council meeting.

Cares Act

City Administrator/Clerk Terry advised the Council that Cares Act dollars will be reallocated through an administrative process opposed to a legislative process. Funds allocated to the City will have to be used for any COVID-19 related expenses in which Staff is currently tracking. Councilmember Berg questioned if this Act would allow the City to help local businesses during the pandemic. City Administrator/Clerk Terry stated that other portions to the Cares Act already went to helping out small local businesses. City Development Specialist Christianson explained to Council two programs that are available to help out local businesses during the pandemic. City staff will be advising and educating area businesses on guidelines and timelines for each program. The first program, the Small Business Relief Grant Program will disburse $10,000 grants to Minnesota owned and operated businesses that can demonstrate financial hardship as a result of the COVID-19 outbreak. The second program, offered by Scott County CDA – Recovery Fund, will provide forgivable loans of up to $5000 to small businesses most in need of support. Community Development staff would be reaching out to local businesses advise and educate local businesses on guidelines and timelines for each program.

Consider Senior Discount on City Utility Bills

City Administrator/Clerk Terry advised the Council of a request that came from a resident to offer a senior discount on the city's utility bills. Staff reached out to other local cities to see if they offered this program. Only two area cities were found to have this program; Lakeville and Belle Plaine. Staff will research and rpovide the Council with more information. Acting Mayor Timmerman suggested that when staff is researching this topic to take into account per capita, number of people participating, median age of City and to possibly gage how many households would participate in this program.

b) Public Works
None

c) Police Department
Traffic Update – Detour
Police Chief Juell provided an update to the Council on traffic in neighbor hoods resulting from the road closure. Chief Juell stated the reason for the construction is to make the intersection safer. Many months went into preparing plans to mitigate traffic impacts from the road closure, including restriping the roadway to narrow the driving lanes and providing extra patrol dedicated to work these routes. Police Chief Juell updated Council on the following items:

- Provided educational based enforcement detail. Slow people down, educate where detour route actually is.
- Worked with County to get better signage up.
- Most common tickets are written to people who live in area right around construction area.
- Traffic volumes are up, more so on Aaron Drive seeing three times the traffic versus Glenborough only seeing twice the volume.

d) Fire Department
None

e) Engineering
None

f) Community Development
None.

g) Parks Department
City Administrator/Clerk Terry discussed the hiring of the Recreation Specialist position. Interviews took place and a background package was handed out to the first choice candidate. City Administrator/Clerk Terry discussed the pool of candidates interviewed.

h) Community & Civic Events Committee (CCEC)
City Administrator/Clerk Terry updated the Council on the summer events discussed at the June 16 CCEC meeting. Fire Relief has already cancelled the dance held each year during Fire Rescue Days. Based on consensus of the CCEC Committee, Fire Rescue Days will consist of an alternate set of events to include cancelling the Community Picnic and reallocating funds to purchase candy or other throwables for a Public Safety Parade. To comply with COVID restrictions, a possible event that includes activities that allow social distancing may take place at Wagner Park after the parade.

i) Other Committee and Board Reports
Scott County Association for Leadership and Efficiency (SCALE)
None.

- Executive Committee – None.
- Service Delivery Committee – None.
- Unified Transit Plan Steering Committee – None.

Minnesota Valley Transit Authority (MVTA)
None.

I35 Solutions Alliance Councilmember
Councilmember Berg volunteered to be on the budget committee and discussed allocations of funds received.

Chamber of Commerce
None.

7) DISCUSSION BY COUNCIL

Councilmember Novak addressed Council presence on committees outside of the City. Councilmembers should email City Administrator/Clerk Terry to monitor whether the meeting will need to be posted for a possible quorum.

8) ADJOURNMENT

MOTION by Councilmember Novak, second by Councilmember Berg to adjourn the meeting at 7:43 p.m. **APIF, MOTION CARRIED**

Respectfully submitted by

_____

Lynda Jirak, Deputy Clerk

STAFF MEMORANDUM

SUBJECT:	Presentation of Elko New Market Claims and Electronic Transfer of Funds
MEETING DATE:	July 9, 2020
PREPARED BY:	Stephanie Fredrickson, Administrative Assistant
REQUESTED ACTION:	Approve Payment of Current Claims

COMMUNITY VISION:

- ☐ A mature growing freestanding suburb of the Twin Cities Metropolitan Area, preserving historic landmarks and small town character while providing suburban amenities and services, as well as full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities for citizens and visitors
- ☐ Promote a diverse commercial base including light industrial and facilitating planned redevelopment which will be aesthetically pleasing with architectural standards that promotes quality development
- ☐ Provide a full range of municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community
- ☐ A comprehensive park and trails system that will have sufficient facilities, play fields and open space to meet the needs of residents
- ☐ An effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate
- ☐ Provide community oriented local government and be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on tax payers

5 YEAR GOALS:

- ☐ Diverse tax base, employment opportunities, additional businesses and services, promote high quality broad spectrum of residential development
- ☐ Advance “shovel ready” status of areas guided for commercial and industrial development
- ☐ Acquisition of land for public purposes, position City to take advantage of land acquisition opportunities
- ☐ Enhance quality of life through parks, trails, recreational programming and cultural events
- ☐ The development of residential lots and an increase in residential building permit activity

COMMUNITY ORIENTED LOCAL GOVERNMENT:

- ☐ Community Involvement
- ☐ Organizational Improvement
- ☐ Problem Solving
- ☐ Performance Measurement
- ☐ Professionalism

BACKGROUND

Each City Council meeting the Administrative Assistant presents for approval the Elko New Market Claims and Electronic Transfer of Funds.

BUDGET IMPACT:

Budgeted

Attachments:

- Check Summary Register

CITY OF ELKO/NEW MARKET

*Check Summary Register©

July 9, 2020

	Name	Check Date	Check Amt	
AUTOPAYS				
Paid Chk# 006805E	PERA	6/29/2020	$10,050.86	Payroll Liability
Paid Chk# 006806E	MN DEPT OF REVENUE	6/29/2020	$2,202.21	Payroll Liability
Paid Chk# 006807E	INTERNAL REVENUE SERVICE	6/29/2020	$10,862.59	Payroll Liability
Paid Chk# 006808E	HEALTH EQUITY, INC.	6/29/2020	$1,205.03	HSA- Steve Hotaling
Paid Chk# 006809E	DELTA DENTAL OF MINNESOTA	6/30/2020	$1,215.30	Delta Dental
Paid Chk# 006810E	VISA	6/30/2020	$950.31	Annual Fee
Paid Chk# 006811E	VISA	6/30/2020	$1,265.62	Westa 6570 Ribbon Blower Parts
Paid Chk# 006812E	VISA	6/30/2020	$635.23	Zoom
Paid Chk# 006813E	VISA	6/30/2020	$15.00	Annual Visa Fee- Marty
Paid Chk# 006814E	VISA	6/30/2020	$15.00	Annual Visa Fee
Paid Chk# 006815E	VISA	6/30/2020	$18.29	Firearms Training Supplies
Paid Chk# 006816E	VISA	6/30/2020	$15.00	Annual Visa Fee
Paid Chk# 006817E	VISA	6/30/2020	$167.37	Fleet
Paid Chk# 006818E	VISA	6/30/2020	$268.42	Printer Paper Squad
Paid Chk# 006819E	UNUSED NUMBER	N/A	$0.00	VOID – UNUSED NUMBER
Paid Chk# 006820E	XCEL ENERGY	7/1/2020	$4,354.78	601 Main Street
Paid Chk# 006821E	DAKOTA ELECTRIC ASSN	7/3/2020	$132.68	200001441377-Ptarmigan Dr. Str
Paid Chk# 006822E	XCEL ENERGY	7/22/2020	$393.89	Storage
Paid Chk# 006823E	XCEL ENERGY	7/22/2020	$113.65	26536 France Ave
Paid Chk# 006824E	MN VALLEY ELECTRIC COMPANY	7/9/2020	$10.74	City of Elko Park, Elko
Paid Chk# 006825E	XCEL ENERGY	7/22/2020	$641.10	Library - 100 J Roberts Way
Paid Chk# 006826E	MINNESOTA ENERGY RESOURCES	7/15/2020	$22.19	408 Carter Street
Paid Chk# 006827E	MINNESOTA ENERGY RESOURCES	7/15/2020	$19.33	359 James Parkway
Paid Chk# 006828E	MINNESOTA ENERGY RESOURCES	7/13/2020	$19.33	26518 France Avenue
Paid Chk# 006829E	MINNESOTA ENERGY RESOURCES	7/13/2020	$307.96	25499 Natchez Ave - WTP
Paid Chk# 006830E	MINNESOTA ENERGY RESOURCES	7/20/2020	$274.30	50 Church Street
TOTAL			$35,176.18	
PRE-PAIDS				
Paid Chk# 041135	PAYROLL	6/25/2020	$69.26	
Paid Chk# 041136	PAYROLL	6/25/2020	$429.25	
Paid Chk# 041137	PAYROLL	6/25/2020	$46.17	
Paid Chk# 041138	PAYROLL	6/25/2020	$69.26	
Paid Chk# 041139	PAYROLL	6/25/2020	$0.00	
Paid Chk# 041140	SEVENING, HALEY	6/26/2020	$43.22	Food Reimbursement for Council
Paid Chk# 041141	DEPUTY REGISTRAR	7/1/2020	$287.00	Title Application for new PW t
TOTAL			$944.16	
CHECK REGISTER				
Paid Chk# 041142	ADELMANN FARMS (NEW MARKET)	7/9/2020	$56,465.10	2018 EDI Grant Proceeds Reimburse
Paid Chk# 041143	AIRGAS USA, LLC	7/9/2020	$39.75	FD - Oxygen
Paid Chk# 041144	APPLE FORD LINCOLN	7/9/2020	$434.51	PW - Fleet Maint & Equip
Paid Chk# 041145	BRYAN ROCK PRODUCTS, INC.	7/9/2020	$3,599.70	Rowena Park Improvements - Ball
Paid Chk# 041146	BTR OF MINNESOTA LLC	7/9/2020	$144.45	PW - Fleet Maint & Equip
Paid Chk# 041147	CANON FINANCIAL SERVICES, INC.	7/9/2020	$34.40	PD Copier - Rental Agmt
Paid Chk# 041148	CENTURY COLLEGE	7/9/2020	$1,050.00	FD - CEU Program 2020
Paid Chk# 041149	CINTAS CORPORATION NO. 2	7/9/2020	$75.99	PW - Uniforms
Paid Chk# 041150	CITY OF SAVAGE	7/9/2020	$6,926.50	2020 IT Svcs 3/15-5/31
Paid Chk# 041151	CULLIGAN BOTTLED WATER	7/9/2020	$85.35	Bottled Water
Paid Chk# 041152	DIAMOND VOGEL	7/9/2020	$122.58	PW - Streets
Paid Chk# 041153	EARL F. ANDERSON, INC.	7/9/2020	$126.00	PW - Signs
Paid Chk# 041154	ECOLAB	7/9/2020	$161.54	Pest Control
Paid Chk# 041155	ENM FIRE RELIEF ASSN.	7/9/2020	$350.00	GASB 2020 - ENM Fire Relief Assn
Paid Chk# 041156	FASTENAL COMPANY	7/9/2020	$213.84	PW - Operating Supplies
Paid Chk# 041157	FREDRICKSON, STEPHANIE	7/9/2020	$206.43	1st Half 2020 Mileage
Paid Chk# 041158	INNOVATIVE OFFICE SOLUTIONS LL	7/9/2020	$281.46	Office Supplies
Paid Chk# 041159	INTERSTATE BATTERY SYSTEM OF	7/9/2020	$329.15	PD - Fleet
Paid Chk# 041160	LEO A DALY	7/9/2020	$9,837.25	PD Station Addition - 90%
Paid Chk# 041161	LIGHTFIELD LLR CORP	7/9/2020	$76.98	PD - Less Lethal Rounds
Paid Chk# 041162	MCFOA	7/9/2020	$45.00	2020 Dues - Tom Terry
Paid Chk# 041163	MN CRITTER GETTERS, INC.	7/9/2020	$1,200.00	Monthly Animal Control
Paid Chk# 041164	MN PUBLIC FACILITIES AUTHORITY	7/9/2020	$544,545.00	PFA Loan - Interest
Paid Chk# 041165	NAPA AUTO PARTS	7/9/2020	$467.56	PW - Fleet Maint & Equip
Paid Chk# 041166	OLSEN CHAIN & CABLE, INC.	7/9/2020	$606.65	PW - Fleet Maint & Equip
Paid Chk# 041167	POMPS TIRE SERVICE, INC.	7/9/2020	$1,665.90	PW - Fleet Maint & Repairs
Paid Chk# 041168	QUILL CORPORATION	7/9/2020	$165.54	Operating Supplies

CITY OF ELKO/NEW MARKET

*Check Summary Register©

July 9, 2020

		Name	Check Date	Check Amt	
Paid Chk#	041169	SCOTT COUNTY TREASURER	7/9/2020	$140,631.79	2 & 91 Roundabout Construction
Paid Chk#	041170	SCOTT COUNTY RECORDER	7/9/2020	$46.00	F16-20 Fence Encroachment Agmt
Paid Chk#	041171	SHRED RIGHT	7/9/2020	$15.40	Shredding
Paid Chk#	041172	SUEL PRINTING COMPANY	7/9/2020	$128.00	Legal Ads - Asbestos Abatement
Paid Chk#	041173	TITAN AUTO GLASS	7/9/2020	$491.51	PD - Fleet
Paid Chk#	041174	US BANK - CM9690	7/9/2020	$850.00	2020A GO Bonds
Paid Chk#	041175	US BANK - CM9705	7/9/2020	$53,118.75	2013A Bond Interest
Paid Chk#	041176	SPLIT ROCK MANAGEMENT INC	7/9/2020	$845.00	CITY HALL
Paid Chk#	041177	VERIZON WIRELESS	7/9/2020	$682.40	Cell Phones
TOTAL				$826,065.48	

DIRECT DEPOSIT

Paid Chk#	503369E	Bi-Weekly ACH	6/25/2020	$37,772.35
TOTAL				$37,772.35

BOLTON & MENK, INC.
Consulting Engineers & Surveyors
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www.bolton-menk.com

M E M O R A N D U M

Date: July 9th, 2020

To: Honorable Mayor and City Council of Elko New Market, Minnesota
Thomas Terry, City Administrator

From: Rich Revering PE, City Engineer

Subject: Approve Plans and Specifications and Authorize Mayor to Sign Contract
Webster Wetland Restoration
T15.103470

BACKGROUND

The City Council is being asked to adopt a motion approving the attached plans and specifications and authorizing the mayor to sign the contract.

DISCUSSION

Staff obtained bids based on the attached plans and specifications in response to Council direction for the purpose of verifying City costs for the project. The low bidder was Krueger Excavating, to whom the contract was awarded.

The City Administrator asked that prior to the City signing the contract the Engineer have the City Attorney review the Engineer-prepared document to ensure required elements were in place and that the Council approve by the documents after opportunity for its own review. The City Attorney has concluded the contract contains required elements. The Project Manual and Plans are attached.

RECOMMENDATIONS

Adopt a motion approving the attached plans and specifications and authorizing execution of the contract with Krueger Excavating.

H:\ELNM\T15103740\1_Corres\B_To Others\Approve Plans Specs Cover Memo.docx

PROJECT MANUAL

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

BOLTON & MENK

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Bolton-Menk.com

SECTION 00005 – CERTIFICATION

PROJECT MANUAL

for

Webster Wetland Restoration
City of Elko New Market
Elko New Market, MN

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

By: _____
Rich J. Revering
License No. 20711

Date: 01/15/20

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SECTION 00010 - TABLE OF CONTENTS

Webster Wetland Restoration
City of Elko New Market

This Project Manual incorporates, either in full or in part, various EJCDC copyrighted documents. Documents incorporated in full are subject to the copyright notice in the EJCDC document footnotes. For those EJCDC documents excerpted, modified or incorporated in part, those portions of the text that originated in copyrighted EJCDC documents remain subject to the EJCDC license and copyright. Copyright © 2011-2015 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

CONTRACT DOCUMENTS:

PROJECT MANUAL:

Introductory Information, Bidding Requirements, Contract Forms and Conditions of Contract

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02320 - TRENCH EXCAVATION, BEDDING AND BACKFILL
02370 - EROSION & SEDIMENT CONTROL (LESS THAN ONE ACRE DISTURBANCE)
02630 - PIPE SEWERS – STORM

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APPENDIX:
MN RURAL WATER ASSOCIATION TRACE WIRE SPECIFICATION

DRAWINGS (UNDER SEPARATE COVER):

2 sheets numbered 1 through 2, inclusive, dated 01/15/2020, and with each sheet bearing the following general title:

Webster Wetland Restoration
City of Elko New Market

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

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SECTION 00100 – INVITATION FOR BIDS

Webster Wetland Restoration

City of Elko New Market
Elko New Market, MN

RECEIPT AND OPENING OF PROPOSALS: Sealed proposals for the work described below will be received at the Office of the City Administrator, City of Elko New Market, 601 Main Street, Elko New Market, MN 55054 until 4:00 p.m. on 02/14/2020 after which time, no further bids will be accepted.

DESCRIPTION OF WORK: The work includes the construction of approximately: 900 Ft of 15-inch storm sewer installed in a wetland and associated work.

together with numerous related items of work, all in accordance with Plans and Specifications.

COMPLETION OF WORK: All work under the Contract must be completed as stated in Section 00520-Agreement.

ADDENDUMS: Any addendums will be emailed to all plan holders.

BID SECURITY: A certified check or proposal bond in the amount of not less than 5 percent of the total amount bid, drawn in favor of City of Elko New Market shall accompany each bid.

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

Dated: 01/15/2020 /s/ Thomas Terry
City Administrator

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

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SECTION 00200 - INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

Webster Wetland Restoration
City of Elko New Market

ARTICLE 1 - DEFINED TERMS

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

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

ARTICLE 2 - USE OF BIDDING DOCUMENTS

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

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

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

A. None.

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

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

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

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

4.01 *Site and Other Areas*

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

4.02 *Existing Site Conditions*

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:

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

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

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

d. Technical Data contained in such reports and drawings.

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

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

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

C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 Site Visit and Testing by Bidders

A. Bidder shall conduct any Site visit during normal working hours by appointment with the Elko New Market Public Works Superintendent, Corey Schweich at 952-224-6781, and shall not disturb any ongoing operations at the Site.

B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions, but would be permitted to excavate a test hole or do other examinations as he deems prudent. Bidders excavating at the site would be required to call Gopher State One Call for their own locates. The city will stake the piping alignment for bidders.

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

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

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

4.04 *Owner's Safety Program*

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

4.05 *Other Work at the Site*

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

ARTICLE 5 - BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;

B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;

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

E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

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

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

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

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

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

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ARTICLE 6 - PRE-BID CONFERENCE

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

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

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

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

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents or form that is equivalent in terms, duration and obligation issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

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 Documents, 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 Documents 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. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven 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 seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

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

ARTICLE 10 - LIQUIDATED DAMAGES

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

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

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

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

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

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

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

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

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

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

ARTICLE 13 - PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents.

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

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

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

13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.

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13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.

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

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

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

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

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

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

ARTICLE 14 - BASIS OF BID

14.01 Unit Price

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

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

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

ARTICLE 15 - SUBMITTAL OF BID

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

15.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the project title "Webster Wetland Restoration", Project No. T15.103740 (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to the person indicated in the advertisement or invitation to bid.

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

15.04 The Owner does not allow electronic bid submittals.

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

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

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

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

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened privately.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 - EVALUATION OF BIDS AND AWARD OF CONTRACT

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

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

19.03 Evaluation of Bids

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

19.04 In evaluating whether a Bidder is responsible, Owner will consider applicable mandatory criteria established by governing statutes and regulations, including but not limited to Minnesota Statute 16C.285, qualifications of the Bidder, and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

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

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ARTICLE 20 - BONDS AND INSURANCE

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

ARTICLE 21 - SIGNING OF AGREEMENT

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

ARTICLE 22 - SALES AND USE TAXES

22.01 **Owner is not exempt from** state sales and use taxes on materials and equipment. Said taxes shall be included in the bid.

ARTICLE 23 - CONTRACTS TO BE ASSIGNED

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

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

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SECTION 00210 - ELECTRONIC/DIGITAL DOCUMENTS

PART 1 -- GENERAL

1.1 SUMMARY

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

1.2 FORMAT OF DOCUMENTS AND CONTROLLING CRITERIA

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

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

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

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

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

1.3 AVAILABILITY AND USE OF DIGITAL/ELECTRONIC DOCUMENTS

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

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and do not guarantee that electronic/digital versions and reproductions prepared from those versions are identical in every manner to the paper copies.

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

C. When using PDF versions of the bidding documents, the Contractor shall prepare its Bid on a printed paper copy of the Bid Form from the PDF file; submit its bid together with all required submittals; and deliver the Bid in the manner described in the bidding documents. The printed copy of the Bid Form shall be clearly legible, printed on 8 ½--inch by 11.0-inch paper and as closely identical in appearance to the PDF Bid Form as may be practical. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the Hard Copy of the Bid Form, providing that all required information and submittals are included with the bid.

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

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

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

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

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

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REQUEST TO PROJECT ENGINEER (BOLTON & MENK, INC. "BMI")
FOR ELECTRONIC/DIGITAL DATA AND CONDITIONS OF USE

Project Contractor ("USER"):	
Project Owner	City of Elko New Market
Project Name	Webster Wetland Restoration
Description of Data/Files To Be Provided	

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

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

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

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

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

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

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

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

Accepted by: USER

Printed Name of "USER"

Date

Name and Title of Authorized Representative of USER

Signature of Authorized Representative of USER

Approved: Project Engineer: (BMI)

Signature of Project Engineer's Representative

Version 04/11/07

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Items to Be Submitted with the Bid

for

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

SECTION 00410 - BID FORM

Webster Wetland Restoration
City of Elko New Market

ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to:

City of Elko New Market
601 Main Street
Elko New Market, MN 55054

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

ARTICLE 2 - BIDDER'S ACKNOWLEDGEMENTS

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

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

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

Addendum No.	Addendum Date
None	

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

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

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

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E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

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

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

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

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

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

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

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

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

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

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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 e execution of the Contract.

E. **Bidder has completed and executed** the attached Section 00415 "Responsible Contractor – Proposal Attachment" of this Project Manual relating to Minn Statute 16C.285, "Responsible Contractor."

ARTICLE 5 - BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

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

B. Unit Prices have been computed in accordance with Paragraph 13.03.B of Section 00700 "General Conditions" of this Project Manual.

C. Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids. Final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 - TIME OF COMPLETION

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

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

ARTICLE 7 - ATTACHMENTS TO THIS BID

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

A. Required Bid security ~~(Section 00430 – Bid Bond~~) Cashier's Check for 5%

B. **Section 00415 Responsible Contractor –** Proposal Attachment (2 Pages) of this Project Manual.

ARTICLE 8 - DEFINED TERMS

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

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KRUEGER INC. EXCAVATING

"Our Goal Is to Dig Your Hole"

7616 180 Street East
Prior Lake, MN 55372
Office# 952-447-8335
Fax# 952-447-6169
www.kruegerexcavating.com

Estimate

Date	Estimate #
2/17/2020	3488

Bolton & Menk, Inc.
12224 Nicollet Avenue
Burnsville, MN 55337-1649
Rich - C-612-718-8412
Richard.Revering@bolton-menk.com

Terms	Project
Due on receipt	

Description	Qty	Cost	Total
2019 Webster Wetland Restoration Project			
1) mobilization LS	1	10,000.00	10,000.00
2) common excavation YD	50	10.00	500.00
3) topsoil strip and replace ACRE	0.4	5,000.00	2,000.00
4) subsurface exploration HR	3	600.00	1,800.00
5) 15" HDPE storm w/ bedding LF	899	40.00	35,960.00
6) connect to existing storm / tile EA	2	2,500.00	5,000.00
7) inlet protection at tile openings EA	3	500.00	1,500.00
8) const. drainage structure 48" LF	13.69	450.00	6,160.50
9) 18" apron EA	1	300.00	300.00
10) 12" hickenbottom riser EA	1	1,400.00	1,400.00
11) casting assembly, storm EA	2	500.00	1,000.00

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ARTICLE 9 - BID SUBMITTAL

BIDDER:

Kruger Excavating. Inc.

By:
[Signature]

[Printed name] Tracy Kruger

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

Attest:
[Signature]

[Printed name]

Title:

Submittal Date:

Address for giving notices:

7616 180th Street East

Prior Lake, MN 55372

Telephone Number: 952-447-8335

Fax Number: 952-447-6169

Contact Name and e-mail address:

Bidder's License No.: Cashier's Check

(where applicable)

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

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INITIAL CONTRACTOR VERIFICATION OF COMPLIANCE

By signing this document, I certify that I am an owner or officer of the company, and I swear under oath that:

My company meets each of the minimum criteria in subclauses (1) – (6) of Minn. Stat. § 16C.285, subd. 3, the Responsible Contractor statute.

The undersigned understands that a failure to meet or verify compliance with the minimum criteria established for a "responsible contractor" as defined in Minn. Stat. § 16C.285, subd. 3, renders a bidder ineligible to be awarded a construction contract for the Project or to perform work on the Project.

The undersigned understands that a false statement under oath verifying compliance with any of the minimum criteria shall make the undersigned, ineligible to be awarded a construction project and may result in termination of a contract awarded to the undersigned. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

The undersigned understands that, if the undersigned is the apparent low bidder, the undersigned will be required to submit a supplemental verification under oath as a condition precedent to the execution of the contract. If the undersigned fails to provide the required supplemental verification, it could forfeit its bid bond.

I have attached a list of all of my company's first-tier subcontractors that I intend to retain for work on the project.

Initial Contractor Verification of Compliance - Webster Wetland Restoration	
Authorized Signature of Owner or Officer:	Printed Name: Nate Krueger
Title: President	Date: 2-14-2020
Company Name: Krueger Excavating Inc.	

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SUBCONTRACTORS LIST

SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	Name of City Where Company Home Office is Located
-NA-	

Attach additional sheets if necessary.

Subcontractors List - Webster Wetland Restoration	
Authorized Signature of Owner or Officer:	Printed Name: Nate Kruger
Title: President	Date: 2-14-20
Company Name: Kruger Excavating	

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~~BID BOND~~

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

~~BIDDER *(Name and Address)*:~~

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

~~OWNER *(Name and Address)*:~~

~~City of Elko New Market~~
~~601 Main Street~~
~~Elko New Market, MN, 55054~~

~~BID~~

~~Bid Due Date:~~
~~Description *(Project Name – Include Location)*:~~
~~Webster Wetland Restoration~~

~~BOND~~

~~Bond Number:~~
~~Date:~~
~~Penal sum~~ _____ ~~$~~ _____
~~(Words)~~ ~~(Figures)~~

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

~~**BIDDER**~~	~~**SURETY**~~
_____ ~~(Seal)~~	_____ ~~(Seal)~~
~~Bidder's Name and Corporate Seal~~	~~Surety's Name and Corporate Seal~~
~~By:~~ _____	~~By:~~ _____
~~Signature~~	~~Signature (*Attach Power of Attorney*)~~
_____	_____
~~Print Name~~	~~Print Name~~
_____	_____
~~Title~~	~~Title~~
~~Attest:~~ _____	~~Attest:~~ _____
~~Signature~~	~~Signature~~
_____	_____
~~Title~~	~~Title~~

~~*Note: Addresses are to be used for giving any required notice.*~~
~~*Provide execution by any additional parties, such as joint venturers, if necessary.*~~

~~1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.~~

~~2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.~~

~~3. This obligation shall be null and void if:~~

~~3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or~~

~~3.2 All Bids are rejected by Owner, or~~

~~3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).~~

~~4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.~~

~~5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.~~

~~6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.~~

~~7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.~~

~~8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.~~

~~9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.~~

~~10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.~~

~~11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.~~

OLD NATIONAL BANK®

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BRANCH # 670

1887412

REMITTER

KRUEGER EXCAVATING

DATE

71-1/863

March 4, 2020

PAY TO THE ORDER OF **CITY OF ELKO - NEW MARKET**

$3,500.00

Three Thousand Five Hundred Dollars and No Cents

VOID AFTER 90 DAYS

CASHIER'S CHECK

Vanessa Criswell

NAME AND TITLE

VANESSA CRISWELL RB

PRINTED NAME AND TITLE

⑈1887412⑈ ⑆086300012⑆ ⑈9020007 05⑈

THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND

Items to Be Executed After Bid Opening

for

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

NOTICE OF AWARD

Date of Issuance:	02/27/2020		
Owner:	City of Elko New Market	Owner's Contract No.:	
Engineer:	Bolton & Menk, Inc.	Engineer's Project No.:	T15.103740
Project:	Webster Wetland Restoration	Contract Name:	(Same as Project Name)
Bidder:	Krueger Excavating, Inc.		
Bidder's Address:	7616 180 Street East Prior Lake, MN 55372		

TO BIDDER:

You are notified that Owner has accepted your Bid dated February 17, 2020 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for: Webster Wetland Restoration.

The Contract Price of the awarded Contract is: $ 65,620.50 *[subject to unit prices]*

[4] of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. *[revise if multiple copies accompany the Notice of Award]*

☐ a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of this Notice of Award:

1. Deliver to Owner [4] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [e.g., performance and payment bonds] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Deliver to Owner executed SECTION – 00515 RESPONSIBLE CONTRACTOR NOTICE OF AWARD. SUPPLEMENTAL CONTRACTOR VERIFICATION OF COMPLIANCE in accordance with Minn. Stat. 16C.285 subd.3 Subclauses (1) to (7). Delivery is a condition precedent to execution of this contract and failure to submit this form shall be cause for the Owner to cancel Award of Contract and declare your Bid security forfeited.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

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

Owner: City of Elko New Market

Rich Revering

Authorized Signature

By: Rich Revering, PE

Title: City Engineer

Copy: Engineer

NOTICE OF AWARD

Date of Issuance:	02/27/2020		
Owner:	City of Lake New Market	Owner's Contract No.:	
Engineer:	Bolton & Menk, Inc.	Engineer's Project No.:	T15.102740
Project:	Webster Wetland Restoration	Contract Name:	[Same as Project Name]
Bidder:	Kreager Excavating, Inc.		
	7810 130 Street East		
Bidder's Address:	Prior Lake, MN 55372		

TO BIDDER:

We are notified that Owner has accepted your Bid dated January 17, 2020 for the above Contract, and that you are the Successful Bidder and are nominated a Contractor for Webster Wetland Restoration.

The Contract Price of the awarded Contract is: $[illegible] [illegible] [illegible] (to be filled in below)

[ ] [ ] of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. If this is marked, a separate copy of the Notice of Award

[ ] a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of this Notice of Award:

1. Deliver to Owner [ ] counterparts of the Agreement, fully executed by Bidder.
2. Deliver within the executed Agreement(s) the required security (e.g., performance and payment bonds) and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Deliver to Owner executed SECTION – 00613 RESPONSIBLE CONTRACTOR DOCUMENT OF AWARD, SUPPLEMENTAL CONTRACTOR VERIFICATION OF COMPLIANCE in accordance with Minn. Stat. 16C.285 subd. 3 Subdivisions (1) to (7). Delivery is a condition precedent to execution of this contract and failure to submit this form shall be cause for the Owner to cancel Award of Contract and declare your Bid security forfeited.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.01 of the General Conditions.

Owner: City of Lake New Market

By: [signature]

Authorized Signature

Title: City Engineer

Copy: Engineer

SECTION 00515 - RESPONSIBLE CONTRACTOR - NOTICE OF AWARD

SUPPLEMENTAL CONTRACTOR VERIFICATION OF COMPLIANCE

PROJECT TITLE: Webster Wetland Restoration

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

My company meets each of the minimum criteria of Minn. Stat. § 16C.285, subd. 3, the Responsible Contractor statute.

Pursuant to Stat. § 16C.285, subd. 3(7), my company has obtained from all subcontractors and motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor or motor carrier.

The undersigned agrees that, if it retains additional subcontractors on the project after submitting its verification of compliance, it shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with Minn. Stat. § 16C.285, subd. 3(7), within 14 days of retaining the additional subcontractors.

Upon request, the undersigned shall submit to the contracting authority copies of the signed verifications of compliance from all subcontractors of any tier and all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

The undersigned understands that a failure to meet or verify compliance with the minimum criteria established for a "responsible contractor" as defined in Minn. Stat. § 16C.285, subd. 3, renders a bidder ineligible to be awarded a construction contract for the Project or to perform work on the Project.

The undersigned understands that a false statement under oath verifying compliance with any of the minimum criteria shall make the undersigned, ineligible to be awarded a construction project and may result in termination of a contract awarded to the undersigned. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

Supplemental Contractor Verification of Compliance - Webster Wetland Restoration	
Authorized Signature of Owner or Officer:	Printed Name: Nate Krueger
Title: President	Date: 3-31-20
Company Name: Krueger Excavating Inc	

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SECTION 00516 - RESPONSIBLE CONTRACTOR - SUPPLEMENTAL

ADDITIONAL SUBCONTRACTORS LIST

PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT

PROJECT TITLE: Webster Wetland Restoration

This form must be submitted to the Project Manager or individual as identified in the solicitation document.

Minn. Stat. § 16C.285, Subd. 5. ... If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

ADDITIONAL SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	**Name of city where company home office is located**
None	

Additional Subcontractors List - Webster Wetland Restoration	
By signing this document I certify that I am an owner or officer of the company, and I swear under oath that: All additional subcontractors listed on this form have been verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.	
Authorized Signature of Owner or Officer:	Printed Name: Nate Krueger
Title: President	Date: 3-31-20
Company Name: Krueger Excavating Inc.	

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NEW YORK CITY - REVENUE AND CONTRACTS - SUPERVISOR

ADDITIONAL SUBCONTRACTOR LIST

PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT

PROJECT TITLE: Midtown Vertical Transportation

This form must be submitted to the Project Manager or hand-out as identified in the bid solicitation documents.

Notice: Vol. 3 RCDZ395, Title 5 - If a prime contractor or any subcontractor retains additional subcontractors on an project after submitting its validation of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from such additional subcontractor with which it has a direct co-to-social relationship and shall submit a supplemental certification confirming compliance with subdivision 3, clause (C), within 14 days of its taking the additional subcontractor.

ADDITIONAL SUBCONTRACTOR(S) NAMES (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located
None	

Additional subcontractors (if - Midtown Vertical Transportation

By signing this document I certify that I am an owner or officer of the company and I solely under oath that:

I will treat the information provided in this form as an official document under oath by an owner or officer that they read the affidavit certifying as to a possible conspiracy as stated in Admin. Code § 10-226

Authorized Signature of Owner or Officer

Printed Name

Noah Kenney

Title

President

Date

5 3-25

Company Name

Noah Electric Inc

SECTION 00520 - AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Elko New Market ("Owner") and Krueger Excavating, Inc. ("Contractor").

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: Webster Wetland Restoration

ARTICLE 2 – THE PROJECT

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

Replace field tile with solid pipe.

ARTICLE 3 – ENGINEER

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

3.02 The Owner has retained Bolton & Menk, Inc., to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Dates

A. Substantial completion shall be defined as:

1. The date when construction is sufficiently completed so that the owner can occupy or use the improvement for the intended purpose.
2. For streets, highways, and bridges, the date when construction-related traffic devices and ongoing inspections are no longer required.

B The work will be substantially completed on or before August 1, 2020, and completed and ready for final payment in accordance with Paragraph 15.06 of Section 00700 "General Conditions" of this Project Manual on or before September 15, 2020.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time.

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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 $1,197.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner $18 for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

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

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item)

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

C. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of Section 00700 "General Conditions" of this Project Manual, 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 monthly progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

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

2 No later than 60-days after the date of Substantial Completion, retainage shall be paid except as follows:

a. An amount up to 250% of the cost to correct or complete work known at the time of Substantial Completion shall be retained, and

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b. The greater of $500 or 1% of the value of the contract shall be retained until all contract final paperwork is finalized. Final paperwork is defined as documents required by the contract which may include but are not limited to:

1 Operations Manuals, as built drawings, and submittals required by the contract documents, and

2. Payroll documents for projects with prevailing wage requirements, and

3. IC 134, and

4. Lien Releases, if required.

i. Mn Department of Commerce Form 40.5.1. (http://www.commerce.state.mn.us/UCB/40.5.1.pdf) or equal.

6.03 *Progress Payment to Subcontractors*

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

1. The prime contractor shall pay any subcontractor within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor.

2. The prime contractor shall pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.

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

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

6.04 *Final Payment*

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

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 1.5 percent per month.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

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

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

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface

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structures at the Site that have been identified in the Supplementary Conditions, if any, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, if any, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

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

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

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

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

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

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 00520-1 to 00520-8, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. General Conditions (pages 1 to 65, inclusive).
5. Supplementary Conditions (pages 00800-1 to 00800-9, inclusive).
6. Specifications as listed in the table of contents of the Project Manual.
7. Drawings (not attached but incorporated by reference) consisting of 2 sheets with each sheet bearing the following general title: Webster Wetland Restoration.
8. Addenda (none).
9. Exhibits to this Agreement (enumerated as follows):
   a. Contractor's Bid (pages 00410-1 to 00410-5, inclusive).
   b. Executed Section 00415 – Responsible Contractor – Proposal Attachment
   c. Executed Section 00515 - Responsible Contractor – Award Attachment

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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.

d. Field Orders.

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

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

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

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

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

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

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

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

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid

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

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

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

10.06 *Other Provisions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

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SCHEDULE OF UNIT PRICES

2019 WEBSTER WETLAND RESTORATION PROJECT

CITY OF ELKO NEW MARKET, MN

BMI PROJECT NO. T15.103740

ONLY ONE SCHEDULE OF UNIT PRICES from each BIDDER shall be considered for the project. When more than one SCHEDULE OF UNIT PRICES from an individual BIDDER is received only the last submittal meeting the bidding requirements shall be considered and all other copies shall be left unopened.

BIDDER agrees to perform all of the work described in the CONTRACT DOCUMENTS for the following unit prices:
NOTE: BIDS shall include sales tax and all applicable taxes and fees.
BIDDER must fill in unit prices in numerals, make extension for each item, and total.

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

ITEM NO.	ITEM	APPROX. QUANT.	UNIT	UNIT PRICE	AMOUNT
1	MOBILIZATION	1	LUMP SUM	$10,000.00	$10,000.00
2	COMMON EXCAVATION (P) (Grading at manholes and over overflow pipe)	50	CU YD	$10.00	$500.00
3	TOPSOIL STRIP AND REPLACE AT SURFACE	0.4	ACRE	$5,000.00	$2,000.00
4	SUBSURFACE EXPLORATION	3	HOUR	$600.00	$1,800.00
5	15" DUAL-WALL HDPE STORM PIPE W/BEDDING & FOUNDATION	899	LIN FT	$40.00	$35,960.00
6	CONNECT TO EXISTING STORM/TILE PIPE	2	EACH	$2,500.00	$5,000.00
7	INLET PROTECTION AT TILE OPENINGS (BERM PLACEMENT AND OBLITERATION)	3	EACH	$500.00	$1,500.00
8	CONST DRAINAGE STRUCTURE DES. 4020-48"	13.69	LF	$450.00	$6,160.50
9	18-IINCH PIPE APRON	1	EACH	$300.00	$300.00
10	12-INCH HICKENBOTTOM RISER (COMPLETE, PER DETAIL)	1	EACH	$1,400.00	$1,400.00
11	CASTING ASSEMBLY, STORM	2	EACH	$500.00	$1,000.00
			TOTAL AMOUNT BID:		$65,620.50

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

This Agreement will be effective on 02/27/2020 (which is the Effective Date of the Contract).

OWNER:

City of Elko New Market

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

601 Main Street

Elko New Market, MN, 55054

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

CONTRACTOR:

Krueger Excavating, Inc.

By: _____

Title: Office Admin

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

Attest: _____

Title: _____

Address for giving notices:

License No.: _____

(where applicable)

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

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

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EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

NOTICE TO PROCEED

Owner:	City of Elko New Market	Owner's Contract No.:	
Contractor:	Krueger Excavating, Inc.	Contractor's Project No.:	
Engineer:	Bolton & Menk, Inc.	Engineer's Project No.:	T15.103740
Project:	Webster Wetland Restoration	Contract Name:	(Same as Project Name)
		Effective Date of Contract:	

TO CONTRACTOR:

[_____, 20__].

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date.

In accordance with the Agreement, the date of Substantial Completion is August 1, 2020, and the date of readiness for final payment is September 15, 2020.

Owner: City of Elko New Market

_____
Authorized Signature

By: _____

Title: _____

Date Issued _____

Copy: Engineer

B-2796403

THE CINCINNATI INSURANCE COMPANY

Performance Bond

CONTRACTOR (Name, legal status and address):

Krueger Excavating, Inc.
7616 180th St E
Prior Lake, MN 55372

SURETY (Name, legal status and principal place of business):

THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

OWNER (Name, legal status and address):

City of Elko New Market
601 Main Street
Elko New Market, MN 55054

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, info one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date: February 27, 2020

Amount: $65,621.00

Description (Name and location):

Excavation work

BOND

Date (Not earlier than Construction Contract Date): February 27, 2020

Amount: $65,621.00

Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Krueger Excavating, Inc.

Signature: _____

Name and Title:

SURETY

Company: Corporate Seal)
THE CINCINNATI INSURANCE COMPANY

Signature: C. G.

Name and Title: Gresina Cole Attorney in fact

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)

AGENT or **BROKER:**

Heartman Agency, Inc.
1186 Highway 3 S
Northfield, MN

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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 Section 3.

3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.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 Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with 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 Owner's 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 Section **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:

.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

.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 Section 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 Section 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 Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.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 Section 5; and

.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 Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

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

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

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

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which the signature appears.

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

14 Definitions

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

14.2 Construction Contract. The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	(Corporate Seal)	Company:	(Corporate Seal)
Krueger Excavating, Inc.			
Signature:		Signature:	
Name and Title: Nate Krueger President		Name and Title: Gresina Cole Attorney-in-fact	
Address: 7614 180th St E Prior Lake MN 55372		Address:	

The Company executing this bond vouches that this document conforms to American Institute of Architects Document **A312,** 2010 Edition.

THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Matthew Sewich, Gresina Cole, Lynall Malecha,

of Northfield, MN its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Five Million Dollars and 00/100 ($5,000,000.00)

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 10th day of May, 2012.

The Cincinnati Insurance Company CORPORATE SEAL OHIO

THE CINCINNATI INSURANCE COMPANY

Stephen A. Dietz

Vice President

STATE OF OHIO) ss:
COUNTY OF BUTLER)

On this 10th day of May, 2012, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.

NOTARIAL SEAL STATE OF OHIO

Mark J. Huller

MARK J. HULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.
this 6th day of April, 2020

The Cincinnati Insurance Company CORPORATE SEAL OHIO

Scott R Bolen

Assistant Secretary

BN-1005 (5/12)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

STATE OF Minnesota
COUNTY OF Scott

On this 13th day of April, in the year 2020, before me personally come(s) _____, to me known and known to me to be the person(s) who (is) (are) described in and who executed the foregoing instrument and acknowledge(s) to me that _____ he _____ executed the same.

_____
NOTARY PUBLIC

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

STATE OF _____
COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and who executed the foregoing instrument, and acknowledges to me that he executed the same as and for the act and deed of the said co-partnership.

_____
NOTARY PUBLIC

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

STATE OF Minnesota
COUNTY OF Scott

On this 13 day of April, in the year 2020, before me personally come(s) Nate Krueger to me known, who, being by me duly sworn, deposes and says that he resides in the City of Prior Lake that he is the President of the Krueger Excavating the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such a corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

_____
NOTARY PUBLIC

TRACY RAELLE KRUEGER
Notary Public
Minnesota
My Commission Expires
Jan 31, 2023

ACKNOWLEDGMENT OF SURETY

STATE OF **MINNESOTA** } ss.:
COUNTY OF **Rice**

On this 6th day of APRIL, in the year 2020, before me personally come(s) BRESINA COLE Attorney(s)-in-Fact of CINCINNATI INSURANCE with whom I am personally acquainted, and who, being by me duly sworn, says that he reside(s) in **Minnesota** that he is (are) the Attorney(s)-in-Fact of CINCINNATI INSURANCE, the company described in and which executed the within instrument; that he know(s) the corporate seal of such Company; and that the seal affixed to the within instrument is such corporate seal and that it was affixed by order to the Board of Directors of said Company, and that he said instrument as Attorney(s)-in-Fact of the said Company by like order.

_____
NOTARY PUBLIC

Heather C. Cole
Notary Public
Minnesota
My Commission Expires January 31, 2023

B-2796403

THE CINCINNATI INSURANCE COMPANY

Payment Bond

CONTRACTOR (Name, legal status and address):
Krueger Excavating, Inc.
7616 180th St E
Prior Lake, MN 55372

SURETY (Name, legal status and principal place of business):
THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

OWNER (Name, legal status and address):
City of Elko New Market
601 Main Street
Elko New Market, MN 55054

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, info one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date: February 27, 2020

Amount: $65,621.00

Description (Name and location):
Excavation work

BOND

Date (Not earlier than Construction Contract Date): February 27, 2020

Amount: $65,621.00

Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
Krueger Excavating, Inc.
Signature:
Name and Title: Nate Krueger President

SURETY
Company: Corporate Seal)
THE CINCINNATI INSURANCE COMPANY
Signature:
Name and Title: Caresina Cole Attorney-in-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)
AGENT or **BROKER:**
Heartman Agency, Inc.
1186 Highway 3 S
Northfield, MN

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

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

2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 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 Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants, who do not have a direct contract with the Contractor,

.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

.2 have sent a Claim to the Surety (at the address described in Section 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 Section 13).

6 If a notice of non-payment required by Section 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 Section 5.1.1.

7 When a Claimant has satisfied the conditions of Sections 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 Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

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

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

12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16 Definitions

16.1 Claim. A written statement by the Claimant including at a minimum:

.1 the name of the Claimant;

.2 the name of the person for whom the labor was done, or materials or equipment furnished;

.3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;

.4 a brief description of the labor, materials or equipment furnished;

.5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;

.6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;

.7 the total amount of previous payments received by the Claimant; and

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

16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of 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 the Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company: Krueger Excavating, Inc.	(Corporate Seal)	Company:	(Corporate Seal)
Signature:		Signature:	
Name and Title: Nate Krueger President		Name and Title: Gresina Cole Attorney-in-fact	
Address: 7411 180th St E Prior Lake MN 55372		Address:	

The Company executing this bond vouches that this document conforms to American Institute of Architects Document **A312**, 2010 Edition.

THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Matthew Sewich, Gresina Cole, Lynall Malecha,

of Northfield, MN its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Five Million Dollars and 00/100 ($5,000,000.00)

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 10th day of May, 2012.

The Cincinnati Insurance Company CORPORATE SEAL OHIO

THE CINCINNATI INSURANCE COMPANY

Stephen A. [illegible]

Vice President

STATE OF OHIO) ss:
COUNTY OF BUTLER)

On this 10th day of May, 2012, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.

NOTARIAL SEAL STATE OF OHIO

Mark J. Huller

MARK J. HULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.

this 6th day of April, 2020.

The Cincinnati Insurance Company CORPORATE SEAL OHIO

Scott R Bolen

Assistant Secretary

BN-1005 (5/12)

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

STATE OF _____
COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally come(s) _____, to me known and known to me to be the person(s) who (is) (are) described in and who executed the foregoing instrument and acknowledge(s) to me that _____ he _____ executed the same.

_____
NOTARY PUBLIC

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

STATE OF _____
COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally come(s) _____, a member of the co-partnership of _____, to me known and known to me to be the person who is described in and who executed the foregoing instrument, and acknowledges to me that he executed the same as and for the act and deed of the said co-partnership.

_____
NOTARY PUBLIC

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

STATE OF Minnesota
COUNTY OF Scott

On this 13 day of April, in the year 2020, before me personally come(s) Nate Krueger to me known, who, being by me duly sworn, deposes and says that he resides in the City of Prior Lake that he is the President of the Krueger Excavating the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such a corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

_____
NOTARY PUBLIC

TRACY RAELLE KRUEGER
Notary Public
Minnesota
My Commission Expires
Jan 31, 2023

ACKNOWLEDGMENT OF SURETY

STATE OF **MINNESOTA** }
COUNTY OF **Rice** } ss.:

On this 16th day of APRIL, in the year 2020, before me personally come(s) GRESINA COLE Attorney(s)-in-Fact of CINCINNATI INSURANCE with whom I am personally acquainted, and who, being by me duly sworn, says that he reside(s) in **Minnesota** that he is (are) the Attorney(s)-in-Fact of CINCINNATI INSURANCE, the company described in and which executed the within instrument; that he know(s) the corporate seal of such Company; and that the seal affixed to the within instrument is such corporate seal and that it was affixed by order to the Board of Directors of said Company, and that he said instrument as Attorney(s)-in-Fact of the said Company by like order.

Heather C. Cole
NOTARY PUBLIC

Heather C. Cole
Notary Public
Minnesota
My Commission Expires January 31, 2023

KRUEEXC-01 COLHE1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/6/2020

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 have ADDITIONAL INSURED provisions or 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).

PRODUCER
Heartman Insurance
1186 South Highway 3
Northfield, MN 55057

CONTACT NAME:
PHONE (A/C, No, Ext): (507) 645-5693 FAX (A/C, No): (507) 645-8539
E-MAIL ADDRESS: info@heartman.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : West Bend Mutual	15350
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Krueger Excavating Inc.
7616 180th St E
Prior Lake, MN 55372

COVERAGES **CERTIFICATE NUMBER:** **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	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR			A366979	11/15/2019	11/15/2020	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:						EPLI	$ 100,000
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO			A366979	11/15/2019	11/15/2020	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 2,000,000
	EXCESS LIAB CLAIMS-MADE			A366979	11/15/2019	11/15/2020	AGGREGATE	$ 2,000,000
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A		A366983	11/15/2019	11/15/2020	E.L. EACH ACCIDENT	$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000

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

CERTIFICATE HOLDER

Bolton & Menk, Inc.
12224 Nicollet Avenue
Burnsville, MN 55337-1649

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
Tammy Johnson

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General Conditions

for

Edition C-700 (Rev 1) EJCDC - 2013

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

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

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

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

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

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has declined to address. A demand for money or services by a third party is not a Claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

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

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

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

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

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

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

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

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

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

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

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

36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

1.02 *Terminology*

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

B. *Intent of Certain Terms or Adjectives*:

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

C. *Day*:

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

D. *Defective*:

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents; or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

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

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

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

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

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

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

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

2.02 *Copies of Documents*

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

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

2.03 *Before Starting Construction*

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

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

2. a preliminary Schedule of Submittals; and

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

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

2.05 *Initial Acceptance of Schedules*

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

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

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

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

2.06 *Electronic Transmittals*

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

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

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

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computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

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

2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*:

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

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

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

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

B. *Resolving Discrepancies*:

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

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

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

3.04 *Requirements of the Contract Documents*

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

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

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

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3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

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

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

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

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2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

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

4.05 *Delays in Contractor's Progress*

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

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

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

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;

2. abnormal weather conditions;

3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and

4. acts of war or terrorism.

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

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

F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

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G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 *Availability of Lands*

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

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

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

5.02 *Use of Site and Other Areas*

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

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

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

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by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

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

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

5.03 *Subsurface and Physical Conditions*

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

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

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

3. Technical Data contained in such reports and drawings.

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

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

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

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

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5.04 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or

2. is of such a nature as to require a change in the Drawings or Specifications; or

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

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

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

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

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

D. *Possible Price and Times Adjustments*:

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

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

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

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c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

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

c. Contractor failed to give the written notice as required by Paragraph 5.04.A.

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

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

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and

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

a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;

c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

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becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

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

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

E. *Possible Price and Times Adjustments*:

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

    c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and

    d. Contractor gave the notice required in Paragraph 5.05.B.

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

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

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5.06 *Hazardous Environmental Conditions at Site*

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

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

2. Technical Data contained in such reports and drawings.

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

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

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

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

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

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

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

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F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

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

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

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

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

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

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ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

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

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

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

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

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

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

6.02 *Insurance—General Provisions*

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

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

C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

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maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

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

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

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

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

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

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

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

6.03 *Contractor's Insurance*

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

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

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

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

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4. Foreign voluntary worker compensation (if applicable).

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

1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.

2. claims for damages insured by reasonably available personal injury liability coverage.

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

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

1. Products and completed operations coverage:

   a. Such insurance shall be maintained for three years after final payment.

   b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Broad form property damage coverage.

4. Severability of interest.

5. Underground, explosion, and collapse coverage.

6. Personal injury coverage.

7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

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of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.

H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:

1. include at least the specific coverages provided in this Article.
2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

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6.04 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

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

1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

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

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5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. include performance/hot testing and start-up.
13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.

B. *Notice of Cancellation or Change*: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

C. *Deductibles*: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.

F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

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6.06 *Waiver of Rights*

A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

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

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

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policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

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

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

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guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

3) it has a proven record of performance and availability of responsive service; and

4) it is not objectionable to Owner.

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

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D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

a. shall certify that the proposed substitute item will:

1) perform adequately the functions and achieve the results called for by the general design,

2) be similar in substance to that specified, and

3) be suited to the same use as that specified.

b. will state:

1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,

2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

c. will identify:

1) all variations of the proposed substitute item from that specified, and

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2) available engineering, sales, maintenance, repair, and replacement services.

d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.

B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

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E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.

J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.

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

M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

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O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

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

7.08 *Permits*

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

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7.09 *Taxes*

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

7.10 *Laws and Regulations*

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

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

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2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

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

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

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exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements*:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

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

c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings*:

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

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provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples*:

   a. Contractor shall submit the number of Samples required in the Specifications.

   b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals*: Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review*:

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

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

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8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures*:

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

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

3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal;

6. the issuance of a notice of acceptability by Engineer;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by Owner.

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

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

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

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

7.19 *Delegation of Professional Design Services*

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

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

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Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

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

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

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

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

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

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

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

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8.02 *Coordination*

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

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

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

3. the extent of such authority and responsibilities.

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

8.03 *Legal Relationships*

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

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

C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

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

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

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

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

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

9.07 *Change Orders*

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

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9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

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or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

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

10.04 *Rejecting Defective Work*

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

10.05 *Shop Drawings, Change Orders and Payments*

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

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

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

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

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

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

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

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

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

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

10.09 *Compliance with Safety Program*

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

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

11.01 *Amending and Supplementing Contract Documents*

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

1. *Change Orders*:

a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. *Work Change Directives*: A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

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adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 *Owner-Authorized Changes in the Work*

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

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

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

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

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

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

3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

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the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

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

1. a mutually acceptable fixed fee; or

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

a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

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

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

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

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

11.06 *Change Proposals*

A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

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the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

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

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

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

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

11.07 *Execution of Change Orders*

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

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

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

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

4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

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B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

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

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

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

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

D. *Mediation*:

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

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submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

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

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

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

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

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

13.01 *Cost of the Work*

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

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

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

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

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

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thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

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

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

5. Supplemental costs including the following:

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

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

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

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

    e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

    f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

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other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

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

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

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

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

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

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

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

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

13.02 *Allowances*

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

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B. *Cash Allowances*: Contractor agrees that:

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

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

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

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

13.03 *Unit Price Work*

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

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

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

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

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

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

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

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

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

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

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

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

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

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

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

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

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

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cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

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

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

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

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

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

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

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

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B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

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

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

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

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

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

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

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

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include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

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

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

15.01 *Progress Payments*

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

B. *Applications for Payments*:

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

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

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

C. *Review of Applications*:

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

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

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a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

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

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

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e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*:

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

E. *Reductions in Payment by Owner*:

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. the Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. the Contract Price has been reduced by Change Orders;

i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;

j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

l. there are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

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remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

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

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

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

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E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

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

15.04 *Partial Use or Occupancy*

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

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

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

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

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

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inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all disputes that Contractor believes are unsettled; and

   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

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

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

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

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

D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

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including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

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

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

15.08 *Correction Period*

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

1. correct the defective repairs to the Site or such other adjacent areas;
2. correct such defective Work;
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

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

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

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

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

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

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

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

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

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

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

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

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

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

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

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and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

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

16.03 *Owner May Terminate For Convenience*

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

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

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

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

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

16.04 *Contractor May Stop Work or Terminate*

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

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

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expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

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

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and

2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

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

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or

2. agree with the other party to submit the dispute to another dispute resolution process; or

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

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

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18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

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Supplementary Conditions

for

Edition C-700 EJCDC® - 2013

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

SECTION 00800 - SUPPLEMENTARY CONDITIONS

TO THE STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT
SUPPLEMENTARY CONDITIONS - GENERAL COMMENTS

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

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

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

SC-1.01 Defined Terms

Delete Paragraph 1.01.A.40. of the General Conditions in its entirety and insert the following Paragraph A.40. in its place:

40. *Substantial Completion* – Substantial completion shall be as defined in the Agreement.

SC-4.03 REFERENCE POINTS

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

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

SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS

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

5.03.A. No reports of explorations or tests of subsurface conditions at or contiguous to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS

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

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

SC-6.02 INSURANCE – GENERAL PROVISIONS

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

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

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SC-6.03 CONTRACTOR'S INSURANCE

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

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

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

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

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

State:		Statutory
Federal, if applicable (e.g., Longshoreman's):		Statutory
Jones Act coverage, if applicable:		
Bodily injury by accident, each accident	$	Not Applicable
Bodily injury by disease, aggregate	$	Not Applicable
Employer's Liability:		
Bodily injury, each accident	$	1,000,000.00
Bodily injury by disease, each employee	$	1,000,000.00
Bodily injury/disease aggregate	$	1,000,000.00
For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$	Not Applicable
Foreign voluntary worker compensation		Statutory

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

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

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

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

Bodily Injury:		
Each person	$	1,000,000.00
Each accident	$	1,000,000.00
Property Damage:		
Each accident	$	1,000,000.00

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4. Contractor's Pollution Liability:

Per Occurrence	$	Not Applicable
General Aggregate	$	Not Applicable

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

SC-6.05 PROPERTY INSURANCE

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

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

SC-7.08 PERMITS

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

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

SC-7.10 LAWS AND REGULATIONS

Add Paragraph D: DATA PRACTICES ACT

The Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the Owner pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Contractor pursuant to this Agreement. The Contractor is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event the Contractor receives a request to release data, the Contractor must immediately notify the Owner. The Owner will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. Contractor agrees to defend, indemnify, and hold the Owner, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Contractor's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

"In complying with any MGDPA request, CONTRACTOR will be reimbursed under General Conditions 11.02 by Change Order, only for its reasonable direct labor and other direct expenses, without mark-up or increase in 11.04.C Fee; but only to the extent that the request is not due to a negligent, intentional or willful act or omission by the CONTRACTOR or other failure to comply with its obligations under this contract"

SC-7.11 RECORD DOCUMENTS

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

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

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

SC-7.12 SAFETY AND PROTECTION

The following Paragraph 7.12.A.4 shall be added immediately after Paragraph 7.12.A.3:

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

SC-7.20 PROGRESS PAYMENTS TO SUBCONTRACTORS

Add the following Paragraph 7.20 immediately after Paragraph 7.19

7.20 Progress Payments to Subcontractors

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

SC-8.02 COORDINATION

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

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

SC-8.04 CLAIMS BETWEEN CONTRACTORS

Add the following new paragraphs immediately after paragraph 8.03:

8.04 Claims Between Contractors

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

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

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

SC-10.03 PROJECT REPRESENTATIVE

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

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

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
4. Liaison:
    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. Shop Drawings and Samples:
    a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

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b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. Review of Work and Rejection of Defective Work:

a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:

a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:

a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

c. Maintain records for use in preparing Project documentation.

11. Reports:

a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by

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fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

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

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

14. Completion:

    a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.

    b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.

    c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

10.03.C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

SC-13.03. UNIT PRICE WORK

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

13.03.E. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

1. if the original bid amount of a particular item of Unit Price Work amounts to five (5) percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit

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

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

3. if Contractor believes that Contractor has incurred additional expense as a result thereof or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC-15.01.B.4 APPLICATIONS FOR PAYMENT

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

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

SC-15.01.D.1 PAYMENT BECOMES DUE

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

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

SC-15.04 PARTIAL UTILIZATION

Add the following Paragraph 15.04.B immediately after Paragraph 15.04.A.4 of the General Conditions. Paragraph 15.04.B modifies Paragraph 15.04.A of the General Conditions and reference is made thereto.

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

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

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

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

SC-15.08 CORRECTION PERIOD

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

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

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

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

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CONDITIONS OF THE CONTRACT

for

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

SECTION 01270 - MEASUREMENT & PAYMENT

PART 1 -- GENERAL

1.1 SUMMARY

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

1.2 MEASUREMENT & PAYMENT

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

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

C. **Payment for Materials Stored on Site:** Shall be limited to 50% of the total bid price of the item(s) for which payment request is made and shall be limited to the following eligible items: storm sewer pipe.

All requests for payment for materials on hand shall be accompanied by complete, accurate, and itemized invoices, billing title and other assignment documents identifying in detail the materials, together with proof of insurance assuring protection of the materials while stored on site. No payment will be made for materials ordered, stored off site, nor for materials not properly protected against the elements, pilferage, vandalism, and other losses.

In the event of removal of material from the project site, for which Contractor has received payment, the applicable payment may be deducted on the next partial payment.

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

1.3 SUBMITTALS

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

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

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

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

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PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

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

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SECTION 01310 - COORDINATION

PART 1 -- GENERAL

1.1 SEQUENCE OF CONSTRUCTION

A. A written project management scheduling tool (i.e., critical path (CPM), detailed bar chart, etc.) shall be employed by the Contractor for cost value reporting, planning and scheduling of all work required under the Contract Documents. This schedule shall show the order in which the Contractor proposes to execute the work with dates on which it proposes to start the various phases of the work and the estimated completion date of each phase. The Contractor shall submit a preliminary version of its intended schedule within 10 working days following the *Notice of Award* on the attached form or on a form of its own choosing. **The Contractor is required to show the initial critical path (CPM) of tasks to be performed.**

B. Unless otherwise approved by the Engineer, the schedule shall also include an anticipated payment schedule for the volume of work to be completed each month. This schedule shall indicate the Contractor's intention and ability to complete the work within the contract times, as specified in Article 4 of Section 00520 “Agreement” of this Project Manual.

C. The Preconstruction Conference as outlined in Section 01315 “Project Meetings” of this Project Manual will not be conducted until the schedule is submitted. In addition, no construction staking shall be provided until the schedule is submitted by the Contractor and reviewed by the Engineer.

1.2 WORKING HOURS

A. Except in connection with safety or emergency situations, all work at the site shall be performed during daylight hours.

B. The Contractor shall notify the Owner and Engineer of any work planned on Saturday, Sunday, or any legal holidays at least 48 hours prior to such work.

C. The Contractor shall coordinate any construction or hauling activity in the vicinity of churches, schools, medical facilities, and funeral homes. The Contractor shall be cognizant of the disruptive effects of continued construction during funerals. The Owner reserves the right to temporarily stop construction within one block of, and during the time of, any funeral procession. No compensation shall be granted to the Contractor due to temporary delays caused by funerals.

1.3 TRAFFIC CONTROL

A. Reference Specification 01555 “Maintenance and Control of Traffic” of this Project Manual.

1.4 COORDINATION WITH BUSINESSES AND PRIVATE PROPERTY OWNERS ADJACENT TO THE PROJECT

A. The Contractor shall notify all property owners and occupants adjacent to the project 2 days in advance to allow moving machinery and/or vehicles or other items that may be blocked in or damaged due to the upcoming construction in the area. Access to the properties shall be restored as soon as possible after each phase of construction.

1.5 COORDINATION WITH UTILITY COMPANIES

A. The Contractor is responsible for working with public and private utility companies in protecting and/or relocating existing or new utility lines located near and affected by this construction.

1. Coordination with the utility companies is very important and should be considered in planning the work and the associated extra costs involved.

2. Private utility companies are responsible for their own lines and are so obligated under City Code Agreements to protect and/or relocate their utilities, if required to install new City owned utilities in a given area.

B. The Contractor shall consult with the City’s maintenance personnel when working around or performing the required sanitary sewer installations.

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C. The Contractor shall also work with the City's maintenance personnel to provide for scheduled water shut-downs in a given area and to provide for continued water service to the properties along the project throughout the duration of the project.

D. The Contractor shall work with all utility companies, as necessary, to allow for installation and for maintenance of service of gas, power, lighting, telephone, cable TV, etc. in the boulevards or across the streets prior to final shaping of aggregate base and/or topsoil. This coordination with the utility companies is the responsibility of the Contractor and is considered incidental to the construction and no additional compensation shall be granted.

1.6 COOPERATION WITH FIRE & EMERGENCY DEPARTMENTS

A. The Contractor shall coordinate all work requiring shutting down water service or limiting access to buildings by emergency equipment with the fire & emergency departments. This shall include notification of the daily construction schedule by the Contractor.

1.7 COOPERATION WITH OTHER CONTRACTORS

A. The Contractor shall cooperate with other contractors performing construction on other projects in the vicinity of this Project, including but not limited to allowing access for the delivery of equipment and materials.

1.8 COORDINATION WITH SERVICE PROVIDERS

A. The Contractor shall coordinate with the postal service, recycling service, garbage collection service, school bus service, etc. to maintain continual uninterrupted service to all residences and businesses throughout the duration of the project.

B. The Contractor shall temporarily relocate mailboxes, haul recycling and garbage for residents to a designated pick up location, etc., as required by the subject service provider. All equipment materials and labor required to coordinate with service providers and maintain services shall be incidental to the Contract.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

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

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SECTION 01410 - REGULATORY REQUIREMENTS

PART 1 -- GENERAL

1.1 SUMMARY

A. Applicable codes and standards referred to in these specifications shall establish minimum requirements for equipment, materials, construction and shall be superseded by more stringent requirements of drawings and specifications when and where they occur.

B. All equipment furnished and installed under the contract shall be designed, fabricated, assembled, installed, and placed into service. The equipment will conform to the applicable provisions of the Federal and State Safety and Health Standards, including but not limited to Federal Occupational Safety and Health Regulations for Construction; the Division of Environmental Health, Minnesota Department of Health; the Minnesota Pollution Control Agency; the Department of Natural Resources; the Minnesota Department of Transportation, Division of Highways; the Minnesota Industrial Commission and ordinances of the City that apply to this work.

C. All construction methods and tools shall comply with commonly accepted standards for safety and health of personnel engaged on construction, including but not limited to Federal Occupational Safety and Health Regulations for Construction; the Division of Environmental Health, Minnesota Department of Health; the Minnesota Pollution Control Agency; the Department of Natural Resources; the Minnesota Department of Transportation, Division of Highways; the Minnesota Industrial Commission and ordinances of the City that apply to this work.

D. Any conflicts between specifications and applicable codes and standards shall be referred to the Engineer.

1.2 PERMITS OBTAINED BY OWNER

A. The Owner has applied for the following permits from appropriate authorities. It is anticipated that permission to proceed will be authorized prior to execution of Contract. The Contractor shall perform all work and conduct itself in full accordance with the requirements of the applicable permit: none.

B. The Contractor shall be responsible for meeting any bonding or insurance requirements which may be required as a condition to any permit, listed above.

1.3 PERMITS OBTAINED BY CONTRACTOR

A. The Contractor shall secure and pay the cost of any other permits not mentioned above, which may be required including but not limited to:

1. Work within City right-of-way permit.

2. Building permits.

1.4 WORK WITHIN A RAILROAD RIGHT OF WAY

A. No work within railroad right-of-way is anticipated as part of this project as designed.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

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

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SECTION 01420 - SPECIFICATION REFERENCE AND WORKS CONSULTED

PART 1 -- GENERAL

The references listed in this section are not all inclusive. There may be other references in individual specification sections that are not listed in this Section.

Portions of referenced specifications not specifically affected by the supplemented information of modification shall remain in effect as originally written.

It is the Contractor's responsibility to have these and all other referenced specifications listed in individual Sections available onsite and to be familiar with them.

1.1 ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE (EJCDC)

A. Documents with the EJCDC copyright notice in the footer are used in this Project Manual under a licensing agreement with EJCDC. The text of these documents has not been changed or modified by Bolton & Menk, Inc.

B. EJCDC documents were consulted in the creation of the Project Manual Sections listed below. These documents have been altered from the original EJCDC text and the EJCDC footer has been removed in compliance with the EJCDC license agreement. Those portions of the text that originated in copyrighted EJCDC documents remain subject to the EJCDC copyright.

1. 00100 – Advertisement for Bids
2. 00200 – Instructions to Bidders
3. 00410 – Bid Form
4. 00520 – Agreement
5. 00800 – Supplementary Conditions

1.2 SOIL DISTURBING ACTIVITIES

A. Minnesota Pollution Control Agency (MPCA) - General Storm Water Permit for Construction Activity (MN R100001) in force at the day of bid: http://www.pca.state.mn.us/water/stormwater/stormwater-c.html

1.3 WATERMAIN, SANITARY SEWER AND STORM SEWER CONSTRUCTION

A. "Standard Specifications" as published by the City Engineers Association of Minnesota, in force 30 calendar days prior to bid date: http://www.ceam.org

B. American Water Works Association (AWWA) Standards: http://www.awwa.org/

1.4 GRADING, STREET AND SURFACE IMPROVEMENTS

A. All of Divisions II and III, and any specifically referenced Division I sections of the Minnesota Department of Transportation (MnDOT), "Standard Specifications for Construction", together with all the Supplemental Specifications in force 30 calendar days prior to bid date: http://www.dot.state.mn.us/pre-letting/spec/

B. MnDOT Technical Memoranda in force 30 calendar days prior to bid date and referencing the use of English units of measure: http://www.dot.state.mn.us/design/tools/index.html

C. MnDOT Standard Plans: http://standardplans.dot.state.mn.us/

D. MnDOT Standard Details: http://standardplates.dot.state.mn.us/

E. Whenever the word "Contracting Authority," "Department" or "Owner" is used in the sense of ownership as part of any of the MnDOT Documents, it shall mean Owner as defined in the Agreement.

1.5 TRAFFIC CONTROL

A. The Minnesota Manual of Uniform Traffic Control Devices (MMUTCD) shall apply to this project and is available at: http://www.dot.state.mn.us/trafficeng/publ/mutcd/.

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B. The MnDOT's Temporary Traffic Control Zone Layouts Field available at: http://www.dot.state.mn.us/trafficeng/publ/fieldmanual/.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

A. The Contractor shall have access to the reference documents at the site at all times during the construction either in paper or digital format.

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

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SECTION 01425 - ABBREVIATIONS

PART 1 -- GENERAL

1.1 WHEREVER THE FOLLOWING ABBREVIATIONS ARE USED, THEY SHALL HAVE THE MEANINGS INDICATED:

A.	AASHTO	American Association of the State Highway and Transportation Officials
B.	ACI	American Concrete Institute
C.	AI	The Asphalt Institute
D.	ASTM	American Society for Testing and Materials
E.	AWWA	American Water Works Association
F.	CEAM	City Engineer's Association of Minnesota
G.	CLFMI	Chain Link Fence Manufacturers Institute
H.	MnDOT	Minnesota Department of Transportation
I.	OSHA	Occupational Safety and Health Administration
J.	PCA	Portland Cement Association or Minnesota Pollution Control Agency (context obvious)
K.	SWPPP	Storm Water Pollution Prevention Plan

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

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

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SECTION 01562 - AIR, LAND AND WATER POLLUTION

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary for the prevention of air, land and water pollution as indicated on the plans or as specified herein or as directed by the Engineer.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. Payment for the prevention of air and land pollution shall be incidental to the project and no separate compensation will be granted

2. Payment for all work associated with the prevention of water pollution and erosion control shall be incidental to the project and no separate compensation will be granted, unless payment for such work is specifically identified in Section 02370 "Erosion and Sediment Control" of this Project Manual.

B. SPECIFICATION REFERENCES

1. MnDOT 1717 shall apply to the prevention of air, land and water pollution.

2. MnDOT 2573 shall apply to storm water management.

3. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 GENERAL

A. The Contractor shall provide and maintain all sanitary accommodations for use by employees.

B. All solid waste material shall be disposed by the Contractor in accordance with the local and State solid waste disposal regulations.

3.2 DUST CONTROL

A. The Contractor shall perform dust control operations necessary to proactively prevent the production of dust in amounts to cause nuisance or damage to property, vegetation, animals, or persons in the vicinity of the construction.

B. The Contractor shall suspend construction or haul traffic when the Contractor cannot prevent airborne dust until such time as dust control can be re-established to the required levels.

C. The Contractor shall be responsible for any damage resulting from dust originating from the construction. The dust abatement measures shall be continued until the Contractor is relieved of further responsibility under these Contract provisions.

D. Requests by the Owner or Engineer for additional dust control shall be accomplished within 4 hours of notification and shall also include evenings and weekends as required or deemed necessary by the Owner or the Engineer. **Failure to perform the work requested within the 4 hours may result in the Owner or Engineer arranging for dust control by others. A contract deduction shall be made equal to the total of all costs to perform dust control so arranged, including not limited to labor, materials, equipment and administrative costs.**

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3.3 USE AND ONSITE STORAGE OF CHEMICALS AND HAZARDOUS MATERIALS

A. Examples of chemicals and hazardous materials covered by this section include but are not limited to fertilizer, pesticide, chemical flocculants, oil, diesel fuel, gasoline, hydraulic fluids, paint solvents, petroleum-based products, wood preservatives, additives, curing compounds, paint, and acids.

B. Use of chemicals and hazardous materials shall be in accordance with recommendations provided by the manufacturer or supplier.

C. All onsite storage shall be:

1. in a secured location that is protected from contact with stormwater and wind erosion, and

2. in sealed containers to prevent spills, leaks or other discharge

D. All disposal of chemicals and hazardous materials must be in accordance with the local and State waste disposal regulations including secondary containment as applicable.

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

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TECHNICAL SPECIFICATIONS

for

Webster Wetland Restoration

City of Elko New Market

Elko New Market, MN

SECTION 02210 - SUBSURFACE INVESTIGATION

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to conducting subsurface investigation as shown on the drawings, as specified herein, and/or as specified by the Engineer.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. The UNIT PRICE bid for EXPLORATORY EXCAVATION shall include all costs of labor, equipment and ultimate disposal required to complete the work, as specified.

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

1. Exploratory excavation without prior authorization and approval by the Engineer.
2. Exploratory excavation to locate and connect to existing pipes unless the Engineer agrees that excavation beyond what could be considered reasonable is required.
3. Materials for re-grouting of inverts.
4. All costs of off-site disposal of excess excavated material and debris including but not limited to hauling, fees, and permits for such disposal.

1.3 SPECIFICATION REFERENCES

A. MnDOT 2123 shall apply, except as modified herein.

B. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS

A. No exception to the referenced specification is made.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. The Contractor shall:

1. Perform underground utility exploration as directed by the Engineer which involves excavation to locate pipelines for location and elevation verification.
2. Clean debris and gravel which is present before the Project, out of existing manholes and catch basins along the Project and to regrout the inverts, as directed by the Engineer.
3. Other work associated with the Project, as directed by the Engineer.

B. Where exploratory excavation is performed in a location that will not be disturbed later, the backfill shall be placed and compacted to the density specified elsewhere in these Specifications for the type of utility located.

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

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SECTION 02220 - REMOVING PAVEMENT AND MISCELLANEOUS STRUCTURES

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the removal of pavement and miscellaneous structures as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. The UNIT PRICE bid for removing pavement and miscellaneous structures shall include all costs of labor, materials, equipment and ultimate disposal required to complete the work, as specified.

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

1. Saw cutting - bituminous and/or concrete, driveways, sidewalks, pavements, curb & gutter, and other impervious surfaces.
2. Removing storing and reinstalling mailboxes, street/traffic signs or similar structures which must be moved to construct the project.
3. Off-site disposal of excess excavated material and debris.
4. Removal and off-site disposal of bituminous or concrete, unless designated for salvaging.
5. Removing, salvaging and storing, or disposing of manhole and catch basin castings.
6. Loading, hauling, stockpiling and placing as directed (i.e., leveling) designated salvage items to a location directed by the Owner.
7. Fees and permits for the disposal of materials.
8. Removal and disposal of existing sanitary sewer pipe, storm sewer pipe, watermain, and service pipes.
9. Bulkheading the ends of existing pipes designated by the Engineer to be abandoned in place.
10. Protection from damage of structures or other surface improvements that are not to be removed, and subsequent repair and/or replacement if damaged by Contractor operations.

1.3 SPECIFICATION REFERENCES

A. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

B. MnDOT 2104 shall apply to the removal of pavement and miscellaneous structures, except as modified herein.

1.4 SUBMITTALS

A. No exception to the referenced specification is made.

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PART 2 -- PRODUCTS

2.1 NO EXCEPTION TO THE REFERENCED SPECIFICATION IS MADE.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. Remove existing bituminous, curb and gutter, walks, drives, steps and other specified items where shown on the plans and/or required for the construction of the project.

B. Saw cut bituminous and concrete surfaces prior to excavation, to produce a clean-cut breakage joint.

C. Dispose of all concrete and bituminous removal items, rubbish and debris outside of the construction zone. It shall be the Contractor's responsibility to secure all required permits and pay all fees associated with the disposal of the material and to secure the disposal site.

D. Remove existing mailboxes, street/traffic signs and similar structures that must be removed to construct the project. Restore these facilities to the original location or a location designated by the Owner, when work has progressed past the location of the structure.

E. The Contractor shall take full responsibility to protect structures or other surface improvements from damage that are not to be removed. If damage to these facilities occurs due to the construction of the project, the Contractor shall replace or repair them.

F. The Owner will designate which existing hydrants, valves and boxes, manhole castings and other items removed as part of the construction, are to be salvaged. All other items shall be disposed by the Contractor.

G. All existing watermain, sanitary sewer and storm sewer pipe being removed and replaced by new improvements shall be considered as debris and removed during the construction process.

H. Where existing pipes are to be abandoned in place, the pipe shall be filled with sand or flowable fill as noted on the plans. The exposed pipe ends shall be bulkheaded shut with a watertight non-shrink concrete grout at a thickness of not less than one pipe diameter.

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

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SECTION 02320 - TRENCH EXCAVATION, BEDDING AND BACKFILL

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to maintenance of utility service, trench excavation, bedding and backfill necessary for the construction of underground utilities and structures, as indicated on the drawings or as specified herein.

1.2 DEFINITIONS

A. Excess Material - Material that is not needed to complete the earthwork balance.

B. Suitable Material - Sand, silty sand or low plasticity clay soils with no organic content. The Engineer shall make the final determination as to what material will be considered suitable.

C. Unsuitable Material - Soil with organic content including topsoil, swamp deposits, peat, muck, or other material deemed by the Engineer to be unsuitable for fill or embankment construction.

D. Flexible Pipe Materials – For the purposes of this specification section, flexible pipe materials shall include the following:

1. Polyvinyl chloride (PVC) pipe – solid wall and profile wall pipe.
2. Polypropylene profile wall pipe.
3. High density polyethylene pipe – solid wall and profile wall pipe.
4. Corrugated steel or aluminum pipe.
5. Centrifugally cast, glass-fiber-reinforced, polymer mortar (CCFRPM) pipe.

E. Rigid Pipe Materials – For the purposes of this specification section, rigid pipe materials shall include the following:

1. Reinforced concrete pipe.
2. Reinforced concrete box culverts.
3. Ductile iron pipe.

1.3 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. Items specifically identified in the Schedule of Unit Prices will be compensated in accordance with the description of measurement and payment contained in the section applicable to the individual item. Otherwise, no direct compensation shall be granted for compliance with the provisions contained herein.

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

1. Interference with other above and underground structures and utilities.
2. The removal and restoration, or protection of existing structures and utilities that are shown on the plans and for which there is no bid item for removing and restoring, or working around the utility.
3. Unless separately itemized in the Schedule of Unit Prices, any dewatering necessary for construction.
4. Foundation materials placed in lieu of performing necessary dewatering.

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5. Bulkheading of existing pipes to be abandoned in place.
6. Granular foundation, granular bedding and granular encasement materials.
7. Granular foundation materials used in lieu of bedding materials in the specified bedding zone, where specified.
8. Granular foundation materials used in unstable trench conditions.
9. The removal and disposal of native materials that are unsuitable for bedding and/or backfill.
10. Providing and maintaining utility service.
11. The replacement of all material displaced due to shrinkage or loss during the excavation and backfilling operations.
12. The removal of excess materials above the original topography the resulting from the additional volume created from pipe bedding, utility pipe, and/or underground structures.
13. Delays due to other utility conflicts that result during the course of construction.
14. Protecting existing improvements and previously accepted elements of this construction from damage.
15. Protecting the inverts of other utility pipes from the accumulation of debris and soil, the removal of blockages that threaten to damage property, and/or the cleaning of both the newly constructed lines and the existing lines of all debris and soil that accumulated during the construction.
16. If a separate bid item for bypass pumping is NOT included in the Schedule of Unit Prices, providing temporary bypass pumping / control of storm water flows around the construction zone, include in the price bid for the associated items being installed.
17. The use of special construction techniques such as trench boxes, sheeting, shoring, etc., include in the price bid for the associated items being installed.
18. Compaction testing and compaction, if required, include in the price bid for the associated items being installed.

1.4 SPECIFICATION REFERENCES

A. Reference CEAM 2600 shall apply to excavating, installing bedding and backfilling all trench excavation construction necessary for the completion of work, except as modified herein.

1. All references to MnDOT specifications shall mean the specific edition, including Supplemental Specifications and Technical Memoranda as identified in Section 01420 “Specification Reference” of this Project Manual.
2. CEAM 2600.3.A5 Removal of Surface Improvements - All rubble and debris to be disposed of off-site, shall be disposed of at a location secured by the Contractor and in a manner in compliance with applicable Local, State and Federal regulations.
3. CEAM 2600.3.B3 Excavation Limits and Requirements - OSHA limitations shall also apply to the top of trench width determination. The 7-day written notice is waived if changing soil conditions and OSHA compliance apply.
4. CEAM 2600.3.C Trenchless Pipe Installation is hereby deleted. If trenchless pipe installation is included in this project, refer to applicable specification sections in these specifications
5. CEAM 2600.4 Method of Measurement Paragraphs B and C are hereby deleted. See applicable sections of these Specifications.
6. CEAM 2600.5 Basis of Payment – The last three paragraphs of 2600.5 are hereby deleted. See applicable sections of these Specifications.

B. MnDOT 2451 shall apply to granular materials for foundation, bedding and encasement of utility line construction, except as modified herein.

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C. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

1.5 SUBMITTALS

A. No exception to the referenced specification is made.

PART 2 -- PRODUCTS

2.1 GRANULAR MATERIALS

A. Granular Bedding and Granular Encasement – No exception to the referenced specification is made.

B. Granular Backfill - No exception to the referenced specification is made.

PART 3 -- EXECUTION

3.1 EXCAVATION AND PREPARATION OF TRENCH

A. Interference and Protection of Underground Structures

1. If an existing utility is shown on the plans and there is no bid item for removing and restoring, or working around the utility, the Contractor shall be required to remove and restore, or protect the utility.

2. The inverts of existing sewers (storm & sanitary), culverts, subdrains, etc. shall be protected during construction. The Contractor is responsible to inspect and clean, if necessary, all lines which have become compromised by the construction operations.

B. Excavation Limits and Requirements

1. The trench for all flexible pipe shall be undercut 6.0-inches below the pipe barrel to permit the installation of granular bedding or foundation material.

2. The trench for all rigid pipe shall be undercut three-inches below the pipe barrel, or as shown in the bedding detail, to permit the installation of granular bedding or foundation material.

3. The Contractor shall install and operate a dewatering system to maintain all trenches free of water wherever necessary. The Contractor shall make his own subsurface investigations and determine what dewatering methods to utilize to prevent such damage.

4. The Contractor shall be responsible for any damage to adjacent structures or buildings caused by the dewatering operations

5. Use of granular foundation material in lieu of performing dewatering is permitted.

6. All suitable excess excavated material shall remain the property of the Owner and shall be loaded, hauled, placed and compacted at a site chosen by the Owner within 2 miles of the site. All unsuitable excess excavated material, with the exception of topsoil shall become the property of the Contractor and shall be removed from the site and disposed of at a site secured by the Contractor.

3.2 INSTALLATION OF PIPE AND FITTINGS

A. The Contractor shall keep accurate records as to the location of the service connections, field tile, utility crossings, etc. either constructed or encountered during the construction Measurements to service lines shall be taken from the two nearest permanent structures (i.e., hydrants, valves, manholes, buildings). Final payment for the project will not be made until the information is in the possession of the Owner.

B. When connection to an existing conduit is required at an existing or proposed manhole, the Contractor shall expose and verify the elevation of the existing conduit prior to laying any pipe toward, or away from, the connection point. If the elevation of the existing conduit does not match the elevation shown on the plans, the Contractor shall notify the Engineer, at which time the Engineer may adjust the proposed grades.

C. Sewer Pipe at Structures

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1. The pipe end(s) shall be extended inside the structure a maximum of 3.0-inches unless approved otherwise by the Engineer or shown on the plans.

D. Connection and Assembly of Joints

1. For sanitary sewer, watermain, forcemains, and culverts, all joints shall be water tight.

2. For storm sewers and subdrains, all joints shall not permit the intrusion of soil or backfill materials.

(a) If reinforced concrete pipe is used, the Contractor may at its own discretion choose to wrap each joint with a geotextile filter fabric, as specified, rather than place mastic in the joint.

E. Bulkheading Open Pipe Ends

1. The Contractor shall furnish, install and maintain a temporary, water-tight plug adequately blocked in place to prevent flooding of the existing downstream sewer system. The plug shall be placed at the beginning of the project or at the end of each working day at the end of the day's operation.

2. When flows are diverted from an existing sewer or tile to be abandoned in place, the Contractor shall construct a water-tight plug on the open end of the abandoned pipe.

3. Permanent watertight plugs shall be constructed with concrete grout with a thickness of not less than 1 pipe diameter.

3.3 BEDDING AND BACKFILLING OPERATIONS

A. Backfill material around all manholes, catch basins, valve boxes, curb boxes, and hydrants shall be compacted with hand machines. The maximum lift thickness shall be 6-inches.

B. Flexible Pipe Materials

1. Unless otherwise shown on the plans, the pipe shall be bedded and backfilled with granular material compacted to 95 percent Standard Proctor Density or as recommended by the pipe manufacturer, whichever is denser, from 6.0-inches below the bottom of the pipe to 12.0-inches above the top of the pipe the full width of the trench. The Contractor shall bed and backfill the pipe as shown on the plan details.

2. Where the trench foundation has been found to be unstable and not suitable for bedding, the trench shall be undercut until acceptable conditions are found. The Contractor shall then install compacted foundation material to meet the line and grade specified on the plan.

3. Unless otherwise shown on the plans, select native material may be used as a trench backfill above the granular bedding up to the bottom of the subgrade except in those conditions where the top of the pipe is less than 12-inches from the bottom of the subgrade in which case granular material compacted to 100 percent Standard Proctor Density shall be used as trench backfill the full width of the trench to the bottom of the subgrade excavation zone.

C. Rigid Pipe Materials

1. Unless otherwise shown on the plans, in ordinary or stable trench conditions, the bottom of the trench shall be first excavated to a depth of approximately 15 percent of the outside pipe diameter below the established grade for the bottom of the pipe. Then the bottom of the trench shall be further excavated to allow for the placement of 6.0-inches of granular bedding for a width of at least 60 percent of the outside diameter of the pipe. Pipe shall be placed on the bottom of the pre-shaped excavated trench. The bottom of the excavated trench shall be shaped to fit the circumference of the pipe up to 0.15 of the outside diameter of the pipe. The Contractor shall encase the pipe from the 0.15 outside diameter to the 0.60 diameter height of the pipe with granular material compacted to 95 percent Standard Proctor Density or as recommended by the pipe manufacturer, whichever is denser.

2. Where the trench foundation has been found to be unstable and not suitable for bedding, the trench shall be undercut until acceptable conditions are found. The Contractor shall then install compacted foundation material to meet the line and grade specified on the plan.

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3. Unless otherwise shown on the plans, select native material may be used as trench backfill above the granular bedding up to the bottom of the subgrade except in those conditions where the top of the pipe is less than 12.0-inches from the bottom of the subgrade in which case granular material compacted to 100 percent Standard proctor Density shall be used as trench backfill the full width of the trench to the bottom of the subgrade excavation zone.

D. Structures

1. All manholes, catch basins, valve boxes, water vaults, headwalls and miscellaneous structures shall be backfilled with granular backfill material and shall be compacted with a hand operated motorized compactor.

E. All trench backfill shall be compacted in accordance with the Quality Compaction Method.

3.4 SOURCE QUALITY CONTROL

A. The Contractor shall arrange for having the following testing performed:

1. One gradation test per each 500 tons or 275 cubic yards (CV) of granular materials.

3.5 FIELD QUALITY CONTROL

A. No exception to the referenced Specification is made.

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

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

PART 1 -- GENERAL

1.1 SUMMARY

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

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

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

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

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

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

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

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

(d) The Contractor shall phase construction to minimize erosion and sediment potential during the project.

1.2 METHOD OF MEASUREMENT AND PAYMENT

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

1. Payment for all work associated with Erosion and Sediment Control shall be at the contract price bid and shall be considered full compensation for furnishing, installing, maintaining and utilizing storm water best management practices and any work specified in conjunction therewith as well as removing temporary sediment control devices when no longer necessary, except for storm water management devices identified for individual payment in the bidding schedule.

2. Eighty percent of payment shall be made upon installation. The remaining 20 percent shall be made upon complete removal of the control measure, removal of any accumulated sediment and surface restoration.

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

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

2. Sweeping adjacent streets clean of excess soil.

3. Cleaning storm sewers, drain tiles and culverts that have been partially or completely obstructed by sediment that originated from the site.

4. Geotextile fabric for rock installation.

5. Emergency erosion control mobilization.

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6. Construction, maintenance and removal of rock construction entrance.
7. Changing the type of inlet protection for different phases of construction.

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

1.3 SPECIFICATION REFERENCES

A. MnDOT 2573 – Stormwater Management.

B. MnDOT 2574 – Soil Preparation

C. MnDOT 2575 – Establishing Turf and Controlling Erosion

D. MnDOT 1717 – Air, Land and Water Pollution

E. Section 02920 - Turf Restoration of this Project Manual shall apply to Rapid Stabilization. In the absence of Section 02920, MnDOT 2575, method 3 shall apply.

F. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS

A. Bale checks shall not be used.

B. Where type and rate of seed, fertilizer, and mulch are not designated on the plans or elsewhere in the specifications, the MnDOT Seed Mix and Turf Establishment recommendations for the district where the project is located shall apply except that the seeding rate shall be 1.5 times the MnDOT indicated rate.

PART 3 -- EXECUTION

3.1 GENERAL

A. Construction and/or installation of all appropriate erosion & sediment control devices shall be completed prior to any soil disturbing activities.

B. Prior to construction, the Contractor shall observe and document the existing storm water outfall system and discharge area. Sediment deposits not documented prior to the construction may be assumed to have originated from the project site and shall be required to remove and dispose of by the Contractor.

C. Exit areas and connected roads shall be kept clean of tracking and sediment release from the site. All material shall be cleaned up the sooner of within 24 hours of discovery or the end of each business day. Washing or sweeping of material into the storm sewer system shall not be allowed.

3.2 CONSTRUCTION REQUIREMENTS

A. The Contractor shall control drainage, erosion, and sediment on the project including: haul roads, temporary construction, waste disposal sites, plant and storage locations, and borrow pits, other than commercially operated sources.

B. If Contractor fails to install, maintain, and/or perform the appropriate erosion and sediment control practices, as determined by the Engineer, the Engineer may issue a written notice to the Contractor. Contractor shall correct the cause and alleviate all sediment deposition to the fullest extent possible within the timeframe in the written notice.

C. Contractor shall be responsible for removing all sediment deposits including, but not limited to, drainage ways, stormwater basins, or catch basins and re-stabilize the areas where sediment removal results in exposed soil. The removal and stabilization shall take place within 7 calendar days of discovery unless precluded by legal, regulatory, or physical access restraints, regardless if a written notice has been issued by the Engineer. If precluded, removal and stabilization must take place within 7 calendar days of obtaining access. The Contractor is responsible for contacting all local, regional, State, and Federal authorities and property owners and obtaining applicable rights of entry, approvals, and/or permits.

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D. **A contract deduction shall be made equal to the total of all costs incurred by the Owner due to failure of the Contractor to take corrective action within the required timeframe(s). Such costs include but are not limited to: labor, materials, equipment and administrative costs.**

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

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SECTION 02630 - PIPE SEWERS - STORM

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to storm sewer construction as indicated on the drawings or as specified herein.

1.2 METHODS

A. Trenchless Installation – not applicable for this project.

1.3 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. Manholes

(a) Payment for all manholes shall be at the unit price bid per LINEAR FOOT of structure as measured from the invert of the outlet pipe to the top of the manhole casting. The amount bid includes all work and material required to complete the structure. Casting assemblies shall be paid separately for each assembly furnished and installed.

2. Catch Basins

(a) Payment for all catch basins shall be at the unit price bid per LINEAR FOOT of structure as measured from the invert of the outlet pipe to the flow line of the catch basin casting. The amount bid includes all work and material required to complete the structure. Casting assemblies shall be paid separately for each assembly furnished and installed.

3. Casting Assemblies

(a) Casting assemblies shall be measured per EACH, complete in place and paid at the unit price bid.

(b) Chimney Seal

(c) Chimney seals shall be measured per EACH structure, furnished and installed, for the type and style indicated and paid at the unit price bid. The amount bid includes all work and materials required to place the chimney seal from the top of the precast concrete structure to the middle of the casting.

4. Sewer Pipe

(a) No exception to the referenced specification is made.

5. Aprons

(a) No exception to the referenced specification is made.

6. Connect to Existing Storm Manhole

(a) Payment for connecting a new storm sewer to an existing storm manhole shall be measured and paid per EACH, as specified in the Schedule of Unit Prices, complete and in place, at the appropriate unit price bid. The amount bid shall include removing the existing storm sewer pipe, enlarging the hole, removing the bench and reshaping the invert, if necessary to fit the proposed storm sewer pipe.

7. Raise / Lower Existing Manhole

(a) Payment for raising or lowering an existing manhole shall be measured and paid per lineal foot based on the vertical difference between the existing and final rim elevations. The payment shall include all cost of labor, materials and equipment required to complete the work.

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

1. Locating and connecting to an existing storm sewer, include in the price bid for storm sewer.
2. The costs of furnishing bends, adapters, cutting and removing the existing storm sewer pipe, include in the price bid for storm sewer.
3. Locating and connecting to an existing storm sewer service laterals, include in the price bid for service connections.
4. Use of geotextile fabric to wrap pipe joints in lieu of using mastic, include in the price bid for storm sewer.
5. Maintenance of an appropriate storm water outlet during construction, include in the price bid for storm sewer.
6. The cost of all labor, equipment and materials necessary for testing of storm sewer, if required, included in the price bid for storm sewer.
7. If a separate bid item for bypass pumping is NOT included in the Schedule of Unit Prices, providing temporary bypass pumping / control of storm water flows around the construction zone, include in the price bid for the associated sewer items.
8. If the sewer is to be installed inside a casing pipe, furnishing and placing the carrier pipe, carrier pipe support materials, sand fill and grout seals, include in the unit price bid for sewer.
9. Furnishing and installing underground utility location system, include in the price bid for sewer

1.4 SPECIFICATION REFERENCES

A. MnDOT 2506 shall apply to manholes, catch basins and castings, except as modified herein.

B. Reference Section 02320 “Trench Excavation, Bedding and Backfill” of this Project Manual.

C. Reference Section 02446 “Trenchless Pipeline” of this Project Manual.

D. CEAM 2621 shall apply to construction of pipe sewers, except as modified herein.

E. MnDOT 2503 shall apply to measurement and payment of pipe sewers, except as modified herein.

F. MnDOT Standard Plates Manual with latest revisions.

G. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 OPEN CUT SEWER PIPE AND FITTINGS

A. Reinforced Concrete Pipe (MnDOT 3236)

1. No exception to the referenced specification is made.

B. Solid Wall Polyvinyl Chloride (PVC) Pipe (MnDOT 3245) (Thermoplastic, TP)

1. 4.0-inch through 15.0-inch Diameters: Smooth-walled polyvinyl chloride pipe and fittings shall conform with the requirements of ASTM D3034 for the Standard Dimension Ratio (SDR) of 35.
2. Over 15.0-inch Diameters: Smooth-walled polyvinyl chloride pipe and fittings shall conform with the requirements of ASTM F679 with a minimum wall thickness for a minimum pipe stiffness of 46.
3. The connection shall be push-on with elastomeric gasketed joints, which are bonded to the inner walls of the gasket recess of the bell socket.

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4. The pipe grade used shall be resistant to aggressive soil and corrosive substances in accordance with the requirements of ASTM D543.

C. Corrugated Polyethylene (CP) Pipe and Fittings (MnDOT 3247)

1. Smooth interior and corrugated exterior polyethylene pipe and fittings (diameters through 36-inches) shall conform to the requirements of AASHTO M294 or ASTM F2648 and MnDOT 3247. All joints shall be installed using an approved watertight sleeve with gaskets meeting the requirements of ASTM F477.

D. Flexible Pipe Jointing

1. Pipe joints for solid wall and profile wall polyvinyl chloride (PVC) pipe shall be in accordance with ASTM 3212 - 89. This includes the flexible elastomeric seals being rated at sustaining an internal pressure of 10.8 psi for 10 minutes.

2. Pipe joints for high density polyethylene (HDPE) pipe shall be in accordance with ASTM D3261.

E. Corrugated Steel (CS) Pipe (MnDOT 3226)

1. No exception to the referenced specification is made.

2.2 MANHOLES & CATCH BASINS

A. Precast Concrete Manholes and Catch Basin Section

1. Storm sewer manholes shall conform to the MnDOT Standard for the design type shown on the plans.

2. Reinforced polypropylene plastic steps shall be furnished for all storm sewer manholes 8.0-feet or more in depth.

B. Castings

1. All casting assemblies shall meet the certification requirements of the Minnesota Department of Transportation and be manufactured by a MnDOT approved source.

2. The type of casting assembly to be used shall be Neenah R-17330067 lid with R-17332007 frame, unless otherwise specified on the plan.

3. The type of casting assembly to be used shall be Neenah R-1733 solid lid with two concealed pickholes and 2.0-inch raised letters stamped “STORM SEWER”. The frame shall be Neenah R-1733.

4. The Type of curb and gutter catch basin casting assembly to be used shall be Neenah R-3067-V (Vane Grate).

5. The type of non-street / rear yard inlet casting assembly to be used shall be Neenah R-4342 stool grate.

C. Adjusting Rings

1. Ladtech H.D.P.E. adjusting rings are approved as an alternate to concrete adjusting rings.

D. Chimney Seal

1. Chimney seals accepted for use, when shown in the plans, shall be one of the following listed as standard of quality:

(a) Infi-Shield (exterior only)

E. Cretex (exterior or interior)

2.3 GEOTEXTILE FABRIC

A. MnDOT 3733, Type I, non-woven for use in wrapping joints in storm sewer.

PART 3 -- EXECUTION

3.1 MANHOLE AND CATCH BASIN STRUCTURES

A. Raise / Lower Existing Structure

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1. Raising and/or lowering an existing manhole to meet a proposed finished rim elevation is performed when the addition and/or deletion of 2.0-inch adjusting rings will not reach a minimum of 2 rings or exceed a maximum of 6 rings. Typically, it will require: the removal of the manhole cone section or the concrete slab top; the addition, removal, or exchange of barrel sections; the replacement of the cone section or the concrete slab top; the installation of the proper number of adjusting rings; and the replacement of the manhole casting and frame.

B. Miscellaneous Work

1. If concrete adjusting rings are used, plaster all manhole adjusting rings installed inside and out, with a minimum thickness of ½-inch of mortar. A maximum of 3 individual adjusting rings shall be used. Taller 6.0-inch or 12.0-inch rings shall be used where adjustment requires more than three 2.0-inch rings.

2. If HDPE adjusting rings are used, the sealant material and method shall be in accordance with manufacturer's recommendations.

3.2 FIELD QUALITY CONTROL

A. Deflection test - No exception to the referenced specification is made.

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

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APPENDIX

SEWER/WATER UTILITY – TRACER WIRE SPECIFICATION

Minnesota Rural Water Association

Webster Wetland Restoration

Elko New Market, MN

Sewer/Water Utility - Trace Wire Specification

Materials

General

All trace wire and trace wire products shall be domestically manufactured in the U.S.A.

All trace wire shall have HDPE insulation intended for direct bury, color coated per APWA standard for the specific utility being marked.

Trace wire

- **Open Trench -** Trace wire shall be #12 AWG Copper Clad Steel, High Strength with minimum 450 lb. break load, with minimum 30 mil HDPE insulation thickness.
- **Directional Drilling/Boring -** Trace wire shall be #12 AWG Copper Clad Steel, Extra High Strength with minimum 1,150 lb. break load, with minimum 30 mil HDPE insulation thickness.
- **Trace wire – Pipe Bursting/Slip Lining -** Trace wire shall be 7 x 7 Stranded Copper Clad Steel, Extreme Strength with 4,700 lb. break load, with minimum 50 ml HDPE insulation thickness.

Connectors

- All mainline trace wires must be interconnected in intersections, at mainline tees and mainline crosses. At tees, the three wires shall be joined using a single 3-way lockable connector. At Crosses, the four wires shall be joined using a 4-way connector. Use of two 3-way connectors with a short jumper wire between them is an acceptable alternative.
- **Direct bury wire connectors** – shall include 3-way lockable connectors and mainline to lateral lug connectors specifically manufactured for use in underground trace wire installation. Connectors shall be dielectric silicon filled to seal out moisture and corrosion, and shall be installed in a manner so as to prevent any uninsulated wire exposure.
- Non locking friction fit, twist on or taped connectors are prohibited.

Termination/Access

- All trace wire termination points must utilize an approved trace wire access box (above ground access box or grade level/in-ground access box as applicable), specifically manufactured for this purpose.
- All grade level/in-ground access boxes shall be appropriately identified with “sewer” or “water” cast into the cap and be color coded.
- A minimum of 2 ft. of excess/slack wire is required in all trace wire access boxes after meeting final elevation.
- All trace wire access boxes must include a manually interruptible conductive/connective link between the terminal(s) for the trace wire connection and the terminal for the grounding anode wire connection.
- Grounding anode wire shall be connected to the identified (or bottom) terminal on all access boxes.

This Standard specification was prepared by Joe Rubbelke (joe.rubbelke@gmail.com), Jeff Dale (jeff.dale@mrwa.com) and Frank Stuemke (frank.stuemke@mrwa.com), and is a work-in-progress, intended for redistribution, modification and immediate use by any municipality (March 2014). The end user must accept all liabilities and hold harmless the contributors of this information.

Sewer/Water Utility - Trace Wire Specification

- **Service Laterals on public property** - Trace wire must terminate at an approved grade level/in-ground trace wire access box, located at the edge of the road right-of-way, and out of the roadway.
- **Service Laterals on private property** - Trace wire must terminate at an approved above-ground trace wire access box, affixed to the building exterior directly above where the utility enters the building, at an elevation not greater than 5 vertical feet above finished grade, or terminate at an approved grade level/in-ground trace wire access box, located within 2 linear feet of the building being served by the utility.
- **Hydrants** – Trace wire must terminate at an approved above-ground trace wire access box, properly affixed to the hydrant grade flange. (affixing with tape or plastic ties shall not be acceptable)
- **Long-runs, in excess of 500 linear feet without service laterals or hydrants** - Trace wire access must be provided utilizing an approved grade level/in-ground trace wire access box, located at the edge of the road right-of-way, and out of the roadway. The grade level/in-ground trace wire access box shall be delineated using a minimum 48" polyethylene marker post, color coded per APWA standard for the specific utility being marked.

Grounding

- Trace wire must be properly grounded at all dead ends/stubs
- Grounding of trace wire shall be achieved by use of a drive-in magnesium grounding anode rod with a minimum of 20ft of #12 red HDPE insulated copper clad steel wire connected to anode (minimum 1.5 lb.) specifically manufactured for this purpose, and buried at the same elevation as the utility.
- When grounding the trace wire at dead ends/stubs, the grounding anode shall be installed in a direction 180 degrees opposite of the trace wire, at the maximum possible distance.
- When grounding the trace wire in areas where the trace wire is continuous and neither the mainline trace wire or the grounding anode wire will be terminated at/above grade, install grounding anode directly beneath and in-line with the trace wire. Do not coil excess wire from grounding anode. In this installation method, the grounding anode wire shall be trimmed to an appropriate length before connecting to trace wire with a mainline to lateral lug connector.
- Where the anode wire will be connected to a trace wire access box, a minimum of 2 ft. of excess/slack wire is required after meeting final elevation.

<u>Installation</u>

General

- Trace wire installation shall be performed in such a manner that allows proper access for connection of line tracing equipment, proper locating of wire without loss or deterioration of low frequency (512Hz) signal for distances in excess of 1,000 linear feet, and without distortion of signal caused by multiple wires being installed in close proximity to one another.
- Trace wire systems must be installed as a single continuous wire, except where using approved connectors. No looping or coiling of wire is allowed.

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Sewer/Water Utility - Trace Wire Specification

- Any damage occurring during installation of the trace wire must be immediately repaired by removing the damaged wire, and installing a new section of wire with approved connectors. Taping and/or spray coating shall not be allowed.
- Trace wire shall be installed at the bottom half of the pipe and secured (taped/tied) at 5' intervals.
- Trace wire must be properly grounded as specified.
- Trace wire on all service laterals/stubs must terminate at an approved trace wire access box located directly above the utility, at the edge of the road right-of-way, but out of the roadway. (See Trace wire Termination/Access)
- At all mainline dead-ends, trace wire shall go to ground using an approved connection to a drive-in magnesium grounding anode rod, buried at the same depth as the trace wire. (See Grounding)
- Mainline trace wire shall not be connected to existing conductive pipes. Treat as a mainline dead-end, ground using an approved waterproof connection to a grounding anode buried at the same depth as the trace wire.
- All service lateral trace wires shall be a single wire, connected to the mainline trace wire using a mainline to lateral lug connector, installed without cutting/splicing the mainline trace wire.
- In occurrences where an existing trace wire is encountered on an existing utility that is being extended or tied into, the new trace wire and existing trace wire shall be connected using approved splice connectors, and shall be properly grounded at the splice location as specified.

Sanitary Sewer System

- A mainline trace wire must be installed, with all service lateral trace wires properly connected to the mainline trace wire, to ensure full tracing/locating capabilities from a single connection point.
- Lay mainline trace wire continuously, by-passing around the outside of manholes/structures on the North or East side.
- Trace wire on all sanitary service laterals must terminate at an approved trace wire access box color coded green and located directly above the service lateral at the edge of road right of way.

Water System

- A mainline trace wire must be installed, with all service lateral trace wires properly connected to the mainline trace wire, to ensure full tracing/locating capabilities from a single connection point.
- Lay mainline trace wire continuously, by-passing around the outside of valves and fittings on the North or East side.
- Trace wire on all water service laterals must terminate at an approved trace wire access box color coded blue and located directly above the service lateral at the edge of road right of way.
- Above-ground tracer wire access boxes will be installed on all fire hydrants.
- All conductive and non-conductive service lines shall include tracer wire.

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Sewer/Water Utility - Trace Wire Specification

Storm Sewer System

This section shall be included at the discretion of the facility owner.

- If the storm sewer system includes service laterals for connection of private drains and tile lines, it shall be specified the same as a sanitary sewer application.
- Lay mainline trace wire continuously, by-passing around the outside of manholes/structure on the North or East side.

Prohibited Products and Methods

The following products and methods shall not be allowed or acceptable

- Uninsulated trace wire
- Trace wire insulations other than HDPE
- Trace wires not domestically manufactured
- Non locking, friction fit, twist on or taped connectors
- Brass or copper ground rods
- Wire connections utilizing taping or spray-on waterproofing
- Looped wire or continuous wire installations, that has multiple wires laid side-by-side or in close proximity to one another
- Trace wire wrapped around the corresponding utility
- Brass fittings with trace wire connection lugs
- Wire terminations within the roadway, i.e. in valve boxes, cleanouts, manholes, etc.
- Connecting trace wire to existing conductive utilities

Testing

All new trace wire installations shall be located using typical low frequency (512Hz) line tracing equipment, witnessed by the contractor, engineer and facility owner as applicable, prior to acceptance of ownership.

This verification shall be performed upon completion of rough grading and again prior to final acceptance of the project.

Continuity testing in lieu of actual line tracing shall not be accepted.

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Sewer/Water Utility - Trace Wire Specification

Products

The following products have been deemed acceptable and appropriate. These products are a guide only to help you choose the correct applications for your tracer wire project.

- Copper clad Steel (CCS) trace wire
  - Open Trench – Copperhead #12 High Strength part # 1230*-HS**
  - Directional Drilling/Boring - Copperhead Extra High Strength part # 1245*-EHS**
  - Pipe Bursting/Slip Lining – Copperhead SoloShot Extreme Strength 7 x 7 Stranded part # PBX-50*-**
    - * Denotes color: B=Blue, G-Green, P=Purple
    - **Denotes spool size. 500' 1000' 2500'
- Connectors
  - Copperhead 3-way locking connector part # LSC1230*
  - DryConn 3- way Direct Bury Lug: Copperhead Part # 3WB-01
- Termination/Access
  - Non-Roadway access boxes applications: Trace wire access boxes Grade level Copperhead adjustable lite duty Part # LD14*TP
  - Concrete / Driveway access box applications: Trace wire access boxes Grade level Copperhead Part # CD14*TP 14"
  - Fire hydrant trace wire access box applications: Above ground two terminal Cobra Test Station, denoting "F" includes hydrant mounting flange. Copperhead part # T2*-FLPKG-5/8 to fit hydrants with 5/8" bolts and T2*-FLPKG-3/4 to fit hydrants with ¾" b olts.
- Grounding
  - Drive in Magnesium Anode: Copperhead Part # ANO-12 (1.5 lb)

Manufacture product options:

The information provided by Copperhead Industries gives you product options to help you choose the correct wire – termination/access points – connectors and grounding products. Other manufactures provide these products; this information is only a guide.

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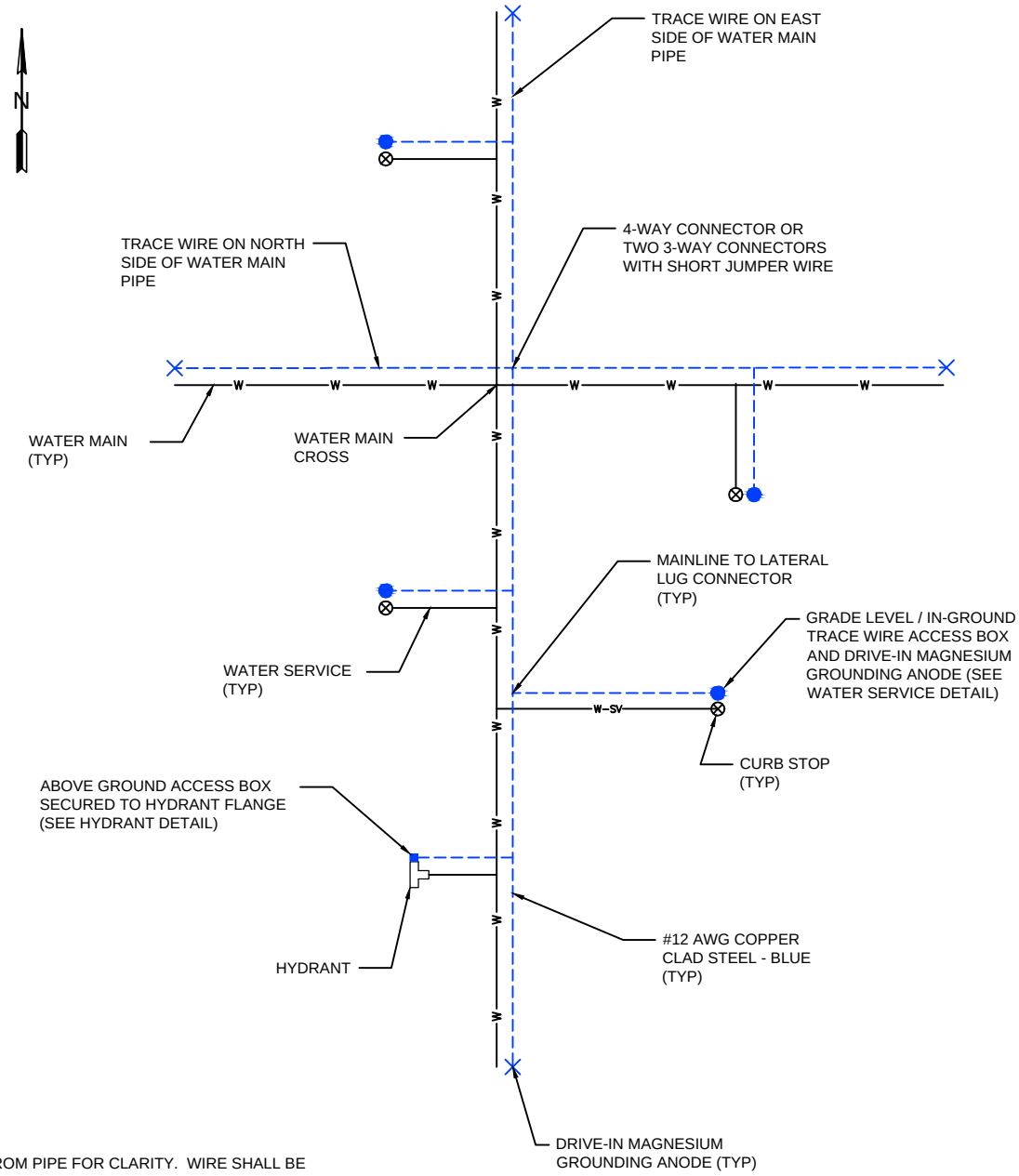

NOTES:

1. WIRE SHOWN AWAY FROM PIPE FOR CLARITY. WIRE SHALL BE INSTALLED ON THE BOTTOM SIDE OF THE PIPE BELOW THE SPRING LINE. THE WIRE SHALL BE FASTENED TO THE PIPE WITH TAPE OR PLASTIC TIES AT 5' INTERVALS.

TRACE WIRE PLAN (WATER)

NO SCALE

MINNESOTA RURAL WATER ASSOCIATION
STANDARD DETAIL

TRACE WIRE
SAMPLE WATER PLAN

May 28, 2014

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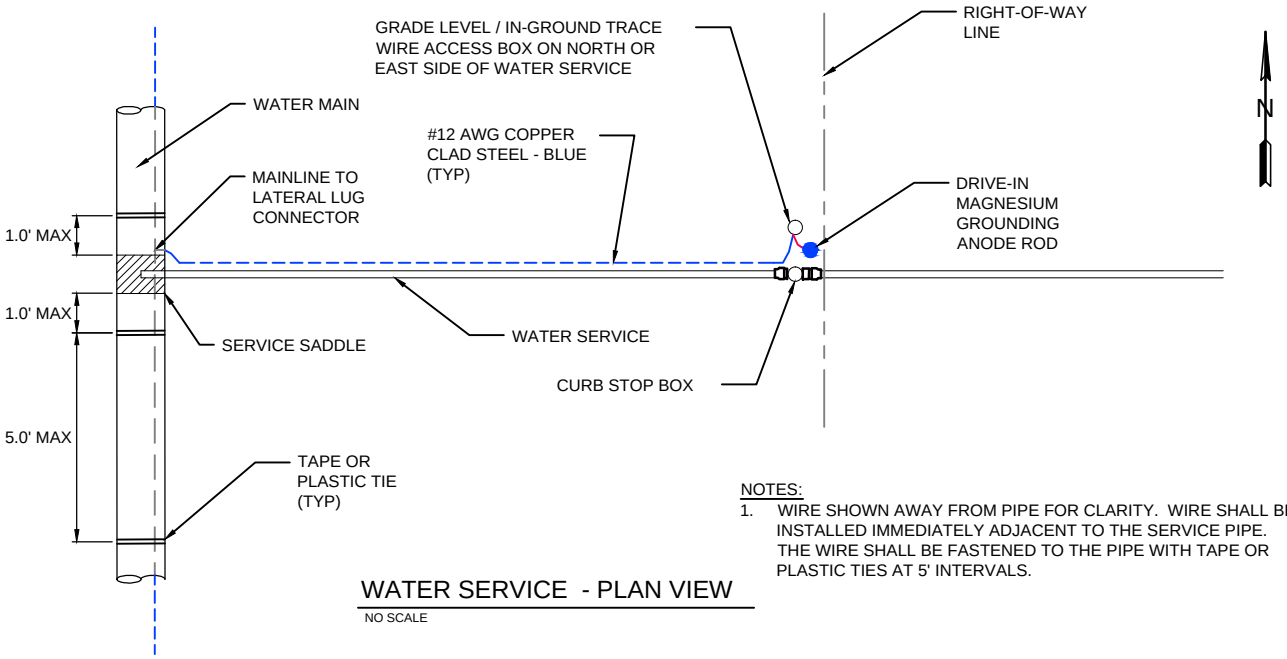
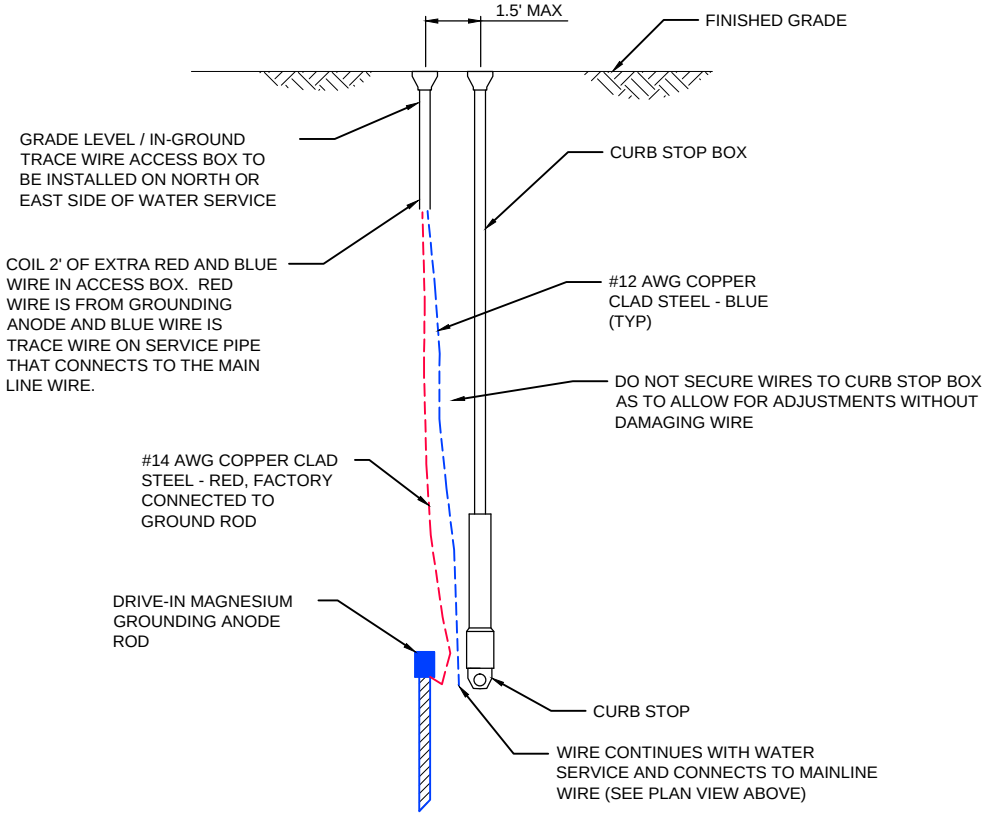


NOTES:

1. WIRE SHOWN AWAY FROM PIPE FOR CLARITY. WIRE SHALL BE INSTALLED IMMEDIATELY ADJACENT TO THE SERVICE PIPE. THE WIRE SHALL BE FASTENED TO THE PIPE WITH TAPE OR PLASTIC TIES AT 5' INTERVALS.

WATER SERVICE - PLAN VIEW

NO SCALE



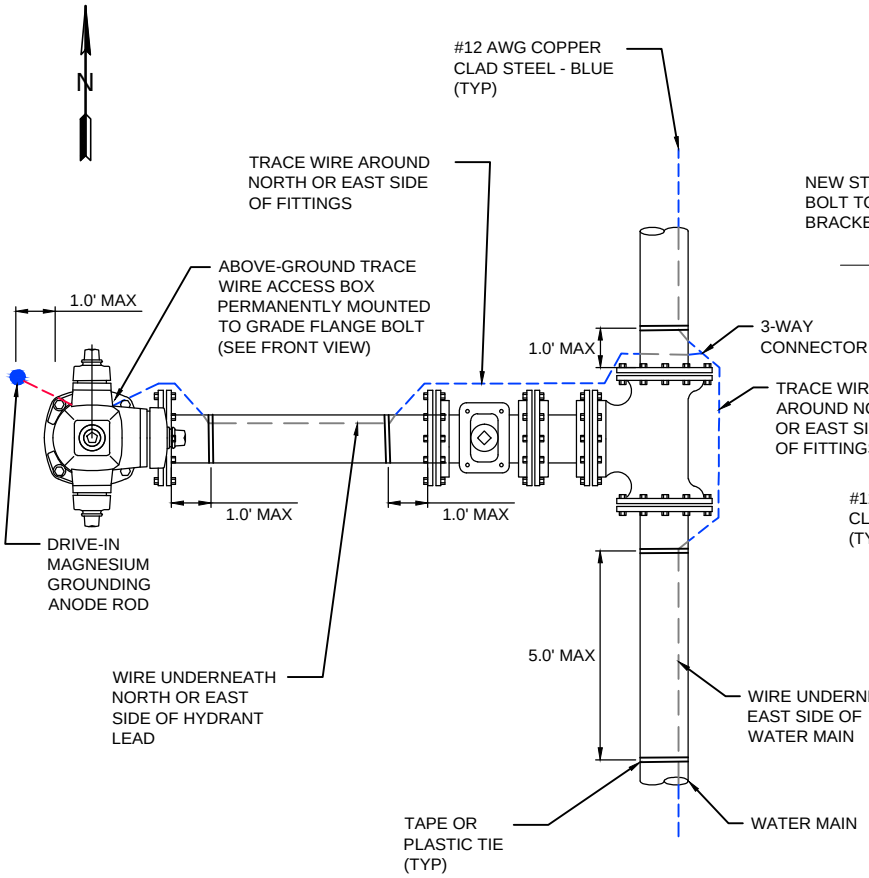
WATER SERVICE - SECTION VIEW

NO SCALE

MINNESOTA RURAL WATER ASSOCIATION
STANDARD DETAIL

TRACE WIRE
WATER SERVICE DETAIL

May 28, 2014



HYDRANT - PLAN VIEW

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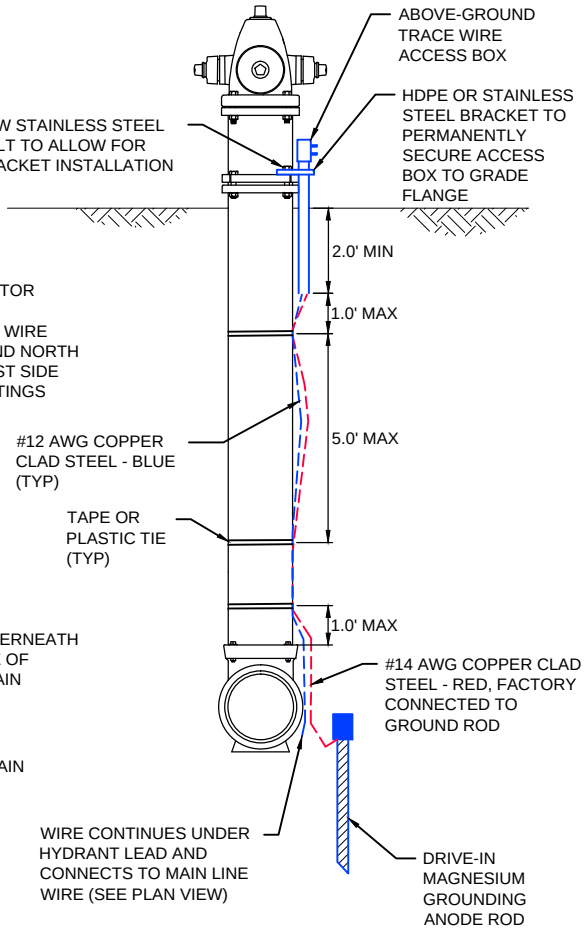

HYDRANT - SECTION VIEW

NO SCALE

MINNESOTA RURAL WATER ASSOCIATION
STANDARD DETAIL

TRACE WIRE
HYDRANT DETAIL

May 28, 2014

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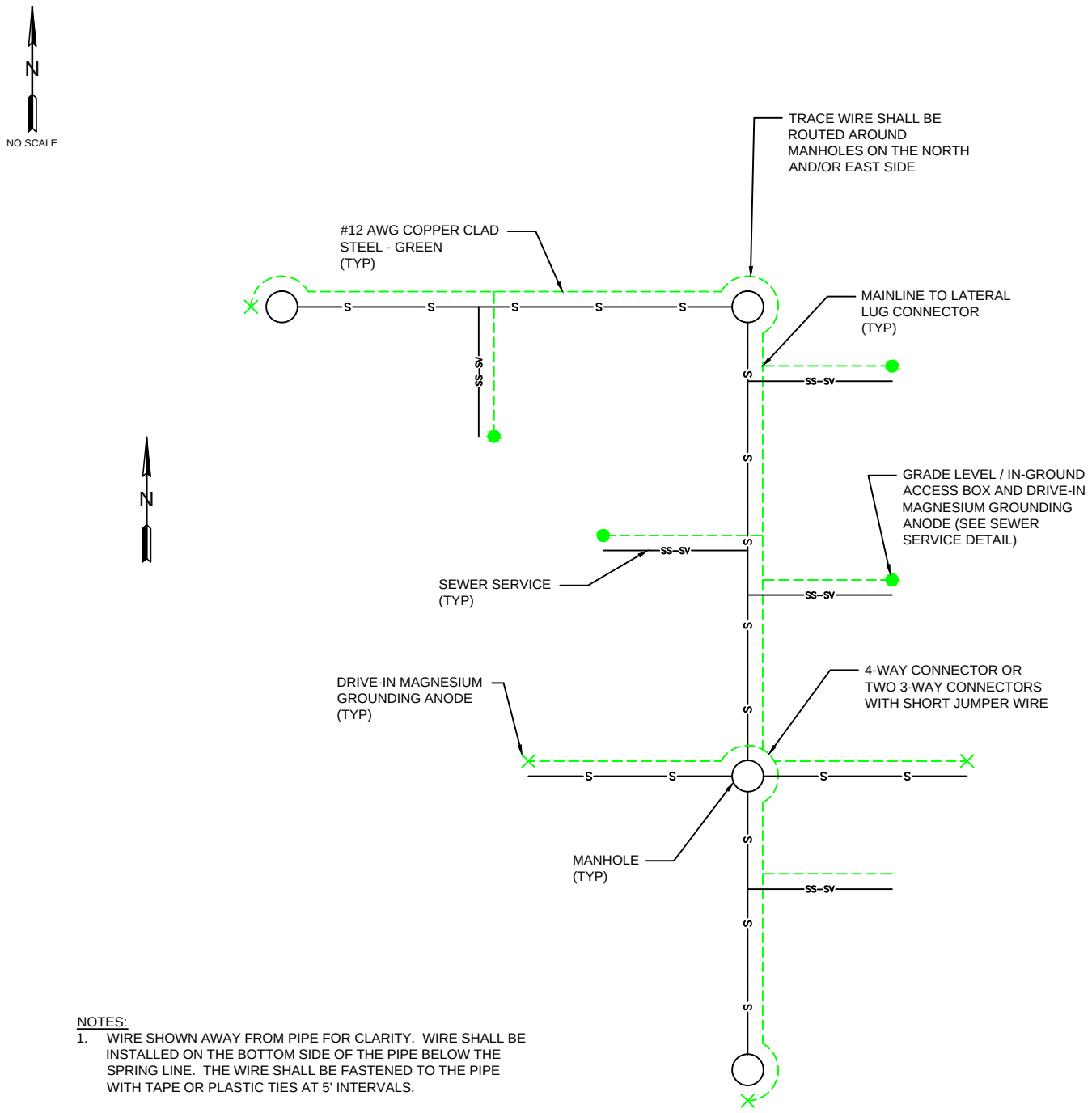

NOTES:

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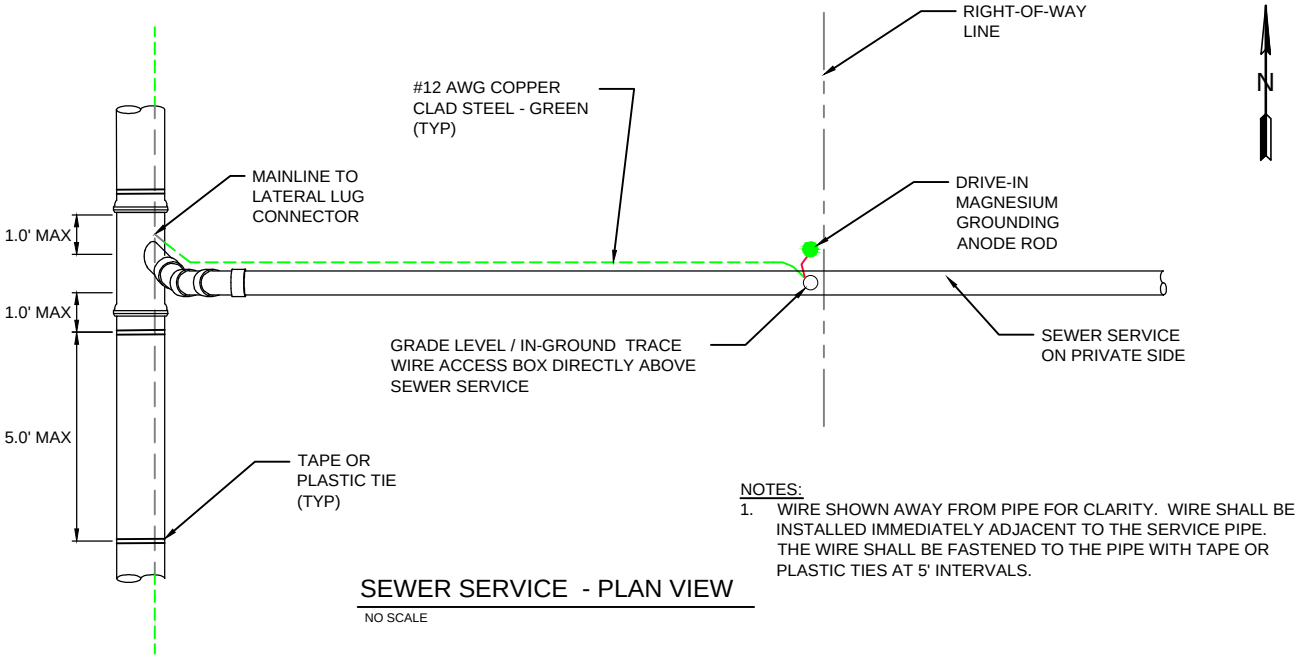
TRACE WIRE PLAN (SEWER)

NO SCALE

MINNESOTA RURAL WATER ASSOCIATION
STANDARD DETAIL

TRACE WIRE
SAMPLE SEWER PLAN

May 28, 2014

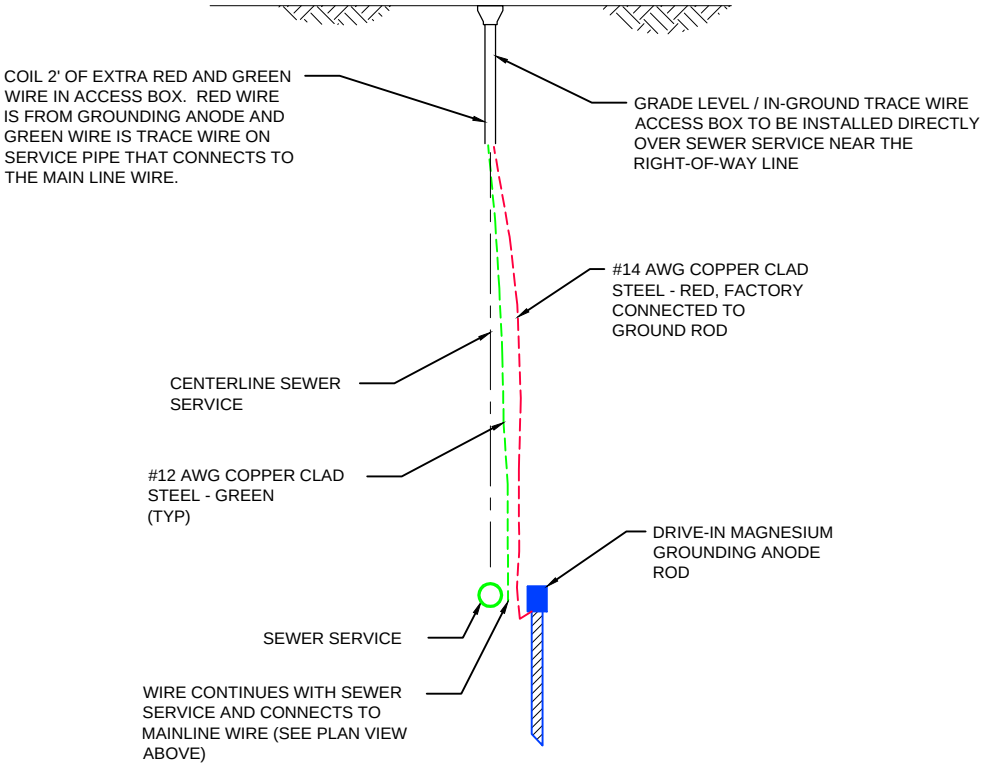


NOTES:

1. WIRE SHOWN AWAY FROM PIPE FOR CLARITY. WIRE SHALL BE INSTALLED IMMEDIATELY ADJACENT TO THE SERVICE PIPE. THE WIRE SHALL BE FASTENED TO THE PIPE WITH TAPE OR PLASTIC TIES AT 5' INTERVALS.

SEWER SERVICE - PLAN VIEW

NO SCALE



SEWER SERVICE - SECTION VIEW

NO SCALE

MINNESOTA RURAL WATER ASSOCIATION
STANDARD DETAIL

TRACE WIRE
SEWER SERVICE DETAIL

May 28, 2014

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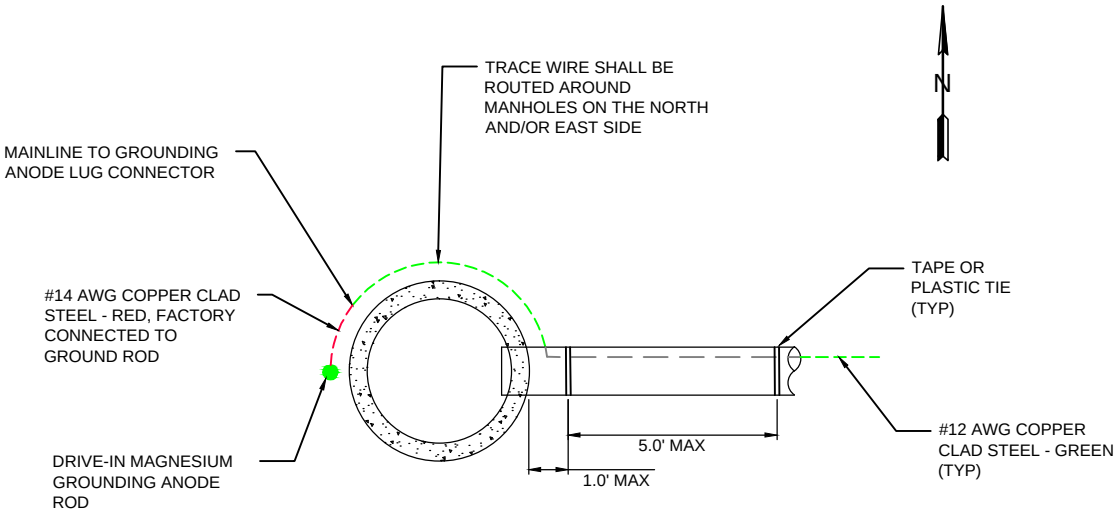
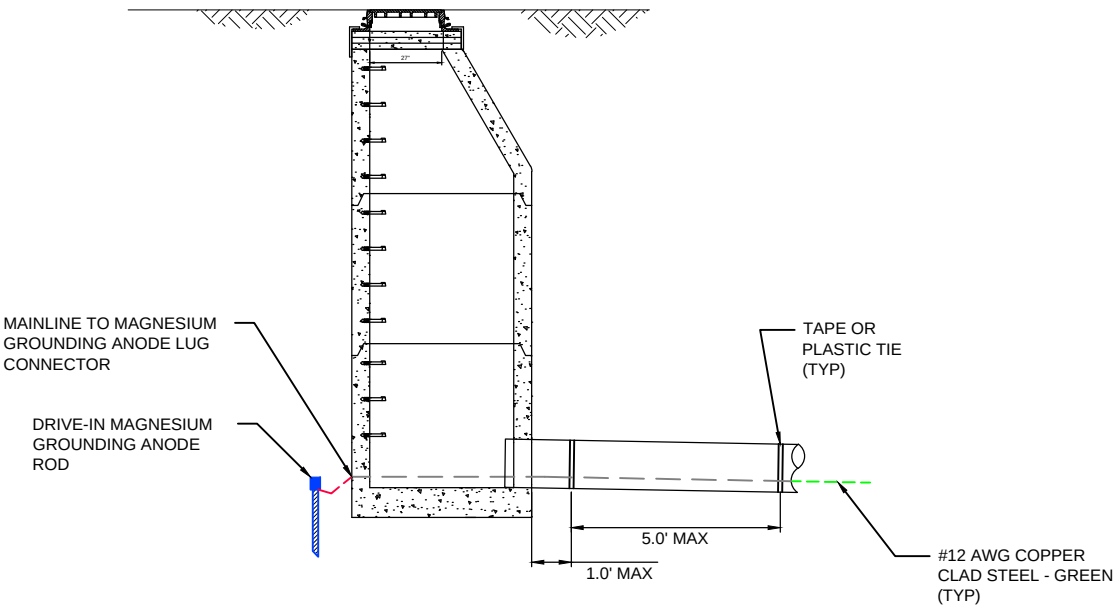


SEWER MANHOLE - PLAN VIEW

NO SCALE



SEWER MANHOLE - SECTION VIEW

NO SCALE

MINNESOTA RURAL WATER ASSOCIATION
STANDARD DETAIL

TRACE WIRE
SEWER MANHOLE DETAIL

May 28, 2014

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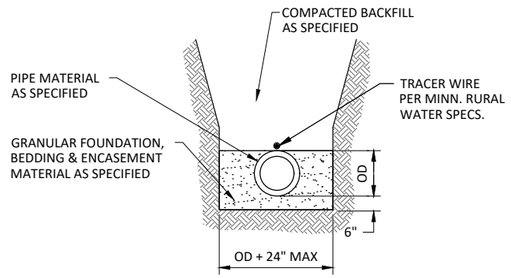

NON-RIGID STORM SEWER TRENCH

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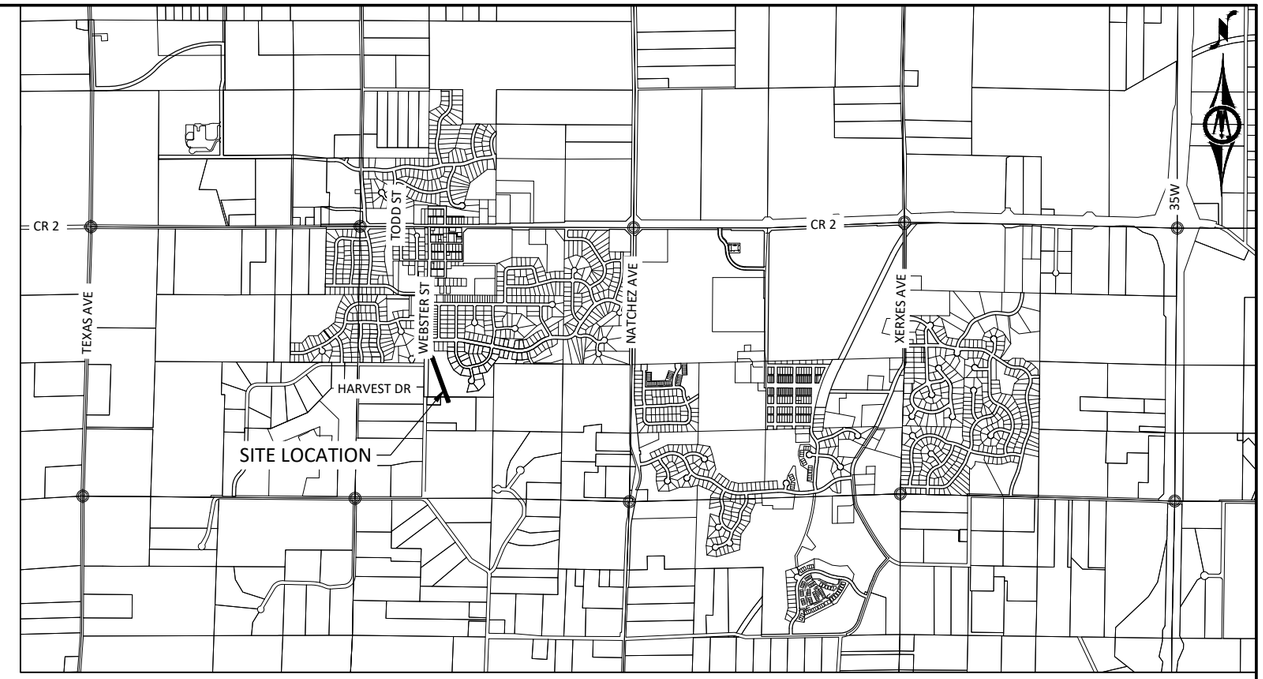

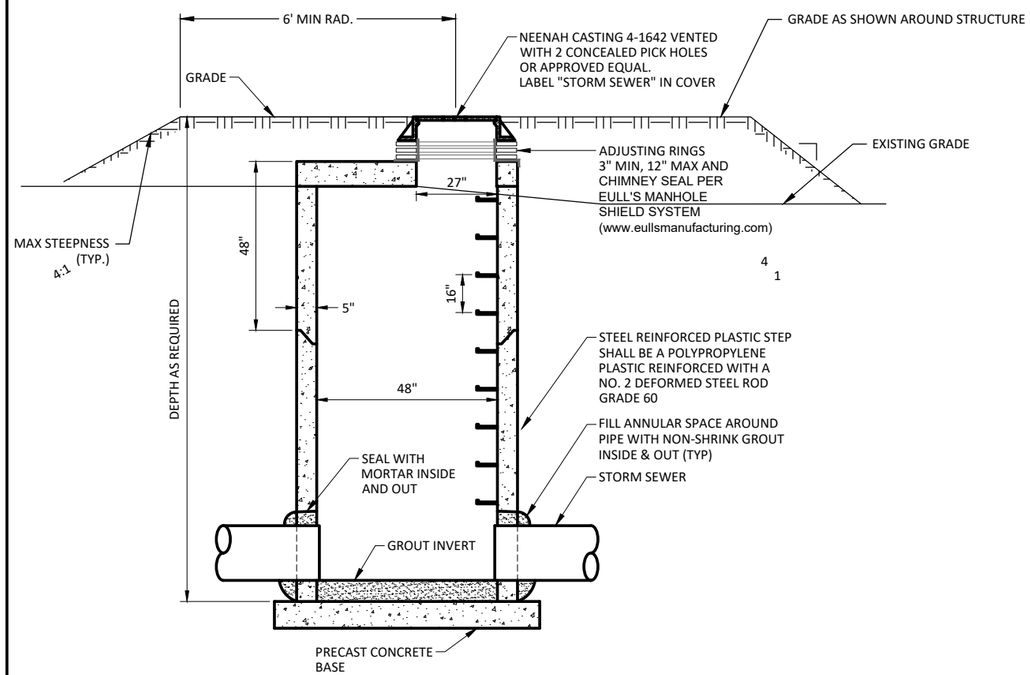

STORM SEWER STRUCTURE

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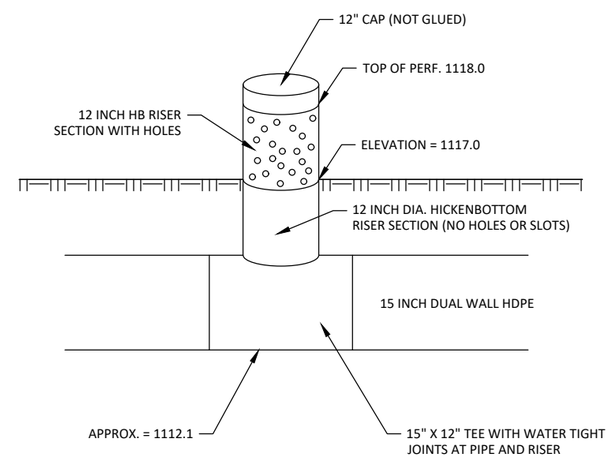

HICKENBOTTOM RISER

HORZ. 0 25 50 SCALE FEET

VERT. 0 5 10 SCALE FEET

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Phone: (952) 890-0509
Email: Burnsville@bolton-menk.com
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CITY OF ELKO NEW MARKET

WEBSTER WETLAND RESTORATION

DETAILS & LOCATION MAP

SHEET 1

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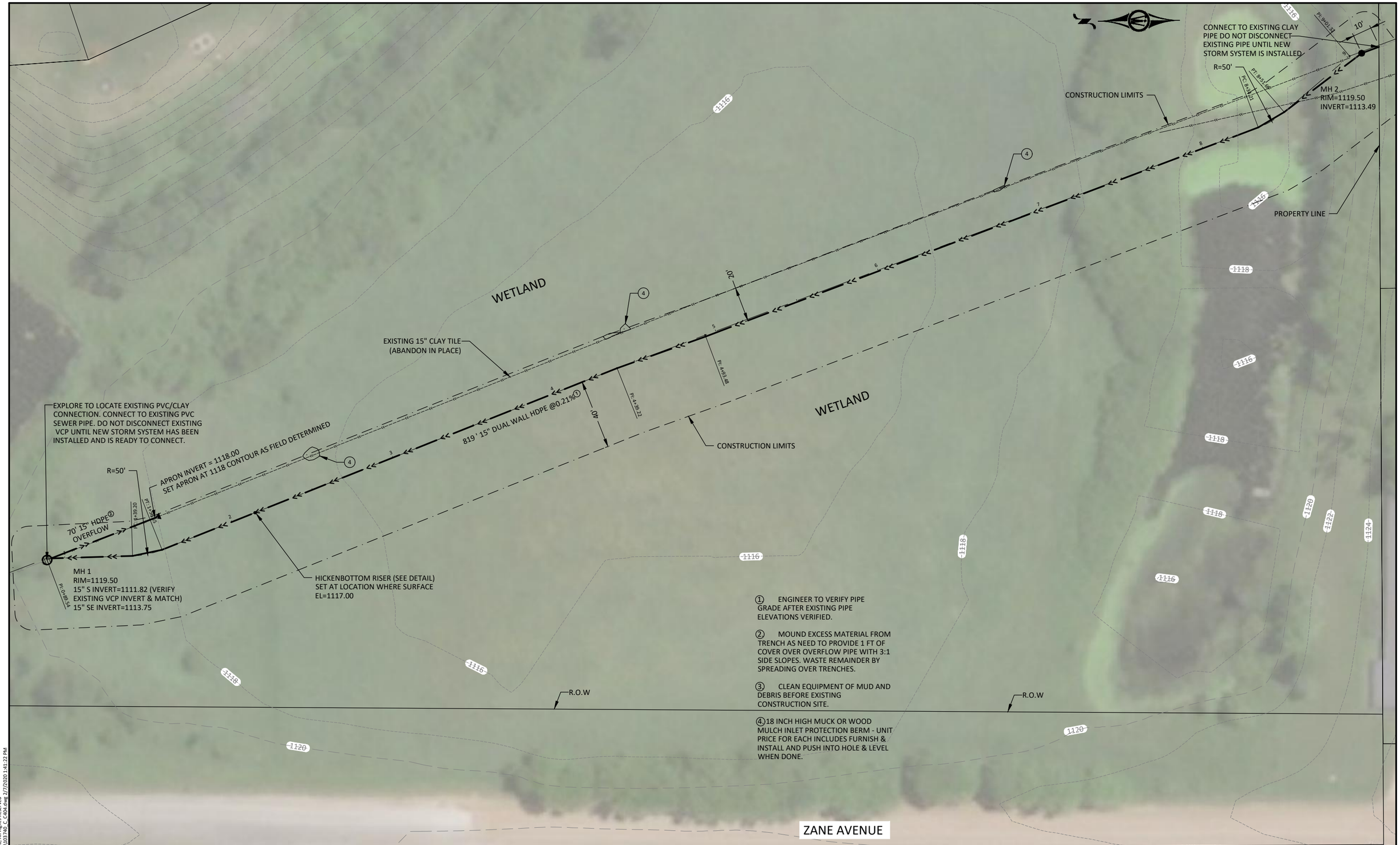

① ENGINEER TO VERIFY PIPE GRADE AFTER EXISTING PIPE ELEVATIONS VERIFIED.

② MOUND EXCESS MATERIAL FROM TRENCH AS NEED TO PROVIDE 1 FT OF COVER OVER OVERFLOW PIPE WITH 3:1 SIDE SLOPES. WASTE REMAINDER BY SPREADING OVER TRENCHES.

③ CLEAN EQUIPMENT OF MUD AND DEBRIS BEFORE EXISTING CONSTRUCTION SITE.

④ 18 INCH HIGH MUCK OR WOOD MULCH INLET PROTECTION BERM - UNIT PRICE FOR EACH INCLUDES FURNISH & INSTALL AND PUSH INTO HOLE & LEVEL WHEN DONE.

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WEBSTER WETLAND RESTORATION

PROPOSED DRAINTILE BYPASS

SHEET 2

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M E M O R A N D U M

Date: July 9th, 2020

To: Honorable Mayor and City Council of Elko New Market, Minnesota
Thomas Terry, City Administrator

From: Rich Revering PE, City Engineer

Subject: Approve Plans and Specifications and Authorize Ad for Bids
Rowena Park Outdoor Hockey Rink
T15.100719

BACKGROUND

The City Council is being asked to adopt a motion approving the attached plans and specifications and authorizing advertising for bids for the project.

DISCUSSION

The attached plans and specs contemplate the site preparation and construction of dasher boards (heavy duty wood fencing) and paving of a full-size hockey rink at Rowena Park. The expected value of the work exceeds $100,000, so advertising and sealed bids are required by City policy.

Work that City forces was able to do in the park included ballfield grading, drainage, and playground improvements. This reduced the overall park improvement cost. The dasher board system is more specialized work, so for timeliness and consistency the PW Dept. prefers it be performed by a contractor. Associated sitework is included in the bid to ease coordination and accountability for quality concerns.

The intention is to bid the project in August and have the work completed during the remainder of the 2020 construction season.

RECOMMENDATIONS

Adopt a motion approving the attached plans and specifications and authorizing staff to advertise for bids.

DESIGNING FOR A BETTER TOMORROW
Bolton & Menk is an equal opportunity employer.

ELKO NEW MARKET

CONSTRUCTION PLANS FOR

ROWENA PARK IMPROVEMENTS

SITE GRADING, HOCKEY RINK, WATER SERVICE, DRAINAGE

APRIL, 2020

SHEET NUMBER	SHEET TITLE
GENERAL	
G0.01 - G0.02	TITLE SHEET, LEGEND
CIVIL	
C1.01 - C1.06	DETAILS, TYPICAL SECTIONS
C3.01	GRADING & SITE PLAN

THIS PLAN SET CONTAINS 9 SHEETS.

NOTE: EXISTING UTILITY INFORMATION SHOWN ON THIS PLAN HAS BEEN PROVIDED BY THE UTILITY OWNER. THE CONTRACTOR SHALL FIELD VERIFY EXACT LOCATIONS PRIOR TO COMMENCING CONSTRUCTION AS REQUIRED BY STATE LAW. NOTIFY GOPHER STATE ONE CALL, 1-800-252-1166 OR 651-454-0002.

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D UNLESS OTHERWISE NOTED. THIS UTILITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF CI/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA."

BM=1129.11
TOP NUT HYDRANT
SOUTH SIDE PARK STREET
EAST OF BITUMINOUS TRAIL

PROJECT DATUM:
HORIZONTAL: SCOTT COUNTY COORDINATES (1996 ADJUSTMENT)
VERTICAL: NAVD 88

RECORD DRAWING INFORMATION
OBSERVER:
CONTRACTOR:
DATE:

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RICHARD J. REVERING
LIC. NO. 20711 DATE 04/13/2020

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ELKO NEW MARKET, MINNESOTA
Rowena Park Drainage Improvements
TITLE SHEET

SHEET G0.01

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EXISTING TOPOGRAPHIC SYMBOLS

- ACCESS GRATE
- AIR CONDITION UNIT
- ANTENNA
- AUTO SPRINKLER CONNECTION
- BARRICADE PERMANENT
- BASKETBALL POST
- BENCH
- BIRD FEEDER
- BOLLARD
- BUSH
- CATCH BASIN RECTANGULAR CASTING
- CATCH BASIN CIRCULAR CASTING
- CURB STOP
- CLEAN OUT
- CULVERT END
- DRINKING FOUNTAIN
- DOWN SPOUT
- FILL PIPE
- FIRE HYDRANT
- FLAG POLE
- FLARED END / APRON
- FUEL PUMP
- GRILL
- GUY WIRE ANCHOR
- HANDHOLE
- HANDICAP SPACE
- IRRIGATION SPRINKLER HEAD
- IRRIGATION VALVE BOX
- LIFT STATION CONTROL PANEL
- LIFT STATION
- LIGHT ON POLE
- LIGHT-GROUND
- MAILBOX
- MANHOLE-COMMUNICATION
- MANHOLE-ELECTRIC
- MANHOLE-GAS
- MANHOLE-HEAT
- MANHOLE-SANITARY SEWER
- MANHOLE-STORM SEWER
- MANHOLE-UTILITY
- MANHOLE-WATER
- METER
- ORDER MICROPHONE
- PARKING METER
- PAVEMENT MARKING
- PEDESTAL-COMMUNICATION
- PEDESTAL-ELECTRIC
- PEDESTRIAN PUSH BUTTON
- PICNIC TABLE
- POLE-UTILITY
- POST
- RAILROAD SIGNAL POLE
- REGULATION STATION GAS
- SATELLITE DISH
- SIGN TRAFFIC
- SIGNAL CONTROL CABINET
- SOIL BORING
- SIREN
- TELEPHONE BOOTH
- TILE INLET
- TILE OUTLET
- TILE RISER
- TRANSFORMER-ELECTRIC
- TREE-CONIFEROUS
- TREE-DEAD
- TREE-DECIDUOUS
- TREE STUMP
- TRAFFIC ARM BARRIER
- TRAFFIC SIGNAL
- TRASH CAN
- UTILITY MARKER
- VALVE
- VALVE POST INDICATOR
- VALVE VAULT
- VENT PIPE
- WATER SPIGOT
- WELL
- WETLAND DELINEATED MARKER
- WETLAND
- WET WELL
- YARD HYDRANT

PROPOSED TOPOGRAPHIC SYMBOLS

- CLEANOUT
- MANHOLE
- LIFT STATION
- STORM SEWER CIRCULAR CASTING
- STORM SEWER RECTANGULAR CASTING
- STORM SEWER FLARED END / APRON
- STORM SEWER OUTLET STRUCTURE
- STORM SEWER OVERFLOW STRUCTURE
- CURB BOX
- FIRE HYDRANT
- WATER VALVE
- WATER REDUCER
- WATER BEND
- WATER TEE
- WATER CROSS
- WATER SLEEVE
- WATER CAP / PLUG
- RIP RAP
- DRAINAGE FLOW
- TRAFFIC SIGNS

SURVEY SYMBOLS

- BENCH MARK LOCATION
- CONTROL POINT
- MONUMENT IRON FOUND
- CAST IRON MONUMENT

EXISTING TOPOGRAPHIC LINES

- RETAINING WALL
- FENCE
- FENCE-DECORATIVE
- GUARD RAIL
- TREE LINE
- BUSH LINE

SURVEY LINES

- CONTROLLED ACCESS
- BOUNDARY
- CENTERLINE
- EXISTING EASEMENT LINE
- PROPOSED EASEMENT LINE
- EXISTING LOT LINE
- PROPOSED LOT LINE
- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- SETBACK LINE
- SECTION LINE
- QUARTER LINE
- SIXTEENTH LINE
- TEMPORARY EASEMENT

EXISTING UTILITY LINES

- FORCEMAIN
- SANITARY SEWER
- SANITARY SERVICE
- STORM SEWER
- STORM SEWER DRAIN TILE
- WATERMAIN
- WATER SERVICE

PROPOSED UTILITY LINES

- FORCEMAIN
- SANITARY SEWER
- SANITARY SERVICE
- STORM SEWER
- STORM SEWER DRAIN TILE
- WATERMAIN
- WATER SERVICE
- PIPE CASING

GRADING INFORMATION

- EXISTING CONTOUR MINOR (952)
- EXISTING CONTOUR MAJOR (950)
- PROPOSED CONTOUR MINOR (952)
- PROPOSED CONTOUR MAJOR (950)
- PROPOSED GRADING LIMITS / SLOPE LIMITS (953.53)
- PROPOSED SPOT ELEVATION (STA:5+67.19 980.87)
- RISE:RUN (SLOPE) (1:4)

HATCH PATTERNS

- BITUMINOUS
- CONCRETE
- GRAVEL

EXISTING PRIVATE UTILITY LINES

NOTE:
EXISTING UTILITY INFORMATION SHOWN ON THIS PLAN HAS BEEN PROVIDED BY THE UTILITY OWNER. THE CONTRACTOR SHALL FIELD VERIFY EXACT LOCATIONS PRIOR TO COMMENCING CONSTRUCTION AS REQUIRED BY STATE LAW. NOTIFY GOPHER STATE ONE CALL, 1-800-252-1166 OR 651-454-0002.

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- F — UNDERGROUND FIBER OPTIC
- E — UNDERGROUND ELECTRIC
- G — UNDERGROUND GAS
- C — UNDERGROUND COMMUNICATION
- OE — OVERHEAD ELECTRIC
- OC — OVERHEAD COMMUNICATION
- OU — OVERHEAD UTILITY

UTILITIES IDENTIFIED WITH A QUALITY LEVEL :

LINE TYPES FOLLOW THE FORMAT: UTILITY TYPE - QUALITY LEVEL
EXAMPLE: G-A — UNDERGROUND GAS, QUALITY LEVEL A
UTILITY QUALITY LEVEL (A,B,C,D) DEFINITIONS CAN BE FOUND IN CI/ASCE 38-02.

UTILITY QUALITY LEVELS:

QUALITY LEVEL D: PROVIDES THE MOST BASIC LEVEL OF INFORMATION. IT INVOLVES COLLECTING DATA FROM EXISTING UTILITY RECORDS. RECORDS MAY INCLUDE AS-BUILT DRAWINGS, DISTRIBUTION AND SERVICES MAPS, EXISTING GEOGRAPHIC INFORMATION SYSTEM DATABASES, CONSTRUCTION PLANS, ETC.

QUALITY LEVEL C: INVOLVES SURVEYING VISIBLE SUBSURFACE UTILITY STRUCTURES SUCH AS MANHOLES, HAND-HOLES, UTILITY VALVES AND METERS, FIRE HYDRANTS, PEDESTALS AND UTILITY MARKERS, AND THEN CORRELATING THE INFORMATION WITH EXISTING UTILITY RECORDS TO CREATE COMPOSITE DRAWINGS. INCLUDES QUALITY LEVEL D ACTIVITIES.

QUALITY LEVEL B: INVOLVES DESIGNATING THE HORIZONTAL POSITION OF SUBSURFACE UTILITIES THROUGH SURFACE DETECTION METHODS AND COLLECTING THE INFORMATION THROUGH A SURVEY METHOD. INCLUDES QUALITY LEVEL C AND D TASKS.

QUALITY LEVEL A: PROVIDES THE HIGHEST LEVEL OF ACCURACY. IT INVOLVES LOCATING OR POTHOLING UTILITIES AS WELL AS ACTIVITIES IN QUALITY LEVELS B, C, AND D. THE LOCATED FACILITY INFORMATION IS SURVEYED AND MAPPED AND THE DATA PROVIDES PRECISE PLAN AND PROFILE INFORMATION.

ABBREVIATIONS

A	ALGEBRAIC DIFFERENCE	GRAV	GRAVEL	RSC	RIGID STEEL CONDUIT
ADJ	ADJUST	GU	GUTTER	RT	RIGHT
ALT	ALTERNATE	GV	GATE VALVE	SAN	SANITARY SEWER
B-B	BACK TO BACK	HDPE	HIGH DENSITY POLYETHYLENE	SCH	SCHEDULE
BIT	BITUMINOUS	HH	HANDHOLE	SERV	SERVICE
BLDG	BUILDING	HP	HIGH POINT	SHLD	SHOULDER
BMP	BEST MANAGEMENT PRACTICE	HWL	HIGH WATER LEVEL	STA	STATION
BR	BEGIN RADIUS	HYD	HYDRANT	STD	STANDARD
BV	BUTTERFLY VALVE	I	INVERT	STM	STORM SEWER
CB	CATCH BASIN	K	CURVE COEFFICIENT	TC	TOP OF CURB
C&G	CURB AND GUTTER	L	LENGTH	TE	TEMPORARY EASEMENT
CIP	CAST IRON PIPE	LO	LOWEST OPENING	TEMP	TEMPORARY
CIPP	CURED-IN-PLACE PIPE	LP	LOW POINT	TNH	TOP NUT HYDRANT
CL	CENTER LINE	LT	LEFT	TP	TOP OF PIPE
CL.	CLASS	MAX	MAXIMUM	TYP	TYPICAL
CLVT	CULVERT	MH	MANHOLE	VCP	VITRIFIED CLAY PIPE
CMP	CORRUGATED METAL PIPE	MIN	MINIMUM	VERT	VERTICAL
C.O.	CHANGE ORDER	MR	MID RADIUS	VPC	VERTICAL POINT OF CURVE
COMM	COMMUNICATION	NIC	NOT IN CONTRACT	VPI	VERTICAL POINT OF INTERSECTION
CON	CONCRETE	NMC	NON-METALLIC CONDUIT	VPT	VERTICAL POINT OF TANGENT
CSP	CORRUGATED STEEL PIPE	NTS	NOT TO SCALE	WM	WATERMAIN
DIA	DIAMETER	NWL	NORMAL WATER LEVEL		
DIP	DUCTILE IRON PIPE	OHW	ORDINARY HIGH WATER LEVEL		
DWY	DRIVEWAY	PC	POINT OF CURVE	AC	ACRES
E	EXTERNAL CURVE DISTANCE	PCC	POINT OF COMPOUND CURVE	CF	CUBIC FEET
ELEC	ELECTRIC	PE	PERMANENT EASEMENT	CV	COMPACTED VOLUME
ELEV	ELEVATION	PED	PEDESTRIAN, PEDESTAL	CY	CUBIC YARD
EOF	EMERGENCY OVERFLOW	PERF	PERFORATED PIPE	EA	EACH
ER	END RADIUS	PERM	PERMANENT	EV	EXCAVATED VOLUME
ESMT	EASEMENT	PI	POINT OF INTERSECTION	LB	POUND
EX	EXISTING	PL	PROPERTY LINE	LF	LINEAR FEET
FES	FLARED END SECTION	PRC	POINT OF REVERSE CURVE	LS	LUMP SUM
F-F	FACE TO FACE	PT	POINT OF TANGENT	LV	LOOSE VOLUME
FF	FINISHED FLOOR	PVC	POLYVINYL CHLORIDE PIPE	SF	SQUARE FEET
F&I	FURNISH AND INSTALL	PVMT	PAVEMENT	SV	STOCKPILE VOLUME
FM	FORCEMAIN	R	RADIUS	SY	SQUARE YARD
FO	FIBER OPTIC	R/W	RIGHT-OF-WAY		
F.O.	FIELD ORDER	RCP	REINFORCED CONCRETE PIPE		
GRAN	GRANULAR	RET	RETAINING		

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LEGEND

SHEET G0.02

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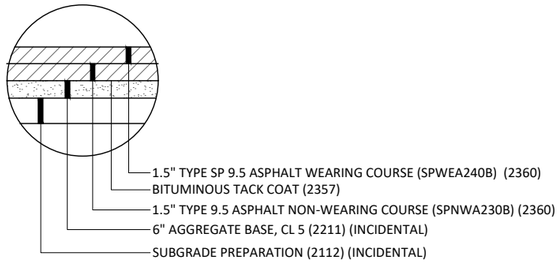

BITUMINOUS TRAIL PAVEMENT

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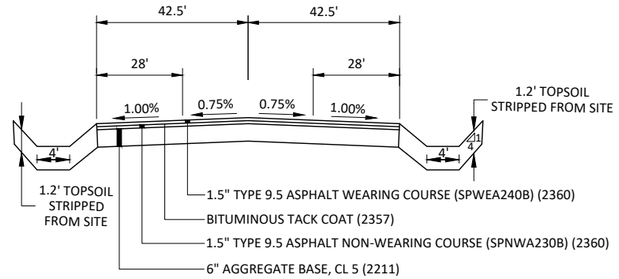
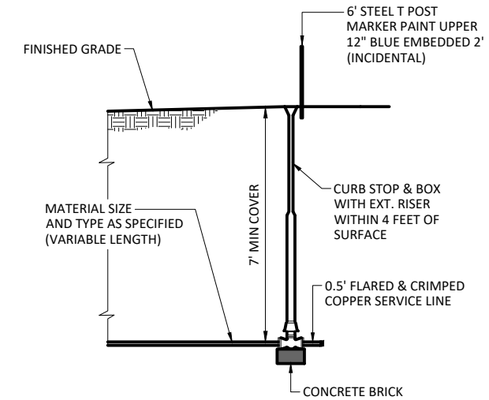
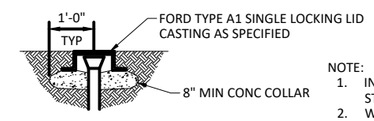


HOCKEY RINK TYPICAL SECTION (SECTION A-A)



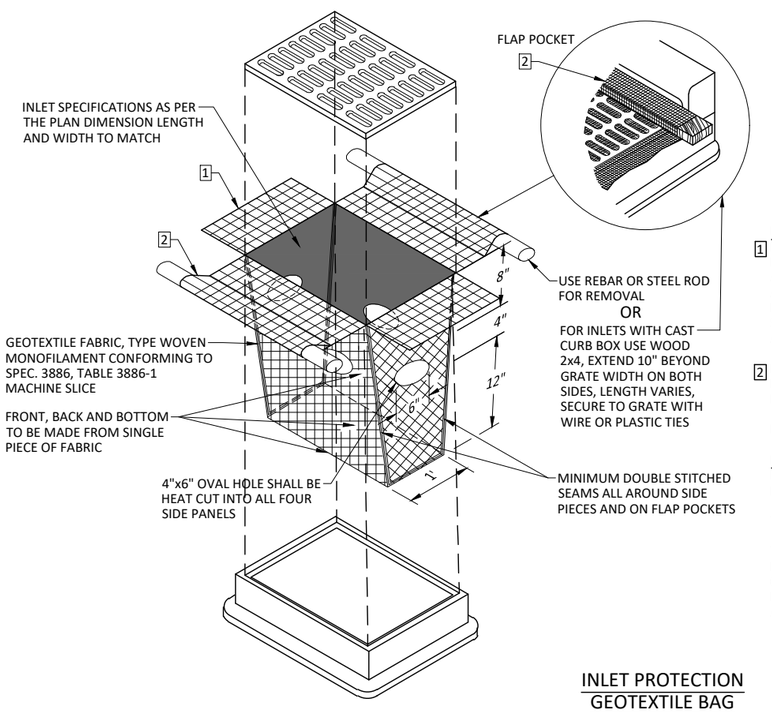


NOTE:
1. INSTALL LID CASTING WHEN CURB STOPS ARE LOCATED IN DRIVEWAYS.
2. WATER SERVICE SHALL BE INSTALLED UPSTREAM FROM THE SEWER SERVICE.

WATER SERVICE INSTALLATION DETAIL

CITY OF ELKO NEW MARKET

NOT TO SCALE



NOTES:

1 INLET PROTECTION DEVICES SHALL BE MAINTAINED OR REPLACED AT THE DIRECTION OF THE ENGINEER. MANUFACTURED ALTERNATIVES APPROVED AND LISTED ON THE DEPARTMENTS EROSION CONTROL PRODUCT ACCEPTABILITY LIST MAY BE SUBSTITUTED. WHEN REMOVING OR MAINTAINING INLET PROTECTION, CARE SHALL BE TAKEN SO THAT THE SEDIMENT TRAPPED ON THE GEOTEXTILE FABRIC DOES NOT FALL IN THE INLET. ANY MATERIAL FALLING INTO THE INLET SHALL BE REMOVED IMMEDIATELY.

2 FINISHED SIZE, INCLUDING POCKETS WHERE REQUIRED, SHALL EXTEND A MINIMUM OF 10" AROUND THE PERIMETER TO FACILITATE MAINTENANCE OR REMOVAL.

FLAP POCKETS SHALL BE LARGE ENOUGH TO ACCEPT WOOD 2x4.

INSTALLATION NOTES:

DO NOT INSTALL PROTECTION IN INLETS SHALLOWER THAN 30", MEASURED FROM THE BOTTOM OF THE INLET TO THE TOP OF THE GRATE.

TRIM EXCESS FABRIC IN THE FLOW LINE TO WITHIN 3" OF THE GRATE.

THE INSTALLED BAG SHALL HAVE A MINIMUM SIDE CLEARANCE, BETWEEN THE INLET AND THE BAG, MEASURED AT THE BOTTOM OF THE OVERFLOW HOLES, OF 3". WHERE NECESSARY THE CONTRACTOR SHALL CLINCH THE BAG, USING PLASTIC ZIP TIES, TO ACHIEVE THE 3" CLEARANCE. THE TIES SHALL BE PLACED AT A MAXIMUM OF 4" FROM THE BOTTOM OF THE BAG.

INLET PROTECTION

GEOTEXTILE BAG

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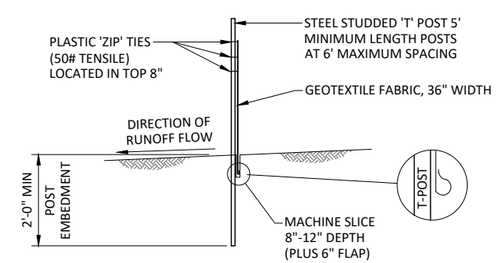

SILT FENCE - MACHINE SLICED

NOT TO SCALE

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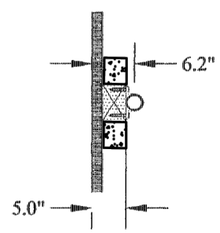
ELKO NEW MARKET, MINNESOTA

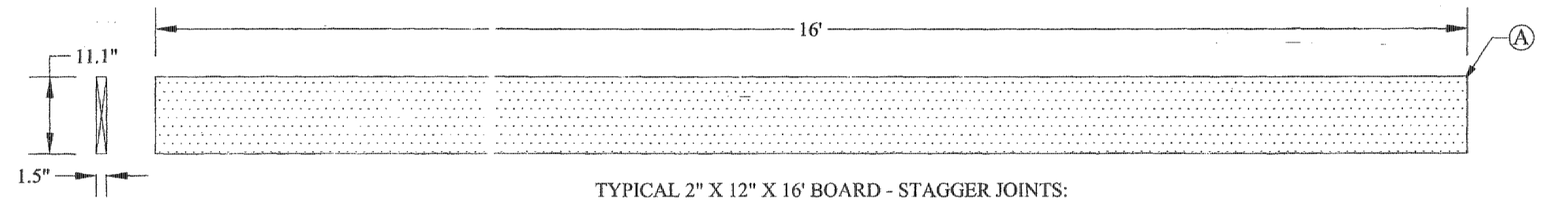
Rowena Park Drainage Improvements

DETAILS

SHEET C1.01

TOP VIEW

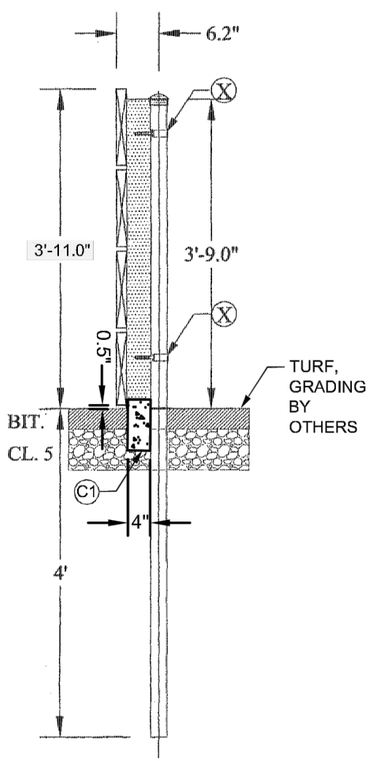


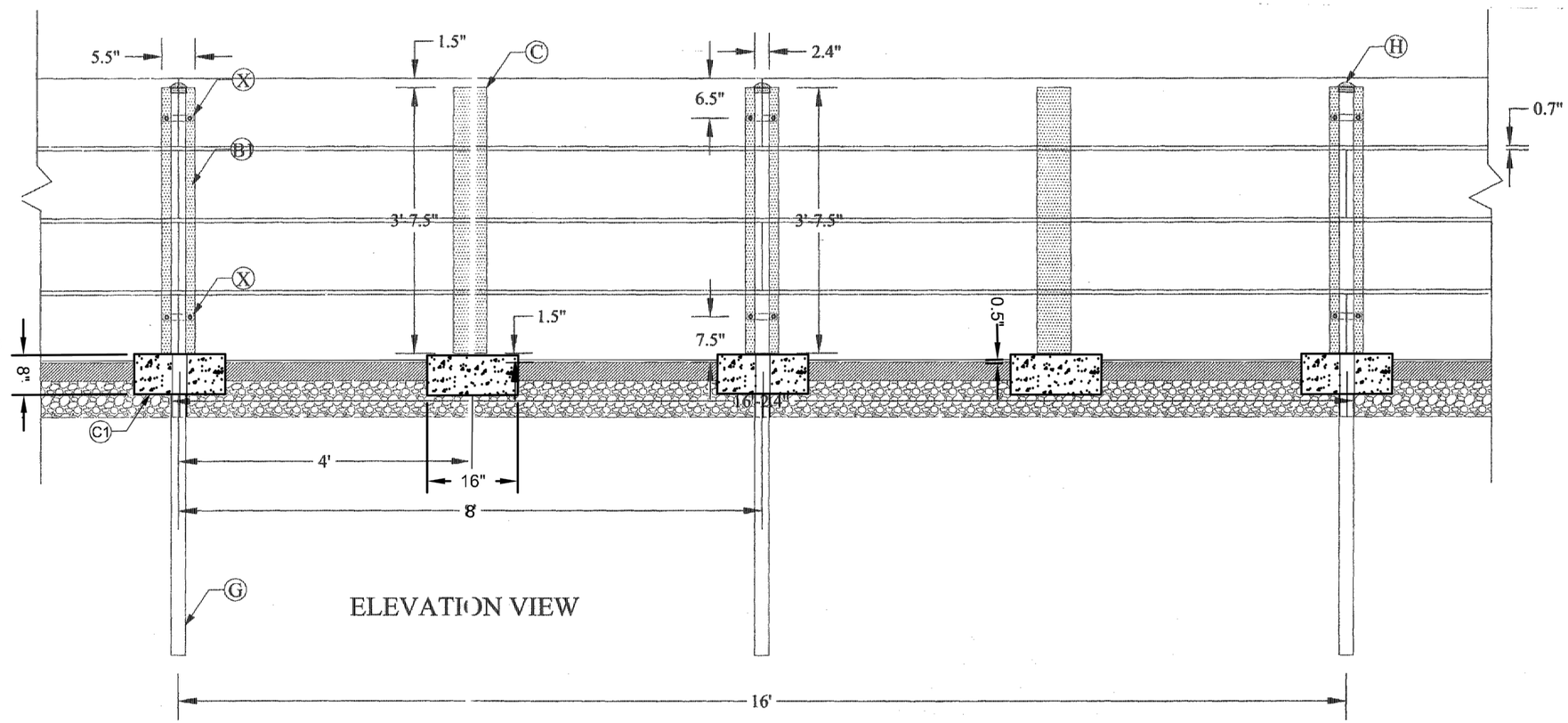


TYPICAL 2" X 12" X 16' BOARD - STAGGER JOINTS:

NOTE:
1. CONTRACTOR TO SUPPLY SUBMITTALS FOR ALL DASHER BOARD PARTS (CALLED OUT BY LETTERS) FOR ENGINEERING REVIEW AND APPROVAL PRIOR TO CONSTRUCTION.

SIDE VIEW





ELEVATION VIEW

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RICHARD J. REVERING
LIC. NO. 20711 DATE 04/13/2020

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BURNSVILLE, MINNESOTA 55337
Phone: (952) 890-0509
Email: Burnsville@bolton-menk.com
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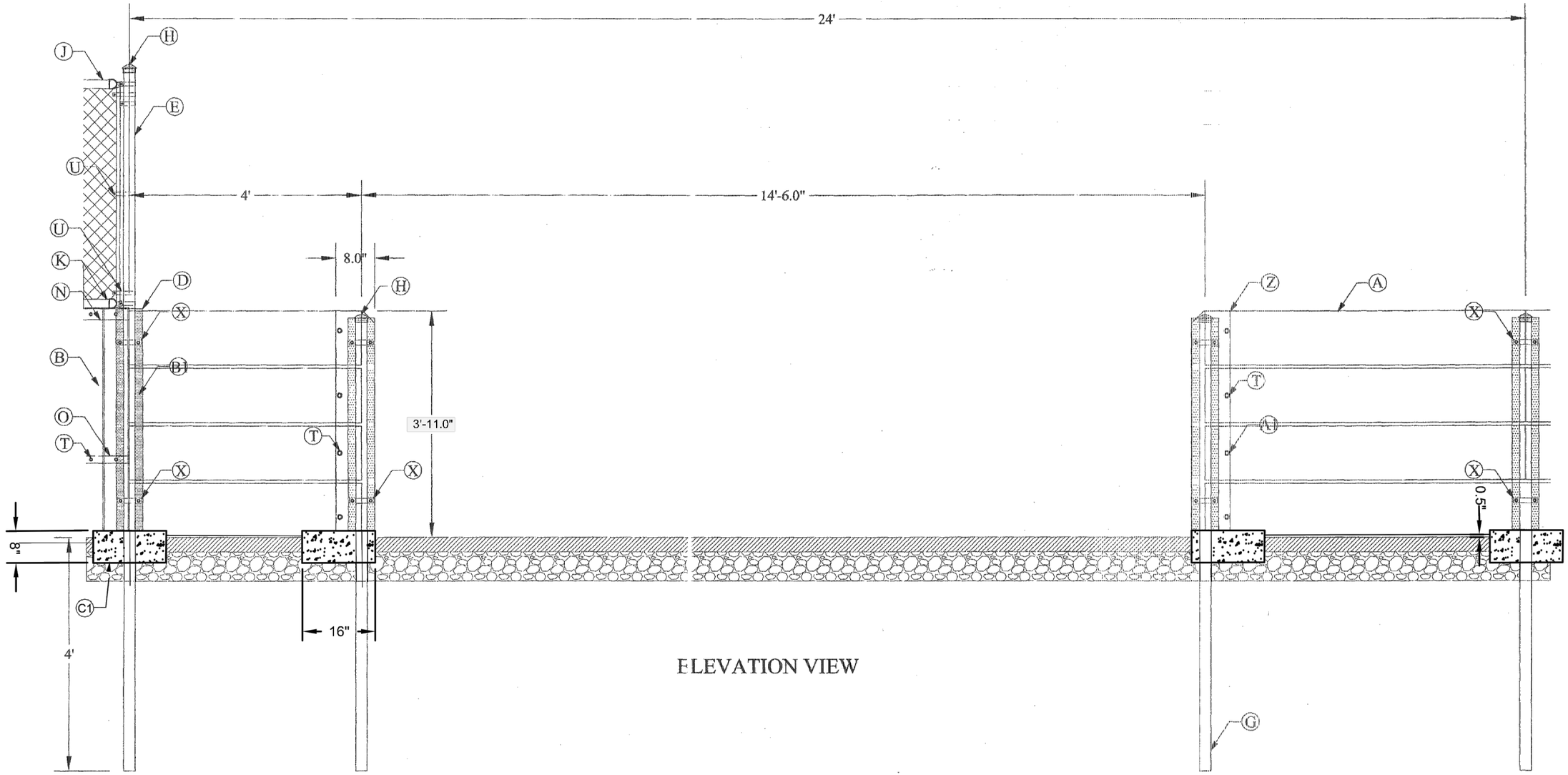
CHECKED	RJR
CLIENT PROJ. NO.	T15.100719

NO.	ISSUED FOR	DATE

ELKO NEW MARKET, MINNESOTA
Rowena Park Drainage Improvements
DASHER BOARD DETAILS
DASHER BOARD AND SUPPORT DETAIL

SHEET
C1.02



ELEVATION VIEW

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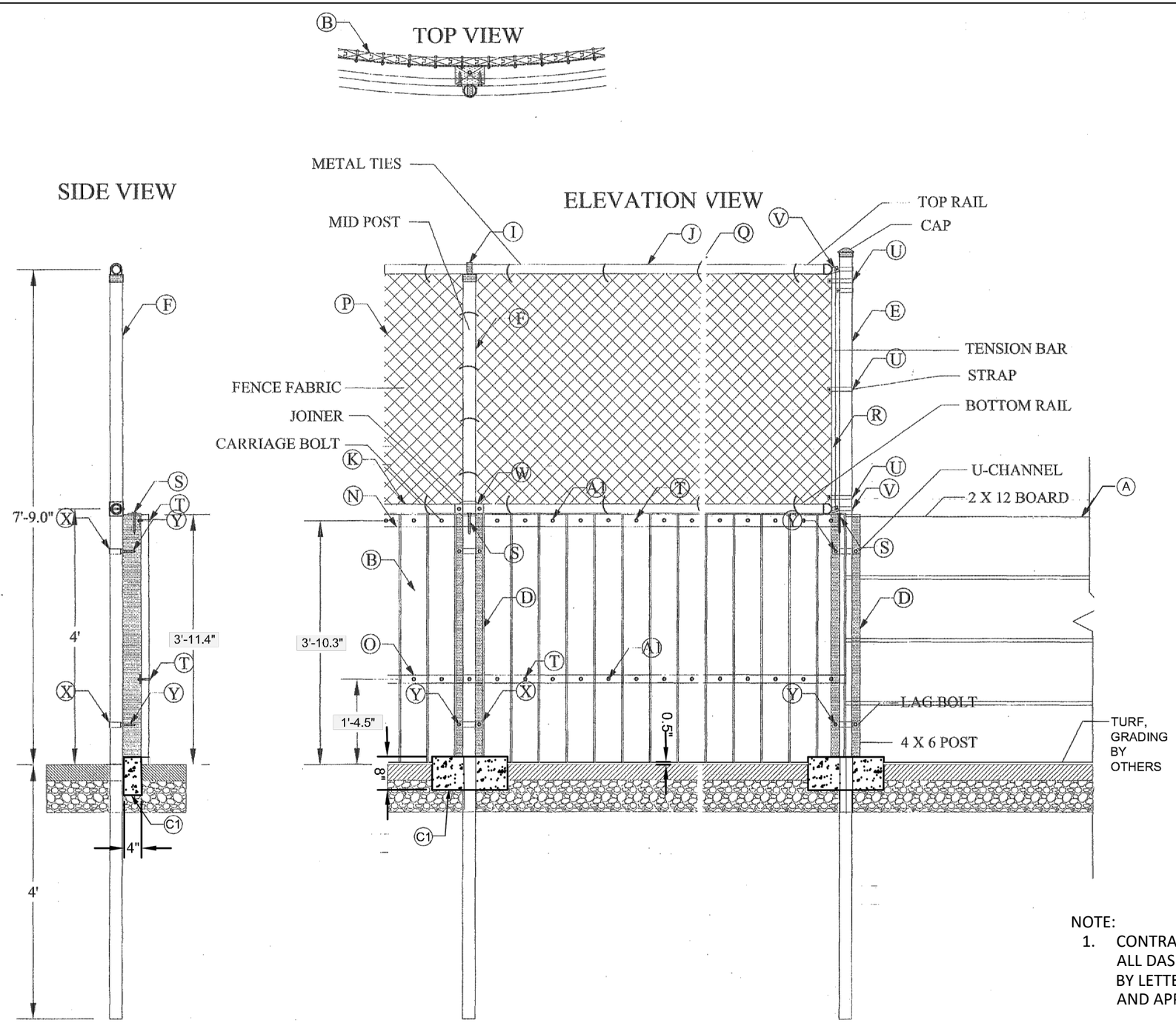
ELKO NEW MARKET, MINNESOTA

Rowena Park Drainage Improvements

DASHER BOARD DETAILS

GATE OPENING DETAIL

SHEET C1.03



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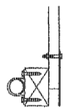
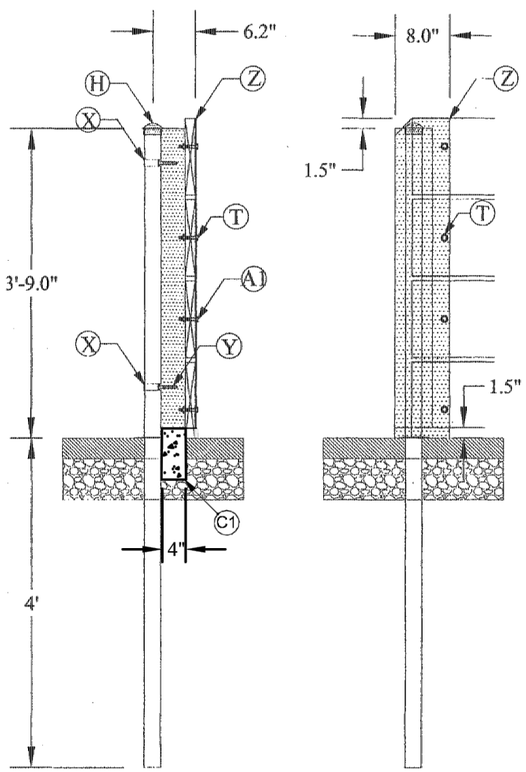
ELKO NEW MARKET, MINNESOTA
Rowena Park Drainage Improvements
DASHER BOARD DETAILS
28' RADIUS & SUPPORT DETAIL

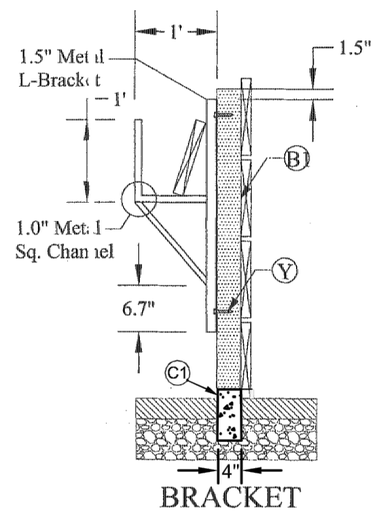
SHEET C1.04

GATE AND BRACKET DETAIL

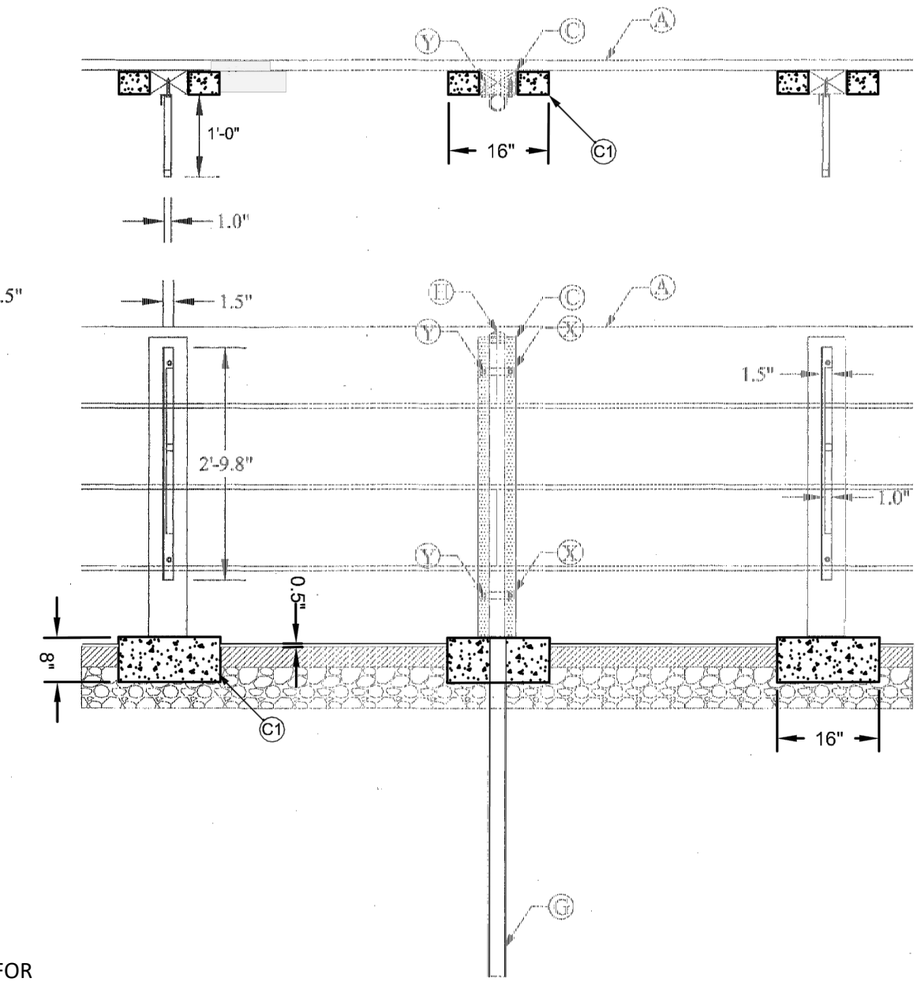
TOP VIEW
GATE







BRACKET



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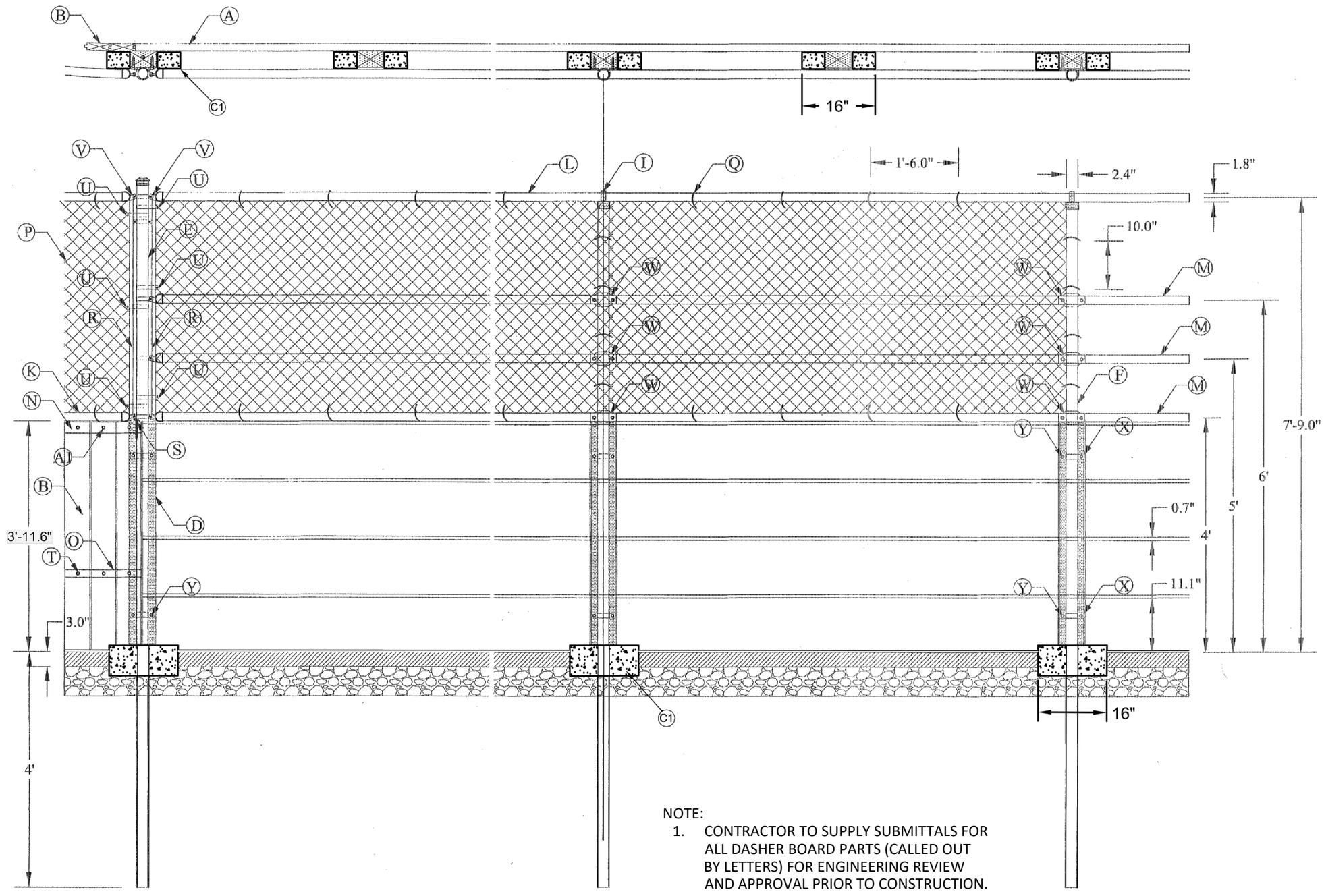
ELKO NEW MARKET, MINNESOTA
Rowena Park Drainage Improvements
DASHER BOARD DETAILS
GATE & BRACKET DETAILS

SHEET
C1.05



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ELKO NEW MARKET, MINNESOTA

Rowena Park Drainage Improvements

DASHER BOARD DETAILS

GOAL END DETAIL

SHEET

C1.06

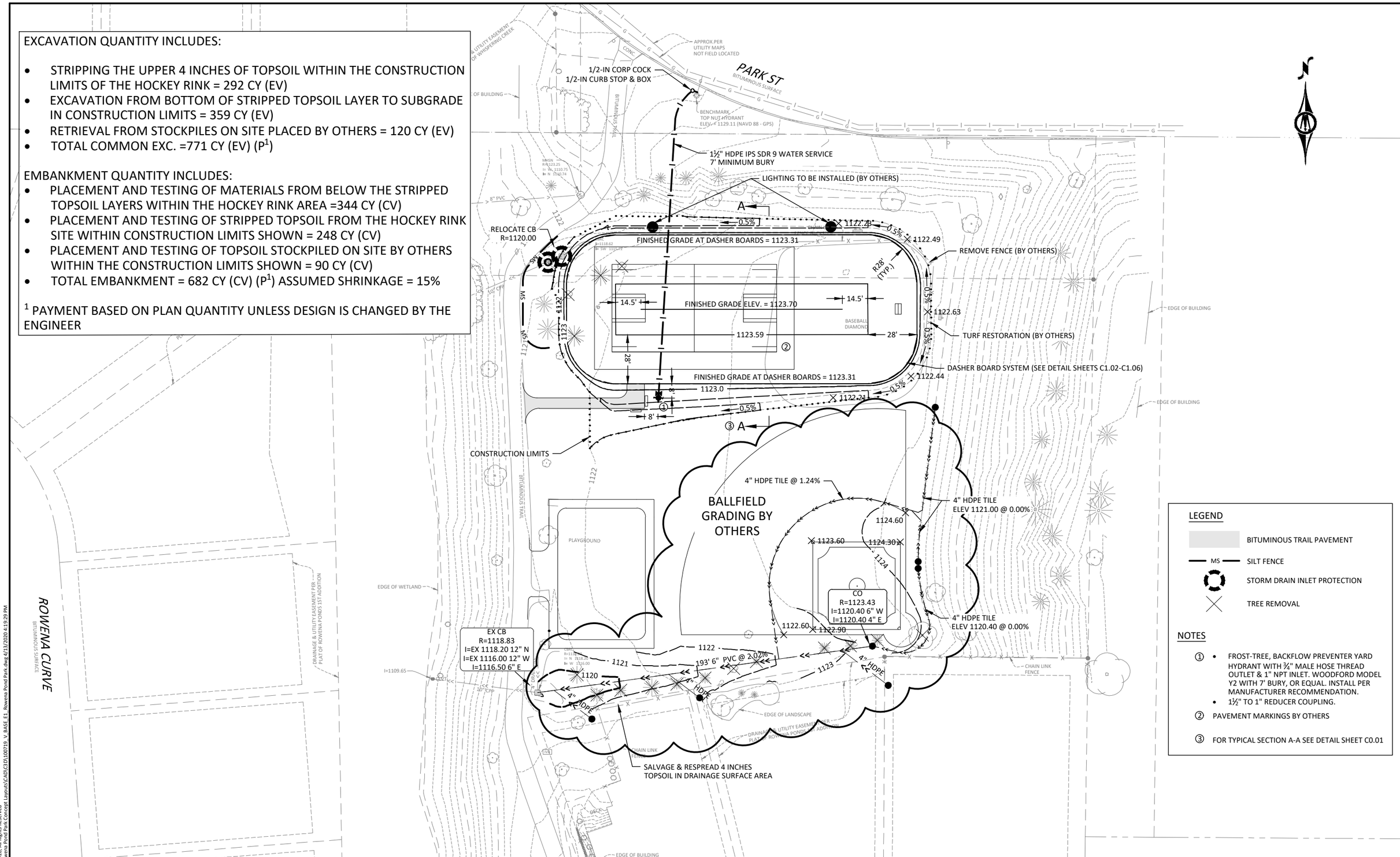
EXCAVATION QUANTITY INCLUDES:

- STRIPPING THE UPPER 4 INCHES OF TOPSOIL WITHIN THE CONSTRUCTION LIMITS OF THE HOCKEY RINK = 292 CY (EV)
- EXCAVATION FROM BOTTOM OF STRIPPED TOPSOIL LAYER TO SUBGRADE IN CONSTRUCTION LIMITS = 359 CY (EV)
- RETRIEVAL FROM STOCKPILES ON SITE PLACED BY OTHERS = 120 CY (EV)
- TOTAL COMMON EXC. =771 CY (EV) (P^1)

EMBANKMENT QUANTITY INCLUDES:

- PLACEMENT AND TESTING OF MATERIALS FROM BELOW THE STRIPPED TOPSOIL LAYERS WITHIN THE HOCKEY RINK AREA =344 CY (CV)
- PLACEMENT AND TESTING OF STRIPPED TOPSOIL FROM THE HOCKEY RINK SITE WITHIN CONSTRUCTION LIMITS SHOWN = 248 CY (CV)
- PLACEMENT AND TESTING OF TOPSOIL STOCKPILED ON SITE BY OTHERS WITHIN THE CONSTRUCTION LIMITS SHOWN = 90 CY (CV)
- TOTAL EMBANKMENT = 682 CY (CV) (P^1) ASSUMED SHRINKAGE = 15%

[1] PAYMENT BASED ON PLAN QUANTITY UNLESS DESIGN IS CHANGED BY THE ENGINEER



HORZ. 0 25 50 SCALE FEET

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ELKO NEW MARKET, MINNESOTA
Rowena Park Drainage Improvements
GRADING & SITE PLAN

SHEET C3.01

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PROJECT MANUAL

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

12224 Nicollet Avenue • Burnsville, MN 55337-1649
Ph: (952) 890-0509 • Fax: (952) 890-8065

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SECTION 00010 - TABLE OF CONTENTS

Rowena Ponds Park Hockey Rink
City of Elko New Market

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CONTRACT DOCUMENTS:

PROJECT MANUAL:

Introductory Information, Bidding Requirements, Contract Forms and Conditions of Contract

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00430 - BID BOND
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00515 - RESPONSIBLE CONTRACTOR - NOTICE OF AWARD
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00520 - AGREEMENT BETWEEN OWNER AND CONTRACTOR
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01450 - QUALITY CONTROL
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01770 - PROJECT CLOSEOUT

Specifications

02220 - REMOVING PAVEMENT AND MISCELLANEOUS STRUCTURES
02310 - EXCAVATION & eMBANKMENT - SITE GRADING
02370 - EROSION & SEDIMENT CONTROL (LESS THAN ONE ACRE DISTURBANCE)
02510 - DOMESTIC WATER SYSTEM

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02630 - PIPE SEWERS - STORM
02720 - AGGREGATE BASE
02740 - PLANT-MIXED BITUMINOUS SURFACING
02776 - BITUMINOUS WALKS AND TRAILS
02821 - WOOD RAIL FENCE

DRAWINGS (UNDER SEPARATE COVER):

9 sheets numbered dated 04/13/2020, and with each sheet bearing the following general title:

Rowena Ponds Park Hockey Rink & Drainage Improvements
City of Elko New Market

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

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SECTION 00100 - ADVERTISEMENT FOR BIDS

Rowena Ponds Park Hockey Rink

City of Elko New Market
Elko New Market, MN

RECEIPT AND OPENING OF PROPOSALS: Sealed proposals for the work described below will be received at the Office of the City Administrator, City of Elko New Market, 601 Main Street, Elko New Market, MN 55054 until 11:00 am on August 3, 2020 at which time the bids will be opened and publicly read.

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

One regulation-sized outdoor hockey rink including site improvements and dasher board fencing (Lump Sum)

together with numerous related items of work, all in accordance with Plans and Specifications.

COMPLETION OF WORK: All work under the Contract must be complete by December 15, 2020.

PLAN HOLDERS LIST, ADDENDUMS AND BID TABULATION: The plan holders list, addendums and bid tabulations will be available for download on-line at www.bolton-menk.com or www.questcdn.com. Any addendums may also be distributed by mail, fax or email.

TO OBTAIN BID DOCUMENTS: Complete digital project bidding documents are available at www.bolton-menk.com or www.questcdn.com. You may view the digital plan documents for free by entering Quest project #_____ on the website's Project Search page. Documents may be downloaded for $30.00. Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership registration, viewing, downloading, and working with this digital project information. An optional paper set of project documents is also available for a nonrefundable price of $50.00 per set, which includes applicable sales tax and shipping. Please make your check payable to Bolton & Menk, Inc. and send it to 12224 Nicollet Avenue, Burnsville, MN 55337-1649, (952) 890-0509, fax (952) 890-8065

BID SECURITY: A certified check or proposal bond in the amount of not less than 5 percent of the total amount bid, drawn in favor of City of Elko New Market shall accompany each bid.

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

Dated: _____ /s/ Thomas Terry
City Administrator

Published:

New Prague Times: _____, _____, (submit by 3 pm Mondays, published Thursdays)

QuestCDN: _____,

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

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SECTION 00200 - INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACTS

Rowena Ponds Park Hockey Rink
City of Elko New Market

ARTICLE 1 - DEFINED TERMS

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

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

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

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

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

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

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

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

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

A. None.

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

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

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

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

4.01 *Site and Other Areas*

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

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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.

4.02 *Existing Site Conditions*

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:

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

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

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

d. Technical Data contained in such reports and drawings.

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

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

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

C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 Site Visit and Testing by Bidders

A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.

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

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

D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners

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or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

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

4.04 *Owner's Safety Program*

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

4.05 *Other Work at the Site*

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

ARTICLE 5 - BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;

B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;

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

E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

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

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

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

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

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

ARTICLE 6 - PRE-BID CONFERENCE

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

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

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

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

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents or form that is equivalent in terms, duration and obligation issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

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 Documents, 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 Documents 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. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven 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 seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

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

ARTICLE 10 - LIQUIDATED DAMAGES

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

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

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

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

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

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

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

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

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

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

ARTICLE 13 - PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents.

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

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

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

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13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.

13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.

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

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

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

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

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

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

ARTICLE 14 - BASIS OF BID

14.01 Lump Sum

A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

ARTICLE 15 - SUBMITTAL OF BID

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

15.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the project title "Rowena Ponds Park Hockey Rink", Project No. T51.100719 (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to the person indicated in the advertisement or invitation to bid.

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

15.04 The Owner does not allow electronic bid submittals.

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

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

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

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

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened 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 bid award.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 - EVALUATION OF BIDS AND AWARD OF CONTRACT

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

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

19.03 Evaluation of Bids

A. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.

19.04 In evaluating whether a Bidder is responsible, Owner will consider applicable mandatory criteria established by governing statutes and regulations, including but not limited to Minnesota Statute 16C.285, qualifications of the Bidder, and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

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

ARTICLE 20 - BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the

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Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 - SIGNING OF AGREEMENT

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

ARTICLE 22 - SALES AND USE TAXES

22.01 **Owner is not exempt from** state sales and use taxes on materials and equipment. Said taxes shall be included in the bid.

ARTICLE 23 - CONTRACTS TO BE ASSIGNED

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

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

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SECTION 00210 - ELECTRONIC/DIGITAL DOCUMENTS

PART 1 -- GENERAL

1.1 SUMMARY

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

1.2 FORMAT OF DOCUMENTS AND CONTROLLING CRITERIA

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

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

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

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

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

1.3 AVAILABILITY AND USE OF DIGITAL/ELECTRONIC DOCUMENTS

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

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and do not guarantee that electronic/digital versions and reproductions prepared from those versions are identical in every manner to the paper copies.

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

C. When using PDF versions of the bidding documents, the Contractor shall prepare its bid together with all required submittals; and deliver the Bid in the manner described in the bidding documents. The Owner reserves the right to accept Bid Forms which nominally vary in appearance from the PDF version, providing that all required information and submittals are included with the bid.

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

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

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

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

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

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REQUEST TO PROJECT ENGINEER (BOLTON & MENK, INC. "BMI")
FOR ELECTRONIC/DIGITAL DATA AND CONDITIONS OF USE

Project Contractor ("USER"):	
Project Owner	City of Elko New Market
Project Name	Rowena Ponds Park Hockey Rink
Description of Data/Files To Be Provided	

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

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

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

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

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

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

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

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

Accepted by: USER	
	Printed Name of "USER"
Date	Name and Title of Authorized Representative of USER
	Signature of Authorized Representative of USER
Approved: Project Engineer: (BMI)	
	Signature of Project Engineer's Representative

Version 04/11/07

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Items to Be Submitted with the Bid

for

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

SECTION 00410 - BID FORM

Rowena Ponds Park Hockey Rink
City of Elko New Market

ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to:

City of Elko New Market
601 Main Street
Elko New Market, MN 55054

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

ARTICLE 2 - BIDDER'S ACKNOWLEDGEMENTS

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

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

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

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____

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

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

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

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost,

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

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

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

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

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

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

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

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

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

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

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

E. **Bidder has completed and executed** the attached Section 00415 "Responsible Contractor – Proposal Attachment" of this Project Manual relating to Minn Statute 16C.285, "Responsible Contractor."

ARTICLE 5 - BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

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

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ARTICLE 6 - TIME OF COMPLETION

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

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

ARTICLE 7 - ATTACHMENTS TO THIS BID

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

A. Required Bid security (Section 00430 – Bid Bond)

B. **Section 00415 Responsible Contractor –** Proposal Attachment (2 Pages) of this Project Manual.

ARTICLE 8 - DEFINED TERMS

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

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ARTICLE 9 - BID SUBMITTAL

BIDDER:

_____

By:
[Signature] _____

[Printed name] _____

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

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

_____

_____

_____

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

_____

Bidder's License No.: _____

(where applicable)

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

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Schedule of Prices for Construction of:

Rowena Ponds Park Hockey Rink
City of Elko New Market, MN

Bidder agrees to perform all of the work described in the CONTRACT DOCUMENTS for the following lump sum:

TOTAL PROJECT BID PRICE

1. Construct one regulation-sized outdoor hockey rink including site improvements and dasher board fencing. $ _____

(_____

_____ DOLLARS)

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INITIAL CONTRACTOR VERIFICATION OF COMPLIANCE

By signing this document, I certify that I am an owner or officer of the company, and I swear under oath that:

My company meets each of the minimum criteria in subclauses (1) – (6) of Minn. Stat. § 16C.285, subd. 3, the Responsible Contractor statute.

The undersigned understands that a failure to meet or verify compliance with the minimum criteria established for a "responsible contractor" as defined in Minn. Stat. § 16C.285, subd. 3, renders a bidder ineligible to be awarded a construction contract for the Project or to perform work on the Project.

The undersigned understands that a false statement under oath verifying compliance with any of the minimum criteria shall make the undersigned, ineligible to be awarded a construction project and may result in termination of a contract awarded to the undersigned. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

The undersigned understands that, if the undersigned is the apparent low bidder, the undersigned will be required to submit a supplemental verification under oath as a condition precedent to the execution of the contract. If the undersigned fails to provide the required supplemental verification, it could forfeit its bid bond.

I have attached a list of all of my company's first-tier subcontractors that I intend to retain for work on the project.

Initial Contractor Verification of Compliance - Rowena Ponds Park Hockey Rink	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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SUBCONTRACTORS LIST

SUBCONTRACTOR NAMES **(Legal name of company as registered with the Secretary of State)**	**Name of City Where Company Home Office is Located**

Attach additional sheets if necessary.

Subcontractors List - Rowena Ponds Park Hockey Rink	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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BID BOND

Bidder Name: Address *(principal place of business)*:	Surety Name: Address *(principal place of business)*:
Owner Name: City of Elko New Market Address *(principal place of business)*: 601 Main Street, Elko New Market, MN 55054	Bid Project *(name and location)*: Rowena Ponds Park Hockey Rink - Elko New Market, MN Bid Due Date:
Bond Penal Sum: Date of Bond:	
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.	

Bidder	Surety
(Full formal name of Bidder)	*(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature) (Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title:	Title:

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.

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1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder will occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

   3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

   3.2 All Bids are rejected by Owner, or

   3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the 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 will 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.

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Items to Be Executed After Bid Opening

for

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

NOTICE OF AWARD

Date of Issuance:			
Owner:	City of Elko New Market	Owner's Contract No.:	
Engineer:	Rich J. Revering	Engineer's Project No.:	T51.100719
Project:	Rowena Ponds Park Hockey Rink		
Contract Name:			
Bidder:			
Bidder's Address:			

You are notified that Owner has accepted your Bid dated [_____] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

The Contract Price of the awarded Contract is: $ _____ Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

4 unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award or has been transmitted or made available to Bidder electronically.

☐ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [4] counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security [such as required performance and payment bonds] and insurance documentation, as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Deliver to Owner executed SECTION – 00515 RESPONSIBLE CONTRACTOR NOTICE OF AWARD. SUPPLEMENTAL CONTRACTOR VERIFICATION OF COMPLIANCE in accordance with Minn. Stat. 16C.285 subd.3 Subclauses (1) to (7). Delivery is a condition precedent to execution of this contract and failure to submit this form shall be cause for the Owner to cancel Award of Contract and declare your Bid security forfeited.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions

Owner: City of Elko New Market

By *(signature)* _____

Name *(printed)* _____

Title: _____

Copy: Engineer

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SECTION 00515 - RESPONSIBLE CONTRACTOR - NOTICE OF AWARD

SUPPLEMENTAL CONTRACTOR VERIFICATION OF COMPLIANCE

PROJECT TITLE: Rowena Ponds Park Hockey Rink

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

My company meets each of the minimum criteria of Minn. Stat. § 16C.285, subd. 3, the Responsible Contractor statute.

Pursuant to Stat. § 16C.285, subd. 3(7), my company has obtained from all subcontractors and motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor or motor carrier.

The undersigned agrees that, if it retains additional subcontractors on the project after submitting its verification of compliance, it shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with Minn. Stat. § 16C.285, subd. 3(7), within 14 days of retaining the additional subcontractors.

Upon request, the undersigned shall submit to the contracting authority copies of the signed verifications of compliance from all subcontractors of any tier and all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

The undersigned understands that a failure to meet or verify compliance with the minimum criteria established for a "responsible contractor" as defined in Minn. Stat. § 16C.285, subd. 3, renders a bidder ineligible to be awarded a construction contract for the Project or to perform work on the Project.

The undersigned understands that a false statement under oath verifying compliance with any of the minimum criteria shall make the undersigned, ineligible to be awarded a construction project and may result in termination of a contract awarded to the undersigned. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

Supplemental Contractor Verification of Compliance - Rowena Ponds Park Hockey Rink	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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SECTION 00516 - RESPONSIBLE CONTRACTOR - SUPPLEMENTAL

ADDITIONAL SUBCONTRACTORS LIST

PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT

PROJECT TITLE: Rowena Ponds Park Hockey Rink

This form must be submitted to the Project Manager or individual as identified in the solicitation document.

Minn. Stat. § 16C.285, Subd. 5. … If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

ADDITIONAL SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	**Name of city where company home office is located**

Additional Subcontractors List - Rowena Ponds Park Hockey Rink	
By signing this document I certify that I am an owner or officer of the company, and I swear under oath that: All additional subcontractors listed on this form have been verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.	
Authorized Signature of Owner or Officer:	Printed Name:
Title:	Date:
Company Name:	

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SECTION 00520 - AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Elko New Market ("Owner") and _____ ("Contractor").

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: Rowena Ponds Park Hockey Rink

ARTICLE 2 – THE PROJECT

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

Site Prep, Dasher Boards and Paving for Hockey Rink

ARTICLE 3 – ENGINEER

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

3.02 The Owner has retained Bolton & Menk, Inc., to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Dates

A. Substantial completion shall be defined as:

1. The date when construction is sufficiently completed so that the owner can occupy or use the improvement for the intended purpose.

B The work will be substantially completed on or before December 15, 2020, and completed and ready for final payment in accordance with Paragraph 15.06 of Section 00700 "General Conditions" of this Project Manual on or before May 15, 2021.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

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1. Substantial Completion: Contractor shall pay Owner $200.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

   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$20 for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

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

A. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) $_____.

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

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

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

6.03 *Progress Payment to Subcontractors*

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

1. The prime contractor shall pay any subcontractor within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor.

2. The prime contractor shall pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.

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

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

6.04 *Final Payment*

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

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 1.5 percent per month.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

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

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

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

E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, if any, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

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

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

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

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

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

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to ___, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. General Conditions (pages 1 to 65, inclusive).
5. Supplementary Conditions (pages ___ to ___, inclusive).
6. Specifications as listed in the table of contents of the Project Manual.
7. Drawings (not attached but incorporated by reference) consisting of 9 sheets with each sheet bearing the following general title: Rowena Ponds Park Hockey Rink & Drainage Improvements.
8. Addenda (numbers ___ to ___, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
   a. Contractor's Bid (pages ___ to ___, inclusive).
   b. Executed Section 00415 – Responsible Contractor – Proposal Attachment
   c. Executed Section 00515 - Responsible Contractor – Award Attachment
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.
   c. Change Orders.
   d. Field Orders.

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

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

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

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

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

10.02 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this

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restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

10.05 *Contractor's Certifications*

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

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

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

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

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

10.06 *Other Provisions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

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

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

OWNER:

City of Elko New Market

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

601 Main Street

Elko New Market, MN, 55054

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

CONTRACTOR:

_____

By: _____

Title: _____

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

Attest: _____

Title: _____

Address for giving notices:

License No.: _____
(where applicable)

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

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

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NOTICE TO PROCEED

Owner:	City of Elko New Market	Owner's Project No.:	
Engineer:	Rich J. Revering	Engineer's Project No.:	T51.100719
Contractor:		Contractor's Project No.:	
Project:	Rowena Ponds Park Hockey Rink		
Contract Name:			
Effective Date of Contract:			

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to Paragraph 4.01 of the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement: [Select one of the following two alternatives, insert dates or number of days, and delete the other alternative.]

> The date by which Substantial Completion must be achieved is December 15, 2020, and the date by which readiness for final payment must be achieved is May 15, 2021.

Owner:	City of Elko New Market
By *(signature)*:	
Name *(printed)*:	
Title:	
Date Issued:	

Copy: Engineer

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PERFORMANCE BOND

Contractor	Surety
Name: Address (principal place of business):	Name: Address (principal place of business):
Owner Name: City of Elko New Market Mailing address (principal place of business): 601 Main Street, Elko New Market, MN 55054	Contract Description (name and location): Rowena Ponds Park Hockey Rink - Elko New Market, MN Contract Price: Effective Date of Contract:

Bond

Bond Amount:

Date of Bond:

(Date of Bond cannot be earlier than Effective Date of Contract)

Modifications to this Bond form:

☐ None ☐ See Paragraph 16

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.

Contractor as Principal	Surety
_____	_____
(Full formal name of Contractor)	*(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature)(Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____

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

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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:

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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

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PAYMENT BOND

Contractor	Surety
Name: Address *(principal place of business)*:	Name: Address *(principal place of business)*:
Owner Name: City of Elko New Market Mailing address *(principal place of business)*: 601 Main Street, Elko New Market, MN 55054	Contract Description *(name and location)*: Rowena Ponds Park Hockey Rink - Elko New Market, MN Contract Price: Effective Date of Contract:

Bond

Bond Amount:

Date of Bond:

(Date of Bond cannot be earlier than Effective Date of Contract)

Modifications to this Bond form:

☐ None ☐ See Paragraph 18

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.

Contractor as Principal	Surety
_____	_____
(Full formal name of Contractor)	*(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature)(Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____

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

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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

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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.

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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

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General Conditions

for

Edition C-700 (Rev 1) EJCDC - 2013

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

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

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

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

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

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has declined to address. A demand for money or services by a third party is not a Claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

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

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

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

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

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

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

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

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

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

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

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

36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

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37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.

42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

46. *Unit Price Work*—Work to be paid for on the basis of unit prices.

47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*:

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*:

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents; or

b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. *Furnish, Install, Perform, Provide*:

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

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3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and

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3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

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computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*:

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

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error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

   a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

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3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

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2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;

2. abnormal weather conditions;

3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and

4. acts of war or terrorism.

D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

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G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*:

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

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by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

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5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or

2. is of such a nature as to require a change in the Drawings or Specifications; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Possible Price and Times Adjustments*:

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

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c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

c. Contractor failed to give the written notice as required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;

c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

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becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

C. *Engineer's Review*: Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Possible Price and Times Adjustments*:

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

    c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and

    d. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

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5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

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F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.

H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

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ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.

B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

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maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.

H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.

J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.

2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).

3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

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4. Foreign voluntary worker compensation (if applicable).

B. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:

1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.

2. claims for damages insured by reasonably available personal injury liability coverage.

3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

C. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:

   a. Such insurance shall be maintained for three years after final payment.

   b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Broad form property damage coverage.

4. Severability of interest.

5. Underground, explosion, and collapse coverage.

6. Personal injury coverage.

7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

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of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.

H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:

1. include at least the specific coverages provided in this Article.
2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

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6.04 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

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5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. include performance/hot testing and start-up.
13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.

B. *Notice of Cancellation or Change*: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

C. *Deductibles*: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.

F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

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6.06 *Waiver of Rights*

A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

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policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

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guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

3) it has a proven record of performance and availability of responsive service; and

4) it is not objectionable to Owner.

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

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D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

a. shall certify that the proposed substitute item will:

1) perform adequately the functions and achieve the results called for by the general design,

2) be similar in substance to that specified, and

3) be suited to the same use as that specified.

b. will state:

1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,

2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

c. will identify:

1) all variations of the proposed substitute item from that specified, and

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2) available engineering, sales, maintenance, repair, and replacement services.

d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.

B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

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E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.

J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.

L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

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O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

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7.09 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

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2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

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exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements*:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:

a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings*:

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

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provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples*:

   a. Contractor shall submit the number of Samples required in the Specifications.

   b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals*: Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review*:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

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8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures*:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal;

6. the issuance of a notice of acceptability by Engineer;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by Owner.

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D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.

B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

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Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

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8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. an itemization of the specific matters to be covered by such authority and responsibility; and

3. the extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.

C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

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D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

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9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

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or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.

B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.

C. Engineer's authority as to Change Orders is set forth in Article 11.

D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. *Change Orders*:

a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. *Work Change Directives*: A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

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adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

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the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.

B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

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the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures*: Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. *Engineer's Action*: Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. *Binding Decision*: Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

B. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

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B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*:

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

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submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

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thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

    c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

    d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

    e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

    f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

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other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

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B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.

E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

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cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

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B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

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include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*:

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

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a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

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e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*:

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. the Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. the Contract Price has been reduced by Change Orders;

i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;

j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

l. there are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

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remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

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E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.

2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

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inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all disputes that Contractor believes are unsettled; and

   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance*:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

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including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such other adjacent areas;
2. correct such defective Work;
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

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and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

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expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this Article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and

2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this Article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or

2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

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18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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City of Elko New Market Supplementary Conditions

for

Edition C-700 EJCDC® - 2013

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

SECTION 00800 - SUPPLEMENTARY CONDITIONS

TO THE STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT
SUPPLEMENTARY CONDITIONS - GENERAL COMMENTS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-1.01 Defined Terms

Delete Paragraph 1.01.A.40. of the General Conditions in its entirety and insert the following Paragraph A.40. in its place:

40. *Substantial Completion* – Substantial completion shall be as defined in the Agreement.

SC-4.03 REFERENCE POINTS

Delete Paragraph 4.03.A of the General Conditions in its entirety and insert the following Paragraph 4.03.A in its place:

4.03.A. The OWNER will provide engineering surveys to establish reference points for construction as described in Section 01720, Field Engineering, of the Specifications.

SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS

Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:

5.03.A. No reports of explorations or tests of subsurface conditions at or contiguous to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

SC-5.04 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

Amend paragraph 5.04.d.2.a. by inserting in the second line of this paragraph immediately after the word “conditions” the following:

“or reasonably should have known thereof.”

SC-5.06I HAZARDOUS ENVIRONMENTAL CONDITIONS

Paragraph 5.06I of the General Conditions shall be deleted in its entirety.

SC-6.01B PERFORMANCE, PAYMENT, AND OTHER BONDS

The first sentence of this section is changed to read as follows:

All bonds shall be in a form acceptable to Owner and shall fulfill statutory requirements

SC-6.02 INSURANCE – GENERAL PROVISIONS

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SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

6.02.B.1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

SC-6.03 CONTRACTOR'S INSURANCE

Delete paragraph 6.03.J in its entirety and insert the following:

6.03.J. The coverage requirements for specific policies of insurance, including the requirements of SC 6.03.K.2.a, must be met by such policies, with exception that an Excess or Umbrella Liability insurance policy may be used to supplement Contractor's policy limits on a follow-form basis to satisfy the full policy limits required by this Contract.

SC-6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

6.03.K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

State:		Statutory
Federal, if applicable (e.g., Longshoreman's):		Statutory
Jones Act coverage, if applicable:		
Bodily injury by accident, each accident	$	Not Applicable
Bodily injury by disease, aggregate	$	Not Applicable
Employer's Liability:		
Bodily injury, each accident	$	1,000,000.00
Bodily injury by disease, each employee	$	1,000,000.00
Bodily injury/disease aggregate	$	1,000,000.00
For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$	Not Applicable
Foreign voluntary worker compensation		Statutory

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate	$	2,000,000.00
Products - Completed Operations Aggregate	$	2,000,000.00
Each Occurrence (Bodily Injury and Property Damage)	$	1,500,000.00
Personal and Advertising Injury	$	1,500,000.00

a. The aggregate limits under SC-6.03.K.2 (Commercial General Liability) be maintained fully available for this Contract by obtaining and maintaining a Designated Construction Project General Aggregate Limit endorsement, or equivalent

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3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:

Bodily Injury:

Each person	$	1,000,000.00
Each accident	$	1,000,000.00

Property Damage:

Each accident	$	1,000,000.00
OR		
Combined Single Limit of	$	1,000,000.00

4. Excess or Umbrella Liability:

Per Occurrence	$	Not Applicable
General Aggregate	$	Not Applicable

5. Contractor's Pollution Liability:

Per Occurrence	$	Not Applicable
General Aggregate	$	Not Applicable

☒ If box is checked, Contractor is not required to provide Contractor's Pollution Liability insurance under this Contract

SC-6.05 PROPERTY INSURANCE

Add the following to the list of requirements in Paragraph 6.05.A, after item 13, as numbered items:

14. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorney's fees and engineering or other consultants' fees, if not otherwise covered;

SC-6.06 WAIVER OF RIGHTS

Paragraph 6.06 of the General Conditions shall be deleted in its entirety.

SC-7.02 LABOR; WORKING HOURS

Add the following to 6.02.B of the General Conditions to read as follows:

Unless otherwise noted, working hours shall be restricted to the hours of 7:00 AM to 8:00 PM Monday through Friday and 8:00 AM to 5:00 PM on Saturday. Expansion of working hours, including Sundays and Federal Holidays, require authorization from the Engineer.

SC-7.08 PERMITS

The following Paragraph 7.08.B shall be added immediately after Paragraph 7.08.A:

7.08.B. If the OWNER has obtained, or has applied for, the necessary construction permits from any regulatory agencies, they will be addressed in Section 01410, Regulatory Requirements, of the Specifications. CONTRACTOR shall obtain and pay for all construction permits, licenses and bonds, not specifically highlighted as previously obtained, or applied for, in the referenced Section.

SC-7.11 RECORD DOCUMENTS

The following Paragraphs 7.11.B through 7.11.C shall be added immediately after Paragraph 7.11.A:

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7.11.B. The purpose of the final Project Record Documents is to provide factual information regarding all aspects of the work, both concealed and visible, to enable future modification of the work to proceed without lengthy and expensive site measurement, investigation, and examination.

7.11.C. Prior to submitting a request for final payment, submit the final Project Record Documents to the Engineer and/or Owner for approval. Approval of the Record Documents shall not constitute final acceptance of the completed project.

SC-7.12 SAFETY AND PROTECTION

The following Paragraph 7.12.A.4 shall be added immediately after Paragraph 7.12.A.3:

7.12.A.4. The OWNER, ENGINEER or their representatives may indicate potential safety hazards noticed at the construction site. However, the CONTRACTOR shall remain the only party liable for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

SC-7.20 PROGRESS PAYMENTS TO SUBCONTRACTORS

Add the following Paragraph 7.20 immediately after Paragraph 7.19

7.20 Progress Payments to Subcontractors

A. For contracts involving payment with public funds within the State of Minnesota, including but not limited to cities, counties, towns, school districts, political subdivisions or agencies of local government, within ten days after receipt of payment has been made to the Prime Contractor, the Prime Contractor shall make payment to all Subcontractors for undisputed services provided by the Subcontractor. The Prime Contractor shall pay interest of 1.5% per month or for any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100.00 or more is $10.00 for an unpaid balance of less than $100.00, the Prime Contractor shall pay the actual penalty due to the subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Prime Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

SC-8.01 RELATED WORK AT SITE

Add the following to 8.01.C of the General Conditions to read as follows:

The Contractor shall cooperate with all parties to facilitate the prompt completion of all contracts.

Add the following immediately after 8.01.D of the General Conditions, which is to read as follows:

E. The Contractor is hereby advised that the following work may be performed on the site by others during the contract time.

1. The individual lot owners or their agents may be site grading and/or constructing buildings on the lots adjacent to the proposed streets.

2. Private utility companies may be installing and/or relocating underground facilities on or adjacent to the project.

F. If Owner performs work for the Contractor, the Contractor must pay Owner for such work with no deduction in Contract amount.

SC-8.02 COORDINATION

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Delete Paragraph 8.02.A and 8.02.B in its entirety and replace with the following:

8.02.A. Owner does not intend to contract with others for the performance of other work on the Project at the Site.

SC-8.04 CLAIMS BETWEEN CONTRACTORS

Add the following new paragraphs immediately after paragraph 8.03:

8.04 Claims Between Contractors

8.04.A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law.

8.04.B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.

8.04.C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

SC-9.11 EVIDENCE OF FINANCIAL ARRANGEMENTS

Paragraph 9.11 of the General Conditions shall be deleted in its entirety.

SC-10.03 PROJECT REPRESENTATIVE

Add the following new paragraphs immediately after Paragraph 10.03.A:

10.03.B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

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2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

4. Liaison:

    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

    c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

6. Shop Drawings and Samples:

    a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

    b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

    c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. Review of Work and Rejection of Defective Work:

    a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

    b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Start-ups:

    a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

    b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. Records:

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a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

c. Maintain records for use in preparing Project documentation.

11. Reports:

a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.

b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:

a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.

b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.

c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

10.03.C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

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4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

SC-12.01. CLAIMS

The first sentence of Paragraph 12.01.B of the General Conditions shall be deleted and the following inserted in its place:

Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to the Engineer and the other party to the Contract promptly but in no event later than ten (10) days after the start of the event giving rise thereto.

Add the following paragraphs to 12.01F of the General Conditions to read as follows:

Except as specifically authorized in writing by the Engineer at the time additional work is done beyond the original scope of the Contract Documents, the Contractor shall make no claims for additional compensation. The Contractor's plea of ignorance of foreseeable conditions which will create difficulties or hindrances in the execution of the work will not be acceptable to the Owner as an excuse for any failure of the Contractor to fulfill the requirements of the Contract Documents, and shall not be a basis for the Contractor's claim for additional compensation.

Any discrepancies in or conflicts between the items described in these Contract Documents must be submitted in writing to the Engineer for adjustment prior to proceeding with the work as any claims for additional compensation to achieve compliance with the requirements of those items will not be allowed or considered.

SC-13.01B5F. COSTS OF THE WORK

Paragraph 13.01B5F of the General Conditions shall be deleted in its entirety.

SC-13.01C. COSTS EXCLUDED

Insert the following after Paragraph 13.01C.5:

6. Sales, consumer, use and other similar taxes related to the Work for which CONTRACTOR is liable.

SC-13.03. UNIT PRICE WORK

Delete Paragraph 13.03.E. in its entirety and insert the following in its place:

There will be no adjustment in unit price for increased or decreased quantities. In addition, the Owner reserves the right to reduce certain quantities or delete certain items from each section of the bids as the Owner sees fit, either before or after the Award of Contract. There will be no additional compensation due to remobilization of equipment as necessary to complete punch list items or other

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items not completed by the Contractor. There will be no additional compensation due to restocking charges for materials not used on the project.

SC-15.01 PROGRESS PAYMENTS

Amend paragraph 15.01B.3 of the General Conditions to read as follows:

The amount of retainage with respect to all progress payments will be as follows:

Minnesota Contractors	5%
Exempt Non-Minnesota Contractors	5%
Non-Exempt Non-Minnesota Contractors	5% + 8%* = 13%

*State Surety Deposit

Non-Minnesota Contractors are advised to file Form SDE with the Minnesota Department of Revenue to determine their exemption status.

No reduction in retainage will be allowed until final acceptance of entire project, unless approved by the Engineer.

1. Pursuant to Minnesota Statute 471.425, Subdivision 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of one and one-half percent (1 ½ %) per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of $100.00 or more is $10.00. For an unpaid balance of less than $100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

SC-15.01.B.4 APPLICATIONS FOR PAYMENT

Add the following Paragraph 15.01.B.4 immediately after Paragraph 15.01.B.3.

15.01.B.4. All out-of-state contractors shall comply with all State of Minnesota surety deposit requirements. The OWNER may withhold an additional sum of 8 percent of the amount due the CONTRACTOR from each payment and forward it to the Department of Revenue until the CONTRACTOR's state tax obligations are considered fulfilled unless the CONTRACTOR can show reason for exemption. Exemption will be granted provided the out-of-state CONTRACTOR meets the exemption guidelines established for the Minnesota Department of Revenue. All necessary forms may be obtained from the Minnesota Department of Revenue, Mail Station 4450, St. Paul, Minnesota 55146-4450, or phone 1-800-657-3777 or online at: http://www.revenue.state.mn.us/businesses/withholding/Pages/Forms.aspx .

SC-15.01.D.1 PAYMENT BECOMES DUE

Delete Paragraph 15.01.D.1 in its entirety and replace with the following:

15.01.D.1 The time period for payment shall be in accordance with the Agreement.

SC-15.04 PARTIAL UTILIZATION

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Add the following Paragraph 15.04.B immediately after Paragraph 15.04.A.4 of the General Conditions. Paragraph 15.04.B modifies Paragraph 15.04.A of the General Conditions and reference is made thereto.

15.04.B. Nothing in Paragraph 15.04.A shall obligate the CONTRACTOR to apply for a Certificate of Substantial Completion for any part of this Project. The provisions for partial utilization of the Project, if any, are established by the Specifications and no Certificate of Substantial Completion will be issued for partial utilization occurring within the terms of the Specifications. Partial utilization of the Project not covered by the Specifications shall be in accordance with Paragraph 15.04.A and its sub-paragraphs. If a Certificate of Substantial Completion is not issued, Substantial Completion shall be when final payment is due in accordance with Paragraph 15.06.D.

SC-15.05. FINAL INSPECTION

Add the following after the second sentence of paragraph 15.05.A of the General Conditions:

If, after such measures are taken, subsequent inspections by the Engineer reveal that any of the previously identified construction items remain incomplete or defective, the Engineer will again notify the Contractor in writing of the remaining construction items. All costs associated with any subsequent inspections in which said remaining particulars are revealed, will be documented by the Engineer and paid by the Contractor to the Owner.

SC-15.06. FINAL PAYMENTS

Add a new paragraph immediately after paragraph 15.06.A.3 of the General Conditions, which is to read as follows:

4. Before final application for payment is made for the work, the Contractor must make satisfactory showing of compliance with M.S.A. 290.92, which requires the withholding of state income taxes for wages paid to employees on this project. Receipt by the Engineer of a certificate of Compliance from the Commissioner of Taxation to the Owner will satisfy this requirement. The Contractor is advised that before such certificate can be issued, the Contractor must first place on file with the Commissioner of Taxation an affidavit that the Contractor has complied with the provisions of M.S.A. 290.92. The required affidavit form will be supplied by the Commissioner of Taxation, Centennial Building, St. Paul, Minnesota, on request.

   Final payment will not be made until the Contractor shall have filed with the Engineer evidence in the form of an affidavit or such other evidence as may be required that all claims against him by reason of the Contract have been fully paid or satisfactorily secured. This shall be in the form of IC134 forms, paid-in-full final lien waivers from the Contractor, subcontractors, and major suppliers, and a Consent of Surety shall precede or accompany the final application for payment. In case such evidence is not furnished, the Owner may retain out of any monies due said Contractor sums sufficient to cover all lienable claims unpaid. In addition, a two (2) year maintenance bond is required from the Contractor. Said maintenance bond is to be dated to begin the date the City Council formally accepts the project. The amount of the maintenance bond shall be equal to the amount of the total construction cost (original contract amount plus change orders / minor extra work / additional project costs).

SC-15.06.A.4. WITHHOLDING OF INCOME TAX AT SOURCE

Add the following Paragraph 15.06.A.4. Immediately following Paragraph 15.06.A.3 of the General Conditions and immediately before 15.06.B:

15.06.A.4. "Final payment will not be made to the CONTRACTOR until a certificate showing that the CONTRACTOR has complied with the provisions of M.S.A. 290.92 requiring withholding of income tax on wages at the source. Said certificate shall be executed by the Commissioner of Revenue. Forms for certification may be obtained from the Commissioner of Revenue, Centennial Building, St. Paul, Minnesota 55145."

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SC-15.08 CORRECTION PERIOD

Modify Paragraphs 15.08.A of the General Conditions to change all references for the correction period length from one year to two years, except for luminaires, which is five years.

Add the following Paragraph 15.08.F immediately after Paragraph 15.08.E:

15.08.F. For purposes of this Paragraph 15.08, the date of Substantial Completion shall be interpreted as the date when final payment is due in accordance with Paragraph 15.06.B and 15.06.C, and the two year correction period shall commence on the date when final payment is due in accordance with Paragraph 15.06.B and 15.06.C, unless otherwise modified by the Specifications or by Written Agreement.

SC-17.01 METHODS AND PROCEDURES

Article 17.01, Methods and Procedures, of the General Conditions shall be deleted in its entirety and replaced with the following paragraphs:

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Contractor and the Engineer agree that all disputes between them arising out of or relating to this agreement shall be resolved, if possible, at the lowest possible staff level. If the dispute cannot be resolved between the Contractor and the Engineer staff, the presidents of the respective firms will meet to attempt to resolve the dispute(s). If resolution is not achieved, the dispute shall be submitted to non-binding mediation.

The rights and remedies available to the Contractor shall be limited to breach of Contract, and no other cause of action, including, without limitation, negligence, misrepresentation or other tort theory. The Owner or Contractor may assert any such breach of contract claim in any court of competent jurisdiction. Neither the Owner nor the Contractor shall be entitled to a jury trial in any such action. The right and remedies to the Owner hereunder shall be in addition to and shall not be constructed in any way as a limitation of any rights and remedies available to the Owner, which is otherwise available by law or contract, by special warranty or guarantee, or by other provision of the Contract documents. The provision of this paragraph shall be as effective as if repeated specifically in the contract documents in connection with each particular duty, obligation, right and remedy to which it may apply. All representations, warranties and guarantees made in the Contract documents shall survive final payment, termination or completion of this agreement.

No waiver or failure to enforce any part or provision of the contract documents, including but not limited to the change order process, shall be deemed to be waiver by the Owner of any subsequent default or breach of the same or any other part of provision contained herein, or right to enforce the same or any other part or provision contained herein.

******END OF SECTION******

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CONDITIONS OF THE CONTRACT

for

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

SECTION 00005 – CERTIFICATION

PROJECT SPECIFICATIONS

for

Rowena Ponds Park Hockey Rink
City of Elko New Market
Elko New Market, MN

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision, and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

By: _____
Rich J. Revering
License No. 20711

Date: _____

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SECTION 01110 - SUMMARY OF WORK

PART 1 -- GENERAL

1.1 PROJECT LOCATION

A. The project is located in City of Elko New Market. The project location is shown on the vicinity map in the design drawing set.

1.2 PROJECT DESCRIPTION

A. The project involves but is not limited to the complete construction of public improvements for the outdoor hockey rink. Individual elements of work shall include, but are not limited to:

1. Removal of bituminous pavement, concrete curb and gutter, sidewalk and driveways, pipe and other miscellaneous items.
2. Clearing and grubbing.
3. Water service construction.
4. Storm sewer construction.
5. Concrete walk construction.
6. Driveway pavement construction.
7. Bituminous path construction.
8. Turf restoration and erosion control construction.
9. Dasher boards, (Wooden Fencing construction).
10. Other miscellaneous work shown on the plans or specified herein.

1.3 ALTERNATE MATERIALS & METHODS OF CONSTRUCTION

A. The Contractor may present alternative materials and/or methods of construction for consideration by the Owner. Proposals for such alternatives shall be in accordance with the provisions of Section 01230 “Alternates and Alternatives” of this Project Manual.

1.4 CONTRACTOR USE OF PROJECT SITE

A. The Contractor's use of the project site shall be limited to its construction operations, including on-site storage of materials and field offices. No materials shall be stored in a location as to limit access to the affected public. Any damage caused by Contractor operations to private property, including but not limited to, parking lots, trees, shrubs, material spatter, etc. shall promptly be corrected at the Contractor’s expense.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 OPERATIONAL LIMITATIONS AND REQUIREMENTS

A. The Contractor shall confine its work within the limits of the easements, public rights-of-way, and/or construction limits as shown on the plans. If the Contractor desires additional space, it shall be the Contractor's responsibility to acquire easements and/or permission, as desired.

3.2 BARRICADES

A. The Contractor shall furnish and install any necessary barricades to protect the public or workers during the project. Barricades to keep public out of construction areas shall be left in place until removed by Contractor after they are no longer required for protection. The Contractor is responsible to secure the site at all times during the demolition.

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B. The Contractor shall furnish names, addresses, and phone numbers of at least two local individuals capable of immediate response who will be responsible for the site security and traffic control devices to:

The Engineer
The Owner
Local Law Enforcement Agencies

C. The Contractor shall respond with sufficient personnel, equipment and/or materials and conduct the required work **or be subject to a $100 per hour deduction from the time of notification for non-attention to project security and safety**.

3.3 SAFETY HAZARDS

A. The Owner, Engineer or their representatives may indicate potential safety hazards noticed at the Construction site. However, the Contractor shall remain the only party liable for the maintenance of safe construction practices.

3.4 INTERFERENCE WITH TREES

A. The Contractor may be required to trim tree branches that overhang the work zone as specifically identified during construction by the Engineer, where branches are likely to be broken or excessively damaged by construction equipment and activities. Branches which are accidentally damaged during construction shall be trimmed immediately. All trimmed ends shall be coated with an appropriate coating material.

B. The Contractor shall protect existing trees within close proximity of the construction from stripping and root damage. Roots extending into excavations shall be cut before excavating in their vicinity. Roots cut or otherwise damaged shall be coated with an appropriate protective dressing prior to backfilling.

C. No direct compensation for tree protection and interference shall be made, unless specifically identified in the Schedule of Unit Prices.

******END OF SECTION******

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SECTION 01230 - ALTERNATES / ALTERNATIVES

PART 1 -- GENERAL

1.1 SUMMARY

A. This section shall govern the interpretation and evaluation of bid alternates and contractor proposed alternatives.

B. The Owner reserves the right to reject any bids not complying with the requirements of this section.

C. Qualification process

1. Installers wishing to qualify alternate methods and/or materials for this project must submit a copy of the license or certificate verifying the manufacturer's or licensor's approval, and evidence of the installer's experience including the number, total length, and locations of trenchless construction projects installed to date using the proposed materials and methods together with the names and phone numbers of facility owners to the Engineer 10 days prior to the opening of bids to allow time for evaluation.

2. The final decision to accept or reject the applicant lies solely with the Owner.

1.2 INTERPRETATION OF "OR EQUAL" CLAUSES

A. The Contractor shall include in its base bid the items, as specified, without consideration of using the 'or equal' items and methods.

B. The Contractor shall then include in its bid the amount of the deduction, increase or revised total bid to be applied if the 'or equal' items and methods are accepted.

C. The Owner and Engineer shall evaluate the 'or equal' stature of the proposed materials and methods.

D. The Owner reserves the right to accept or reject the proposed 'or equal' materials and methods at the appropriate adjustment to bid price.

1.3 PROPOSALS WITH SPECIFIED BID ALTERNATES

A. The Owner reserves the right to select the bid alternate desired, regardless of the amount bid.

B. The bid shall be awarded to the lowest and best bidder of the selected alternate.

1.4 CONTRACTOR PROPOSED ALTERNATIVES

A. The Contractor shall include in its base bid the items, as specified, without consideration of using any proposed alternative materials and/or methods.

B. The Contractor shall then include in its bid the amount of the deduction, increase or revised bid amount to be applied if the proposed alternative materials and methods are accepted.

C. The Owner and Engineer shall evaluate the stature of the proposed materials and methods.

1. Evaluation by the Owner and Engineer shall include the cost of modifying the design, as necessary and shall be at the discretion of the Owner and Engineer.

2. If the Contractor is proposing trenchless technology that is not included as a contract alternative, the following modifications to the original design shall be anticipated by the Contractor and included in the price differential or revised contract amount, as proposed:

(a) The actual inside pipe diameter included in the Contractor proposed alternative shall be equal to or larger than the original conduit design, as specified, unless approved by the Engineer.

(b) The minimum grade of all conduits installed by trenchless technologies for gravity sewers shall be 0.80 percent. This minimum may increase the depth required for structures. The Contractor shall include in the price differential or revised contract amount the cost of any such increases in structure depth.

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(c) Proposed modifications which include changes in pipe size whether to meet the required actual inside pipe diameter or necessitated by proposed changes in pipe materials, etc. may require changes in manhole diameters to accommodate the necessary pipe entrances. The Contractor shall include in the price differential or revised contract amount the cost of any such increases in manhole size.

D. The Owner reserves the right to accept or reject "Contractor Proposed Alternatives".

1.5 SPECIFICATION REFERENCES

A. CONTRACTOR PROPOSED ALTERNATIVES

1. If the Bidder proposes an alternative:

(a) The Contractor is required to request, in writing, a determination on the Specifications which will be enforced to govern the construction. This request shall be made directly to the Engineer at the time of bid opening or before.

(b) The Engineer shall attempt to provide the Specification requirements prior to the end of the working day to allow the Contractor time to withdraw its bid, if requested by the Contractor.

1.6 SUBMITTALS

A. "OR EQUAL" MATERIALS AND/OR METHODS

1. Unless otherwise specified, contractors whose bids are based on "equal" materials and/or methods shall include with their bid the manufacturer name, address, product name, model, specification reference and/or testing certification of the items proposed to be used. The Contractor shall also include evidence of the 'equal' stature of the products proposed.

B. PROPOSALS FOR SPECIFIED BID ALTERNATES

1. Unless otherwise specifically requested, no submittals are required.

2. Unless otherwise specifically requested, the Contractor is required to bid at least one of the alternates included in the proposal form, and the Contractor may choose to bid other alternates or not.

C. CONTRACTOR PROPOSED ALTERNATIVES

1. The Contractor shall contact the Engineer prior to bidding the job to discuss its proposed alternative approach to the methods and materials used or execution of the job. The Engineer shall evaluate the proposed methods and may at the Engineer's discretion choose to issue an addendum to all contractors or accept the conversation as privileged communication.

2. Unless otherwise specified, the Contractors whose bid includes alternative materials and/or methods shall include with their bid the manufacturer name, address, product name, model, specification reference and/or testing certification of the items proposed to be used. The Contractor shall also include evidence of the 'equal' stature of the products and/or methods proposed.

3. The Contractor shall mark the outside of the bid envelope that alternative methods are included.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01270 - MEASUREMENT & PAYMENT

PART 1 -- GENERAL

1.1 SUMMARY

A. Methods of measurement and payment for all items not individually specified shall be according to the appropriate referenced specification standard.

1.2 MEASUREMENT & PAYMENT

A. **Payment for Plan Quantity (P) Items:** Items designated as Plan Quantity (P) shall be measured and paid for based on the quantity listed in the plans and no field measurement shall be made. The Engineer will only adjust the quantities on Plan Quantity (P) designated Contract items when the Engineer authorizes changes to the dimensions of that work (in which case only the affected portion will be re-determined) or when the Engineer determines that the quantity designated as a Plan Quantity (P) is incorrect.

B. **Payment for Hauled Materials**: No compensation will be paid for any weigh ticket received after the date shown on the ticket unless prior arrangements are made with the Engineer.

C. **Payment for Materials Stored on Site:** No compensation will be paid for materials delivered to the site and not incorporated into the project.

D. **Payment for Major Lump Sum Items:** The Contractor shall submit a schedule of values for major items of construction that are bid as lump sum. The schedule shall identify major sections of work and the percentage of the bid price applied to each. Payment shall be made according to the percentage complete of each major section of work.

1.3 SUBMITTALS

A. The Contractor shall submit to the Engineer a “Certificate of Conformance” statement stating that the scale used to weigh hauled materials has been tested and calibrated for the current construction season. This Certificate shall be from MnDOT or other reliable scale servicing company. Providing a certified scale and obtaining such “Certificate of Conformance” is the sole responsibility of the Contractor and all costs associated are considered incidental to the materials being supplied.

B. **Hauled Materials:** The Contractor shall furnish numbered weigh tickets which list the Date, Project, Type of Material, Gross Weight, Tare Weight, Material Weight in tons, and Truck Number for each load brought to the construction site. If the individual pay items are identified on a unit weight basis, the Contractor shall provide the Engineer with a summary type spreadsheet which provides accumulative job totals of all aggregate and bituminous materials hauled to the project. This spreadsheet shall be submitted to the Engineer on a weekly basis.

C. **Procured Materials:** The Contractor shall furnish an insurance bond showing the type of material, the amount of material, the valuation of the material, the stored location, the project, the date, the name and address of the surety.

D. **Compacted Volume Materials:** When measurement is specified by the CUBIC YARD, (CY) COMPACTED VOLUME (CV), will be determined by length, width and depth measurements of the material in its placed and compacted position, according to the placement dimensions as shown in the Contract or as designated by the Engineer.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01310 - COORDINATION

PART 1 -- GENERAL

1.1 SEQUENCE OF CONSTRUCTION

A. A written project management scheduling tool (i.e., critical path (CPM), detailed bar chart, etc.) shall be employed by the Contractor for cost value reporting, planning and scheduling of all work required under the Contract Documents. This schedule shall show the order in which the Contractor proposes to execute the work with dates on which it proposes to start the various phases of the work and the estimated completion date of each phase. The Contractor shall submit a preliminary version of its intended schedule within 10 working days following the *Notice of Award* on the attached form or on a form of its own choosing. **The Contractor is required to show the initial critical path (CPM) of tasks to be performed.**

B. Unless otherwise approved by the Engineer, the schedule shall also include an anticipated payment schedule for the volume of work to be completed each month. This schedule shall indicate the Contractor's intention and ability to complete the work within the contract times, as specified in Article 4 of Section 00520 “Agreement” of this Project Manual.

C. The Preconstruction Conference as outlined in Section 01315 “Project Meetings” of this Project Manual will not be conducted until the schedule is submitted. In addition, no construction staking shall be provided until the schedule is submitted by the Contractor and reviewed by the Engineer.

1.2 WORKING HOURS

A. Except in connection with safety or emergency situations, all work at the site shall be performed during daylight hours.

B. The Contractor shall notify the Owner and Engineer of any work planned on Saturday, Sunday, or any legal holidays at least 48 hours prior to such work.

C. The Contractor shall coordinate any construction or hauling activity in the vicinity of churches, schools, medical facilities, and funeral homes. The Contractor shall be cognizant of the disruptive effects of continued construction during funerals. The Owner reserves the right to temporarily stop construction within one block of, and during the time of, any funeral procession. No compensation shall be granted to the Contractor due to temporary delays caused by funerals.

1.3 TRAFFIC CONTROL

A. Reference Specification 01555 “Maintenance and Control of Traffic” of this Project Manual.

1.4 COORDINATION WITH BUSINESSES AND PRIVATE PROPERTY OWNERS ADJACENT TO THE PROJECT

A. The Contractor shall notify all property owners and occupants adjacent to the project 2 days in advance to allow moving machinery and/or vehicles or other items that may be blocked in or damaged due to the upcoming construction in the area. Access to the properties shall be restored as soon as possible after each phase of construction.

1.5 COORDINATION WITH UTILITY COMPANIES

A. The Contractor is responsible for working with public and private utility companies in protecting and/or relocating existing or new utility lines located near and affected by this construction.

1. Coordination with the utility companies is very important and should be considered in planning the work and the associated extra costs involved.

2. Private utility companies are responsible for their own lines and are so obligated under City Code Agreements to protect and/or relocate their utilities, if required to install new City owned utilities in a given area.

B. The Contractor shall consult with the City’s maintenance personnel when working around or performing the required sanitary sewer installations.

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C. The Contractor shall also work with the City's maintenance personnel to provide for scheduled water shut-downs in a given area and to provide for continued water service to the properties along the project throughout the duration of the project.

D. The Contractor shall work with all utility companies, as necessary, to allow for installation and for maintenance of service of gas, power, lighting, telephone, cable TV, etc. in the boulevards or across the streets prior to final shaping of aggregate base and/or topsoil. This coordination with the utility companies is the responsibility of the Contractor and is considered incidental to the construction and no additional compensation shall be granted.

1.6 COOPERATION WITH FIRE & EMERGENCY DEPARTMENTS

A. The Contractor shall coordinate all work requiring shutting down water service or limiting access to buildings by emergency equipment with the fire & emergency departments. This shall include notification of the daily construction schedule by the Contractor.

1.7 COOPERATION WITH OTHER CONTRACTORS

A. The Contractor shall cooperate with other contractors performing construction on other projects in the vicinity of this Project, including but not limited to allowing access for the delivery of equipment and materials.

1.8 COORDINATION WITH SERVICE PROVIDERS

A. The Contractor shall coordinate with the postal service, recycling service, garbage collection service, school bus service, etc. to maintain continual uninterrupted service to all residences and businesses throughout the duration of the project.

B. The Contractor shall temporarily relocate mailboxes, haul recycling and garbage for residents to a designated pick up location, etc., as required by the subject service provider. All equipment materials and labor required to coordinate with service providers and maintain services shall be incidental to the Contract.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01330 - SUBMITTALS

PART 1 -- GENERAL

1.1 SUMMARY

A. The Contractor shall submit three copies of all required submittals and sample items as noted below. The Engineer will review them with reasonable promptness. The Contractor shall make all required corrections and file with the Engineer three corrected sets for final review. If the Contractor requires more than two reviewed copies, the Contractor shall submit additional sets.

B. The responsibility for completeness of submittals lies with the Contractor. If the Engineer and/or Owner sign the submittal with no exception taken, such action shall not absolve the responsibilities of the Contractor in any way.

C. Emailed submittals to the Engineer in pdf format will be accepted.

1.2 ITEMS TO BE SUBMITTED

A. Contractor to propose fencing products for items lettered on plans. All wood must be pressure-treated lumber rated for ground contact.

B. Bituminous Mix Design (wear and non-wear)

C. Gradation Test Results from 2 separate tests, as required in Source Quality Control provisions of individual sections contained herein, from material stockpiles of aggregates to be used on this project. These tests may be run by the Contractor or its supplier during aggregate production.

D. Storm Sewer, Subdrain and Sump Drain Lines

1. Manhole and catch basin structure - shop drawings.
2. Manhole and catch basin casting - shop drawings.
3. Piping and fittings - Certificates of Compliance.

E. Water Service Lines

1. Hydrants - Certificates of Compliance.
2. Valves & boxes - Certificates of Compliance.
3. Pipe & fittings - Certificates of Compliance.
4. Corporation stops, saddles, curb stops, curb boxes, copper pipe - Certificates of Compliance.

1.3 MATERIAL SAFETY DATA SHEETS

A. The Contractor shall submit two copies of Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheets or MSDSs) for each material on site to the OWNER.

B. The Contractor shall maintain an orderly file of Safety Data Sheets at the job site.

1.4 RECORD DRAWINGS

A. The CONTRACTOR shall maintain at the construction site one complete set of drawings suitably marked to show all deviations from the original set of drawings and other information as specified. Supplementary sketches shall be included, if necessary, to clearly indicate all work as constructed. Sanitary and water service tie-in or stub-out locations shall show station and distances left or right of the survey control centerline. Existing sanitary and water service piping material type and size at the tie-in locations shall be noted also.

B. All manholes, watermain bends and valves shall be located with tie-off dimensions to known items on the plans or in the field to enable the Contractor or City personnel to locate these structures for adjustment.

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C. The CONTRACTOR shall fill out a service record form for each water service and sanitary sewer service connection or stub out. A blank service record form will be supplied by the ENGINEER to be used by the CONTRACTOR. The completed service record forms and photos taken of the services shall be submitted to the ENGINEER in a digital format and in booklet form.

D. All work shall be clearly shown and the record drawings and service record forms shall be satisfactory to the OWNER in order to insure that adequate information is indicated to show the actual construction. The complete set of the record drawings shall be submitted to the ENGINEER prior to submittal of the final Application for Payment. Failure of the CONTRACTOR to maintain an up-to-date set of record drawings on the project site shall be reason to withhold payments. All underground lines shall be determined from the record drawings.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 SUBMITTAL ROUTING

A. All submittals shall be approved by the Contractor prior to submission to the Engineer.

B. A Letter of Transmittal that identifies the submitted item and the review action required shall accompany all submittals.

1. The Contractor shall be responsible for filling in the following information on the Letter of Transmittal:

(a) Date.

(b) Submittal No.

(c) Identify what is being sent checking the appropriate box.

(d) No. Copies Submitted.

(e) Identify the Specification Section the attached information relates to.

(f) Subject of Shop Drawing or Other Submittal.

(g) Check whether the Shop Drawings are or are not in compliance.

(1) If not in compliance, list the features which are not.

(h) Sign and Date.

3.2 RESPONSIBILITY

A. The Engineer's review of a submittal shall not relieve the Contractor from the responsibility for deviation from the drawings and specifications unless the Contractor has, in writing, called the Engineer's attention to the deviations at the time of submission; nor shall it relieve the Contractor from the responsibility of errors in the submittals.

B. All submittals shall be reviewed by the Engineer prior to their incorporation into the project. If materials are installed without prior review, they will be subject to removal, at the Contractor's expense, if the material is found to be non-conforming to the Specifications.

****** END OF SECTION ******

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SECTION 01410 - REGULATORY REQUIREMENTS

PART 1 -- GENERAL

1.1 SUMMARY

A. Applicable codes and standards referred to in these specifications shall establish minimum requirements for equipment, materials, construction and shall be superseded by more stringent requirements of drawings and specifications when and where they occur.

B. All equipment furnished and installed under the contract shall be designed, fabricated, assembled, installed, and placed into service. The equipment will conform to the applicable provisions of the Federal and State Safety and Health Standards, including but not limited to Federal Occupational Safety and Health Regulations for Construction; the Division of Environmental Health, Minnesota Department of Health; the Minnesota Pollution Control Agency; the Department of Natural Resources; the Minnesota Department of Transportation, Division of Highways; the Minnesota Industrial Commission and ordinances of the City that apply to this work.

C. All construction methods and tools shall comply with commonly accepted standards for safety and health of personnel engaged on construction, including but not limited to Federal Occupational Safety and Health Regulations for Construction; the Division of Environmental Health, Minnesota Department of Health; the Minnesota Pollution Control Agency; the Department of Natural Resources; the Minnesota Department of Transportation, Division of Highways; the Minnesota Industrial Commission and ordinances of the City that apply to this work.

D. Any conflicts between specifications and applicable codes and standards shall be referred to the Engineer.

1.2 PERMITS OBTAINED BY OWNER

A. The Owner has applied for the following permits from appropriate authorities. It is anticipated that permission to proceed will be authorized prior to execution of Contract. The Contractor shall perform all work and conduct itself in full accordance with the requirements of the applicable permit

B. The Contractor shall be responsible for meeting any bonding or insurance requirements which may be required as a condition to any permit, listed above.

1.3 PERMITS OBTAINED BY CONTRACTOR

A. The Contractor shall secure and pay the cost of any other permits not mentioned above, which may be required including but not limited to:

1. Work within City right-of-way permit: Waived.
2. Building permits.

1.4 WORK WITHIN A RAILROAD RIGHT OF WAY

A. No work within railroad right-of-way is anticipated as part of this project as designed.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01420 - SPECIFICATION REFERENCE AND WORKS CONSULTED

PART 1 -- GENERAL

The references listed in this section are not all inclusive. There may be other references in individual specification sections that are not listed in this Section.

Portions of referenced specifications not specifically affected by the supplemented information of modification shall remain in effect as originally written.

It is the Contractor's responsibility to have these and all other referenced specifications listed in individual Sections available onsite and to be familiar with them.

1.1 ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE (EJCDC)

A. Documents with the EJCDC copyright notice in the footer are used in this Project Manual under a licensing agreement with EJCDC. The text of these documents has not been changed or modified by Bolton & Menk, Inc.

B. EJCDC documents were consulted in the creation of the Project Manual Sections listed below. These documents have been altered from the original EJCDC text and the EJCDC footer has been removed in compliance with the EJCDC license agreement. Those portions of the text that originated in copyrighted EJCDC documents remain subject to the EJCDC copyright.

1. 00100 – Advertisement for Bids
2. 00200 – Instructions to Bidders
3. 00410 – Bid Form
4. 00520 – Agreement
5. 00800 – Supplementary Conditions

1.2 SOIL DISTURBING ACTIVITIES

A. Minnesota Pollution Control Agency (MPCA) - General Storm Water Permit for Construction Activity (MN R100001) in force at the day of bid: http://www.pca.state.mn.us/water/stormwater/stormwater-c.html

1.3 WATERMAIN, SANITARY SEWER AND STORM SEWER CONSTRUCTION

A. "Standard Specifications" as published by the City Engineers Association of Minnesota, in force 30 calendar days prior to bid date: http://www.ceam.org

B. American Water Works Association (AWWA) Standards: http://www.awwa.org/

1.4 GRADING, STREET AND SURFACE IMPROVEMENTS

A. All of Divisions II and III, and any specifically referenced Division I sections of the Minnesota Department of Transportation (MnDOT), "Standard Specifications for Construction", together with all the Supplemental Specifications in force 30 calendar days prior to bid date: http://www.dot.state.mn.us/pre-letting/spec/

B. MnDOT Technical Memoranda in force 30 calendar days prior to bid date and referencing the use of English units of measure: http://www.dot.state.mn.us/design/tools/index.html

C. MnDOT Standard Plans: http://standardplans.dot.state.mn.us/

D. MnDOT Standard Details: http://standardplates.dot.state.mn.us/

E. Whenever the word "Contracting Authority," "Department" or "Owner" is used in the sense of ownership as part of any of the MnDOT Documents, it shall mean Owner as defined in the Agreement.

1.5 TRAFFIC CONTROL

A. The Minnesota Manual of Uniform Traffic Control Devices (MMUTCD) shall apply to this project and is available at: http://www.dot.state.mn.us/trafficeng/publ/mutcd/.

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B. The MnDOT's Temporary Traffic Control Zone Layouts Field available at: http://www.dot.state.mn.us/trafficeng/publ/fieldmanual/.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

A. The Contractor shall have access to the reference documents at the site at all times during the construction either in paper or digital format.

******END OF SECTION******

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SECTION 01425 - ABBREVIATIONS

PART 1 -- GENERAL

1.1 WHEREVER THE FOLLOWING ABBREVIATIONS ARE USED, THEY SHALL HAVE THE MEANINGS INDICATED:

A. AASHTO American Association of the State Highway and Transportation Officials

B. ACI American Concrete Institute

C. AI The Asphalt Institute

D. ASTM American Society for Testing and Materials

E. AWWA American Water Works Association

F. CEAM City Engineer's Association of Minnesota

G. CLFMI Chain Link Fence Manufacturers Institute

H. MnDOT Minnesota Department of Transportation

I. OSHA Occupational Safety and Health Administration

J. PCA Portland Cement Association or Minnesota Pollution Control Agency (context obvious)

K. SWPPP Storm Water Pollution Prevention Plan

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01450 - QUALITY CONTROL

PART 1 -- GENERAL

1.1 SCOPE OF TESTS

A. All materials, equipment, installation, and workmanship included in this contract, if so required by the Engineer, shall be tested and inspected to prove compliance with the contract requirements.

B. All tests and inspections shall be completed under the direct supervision of a licensed professional engineer. All tests and inspections shall be the responsibility as identified in the individual sections of these specifications and shall be reported directly to the Owner and Engineer.

C. No tests specified herein shall be applied until the item to be tested has been inspected and approval given for the application of such tests.

D. Tests and inspections shall include all those specified in the individual sections and shall be compensated in accordance with the individual sections.

E. Tests and inspection, unless otherwise specified or accepted, shall be in accordance with the recognized standards of the industry.

F. Soil compaction testing performed by the Owner is deemed to be for the convenience of the Owner for documentation of the progress and performance of the work. Soil compaction testing results will be made available to the Contractor. However, the Owner and Engineer make no representations that the number of tests taken will be sufficient to accurately characterize the condition of any trench, and the Contractor shall take any supplemental test it deems necessary to monitor its own performance. The Owner may, at its discretion, eliminate soil and compaction testing on any part or the entire project. The presence or absence of soil and compaction testing or the approval of the results thereof shall in no way reduce the Contractor's obligation to correct trench settlement as described in these Special Provisions.

1.2 FINAL TESTING AND START-UP

A. If, under test, any portion of the work fails to fulfill the contract requirements and is altered, renewed or replaced, tests on that portion so altered, removed, replaced, together with all other portions of the work as are affected thereby, shall, if so required by the Engineer, be repeated within reasonable time and in accordance with the specified conditions and the Contractor shall pay to the Owner all reasonable expenses incurred by the Owner as a result of the carrying out of such tests.

1.3 TESTING AND LABORATORY SERVICES

A. Independent Testing Laboratory

1. Where in the individual sections of this Specification, tests or inspections are required to be furnished by the Contractor by an independent testing laboratory, the Contractor shall employ and arrange for, at its expense, the services of an approved independent testing laboratory satisfactory to the Engineer to perform the testing utilizing recognized standard procedures and criteria.

B. Reports and Certificates

1. The Contractor shall submit reports and certificates of all inspections and test to the Engineer in duplicate. The reports and certificates become the property of the Owner.

C. Sample Materials

1. The Contractor shall furnish all sample materials required for these tests and shall deliver the same without charge to the testing laboratory or other designated agency when and where directed by them.

D. Additional Tests

1. In addition to those tests required by the individual technical specifications and/or referenced specifications:

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(a) Additional tests required beyond these required under this specification may be ordered by the Engineer to settle disagreements with the Contractor regarding quality of work done. If the work is defective, the Contractor shall pay all costs of the additional tests and shall correct the work. If the work is satisfactory, the Owner will pay for the additional tests.

1.4 ENGINEER'S REPRESENTATIVES AND TESTING

A. The Engineer may provide a Resident Project Representative (RPR) to ascertain that the work is accomplished properly and in accordance with the plans and specifications. The RPR shall have full access to the work and shall be given full cooperation. The RPR shall have the authority, subject to the final decision of the Engineer, to reject any defective work or material. The RPR shall have no authority to permit any deviation from the plans and specifications except on written order from the Engineer.

B. The presence of the Engineer or any RPRs, however, shall not relieve the Contractor of the responsibility for the proper execution of the work in accordance with all requirements of the Contract Documents. Compliance is a duty of the Contractor, and said duty shall not be avoided by any act or omission on the part of the Engineer or any RPRs.

1.5 SITE INVESTIGATION AND CONTROL

A. The Contractor shall verify all dimensions in the field and shall check field conditions continuously during construction. The Contractor shall be solely responsible for any inaccuracies built into the work due to his failure to comply with this requirement.

B. The Contractor shall inspect related and appurtenant work and shall report in writing to the Engineer any conditions, which will prevent proper completion of the work. Failure to report any such conditions shall constitute acceptance of all site conditions, and any required removal, repair or replacement caused by unsuitable conditions shall be performed by the Contractor at his sole cost and expense.

1.6 RIGHT OF REJECTION

A. The Engineer, acting for the Owner, shall have the right, at all time and places, to reject any articles or materials to be furnished hereunder which in any respect, fail to meet the requirements of these specifications, regardless of whether the defects in such articles or materials are detected at the point of manufacture or after completion of the work at the site. If the Engineer or RPR, through an oversight or otherwise, has accepted materials or work which is defective or which is contrary to the specifications, such material, no matter in what stage or condition of manufacture, deliver, or erection, may be rejected by the Engineer for the Owner.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01500 – MOBILIZATION

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the mobilization of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to construct the project, including but not limited to, the demobilization associated with closing the project, removing all equipment, removing excess materials, and general clean-up.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Mobilization shall be considered incidental to the project and no compensation will be granted.

B. MnDOT 2021 shall apply to mobilization.

C. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

******END OF SECTION******

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SECTION 01550 - MAINTENANCE OF HAUL ROADS & TEMPORARY ACCESS

PART 1 -- GENERAL

1.1 MAINTENANCE

A. The Contractor shall notify and obtain the approval of the local governmental authority for the use of all haul roads and construction easement areas within the City limits not specifically noted below. The Contractor will be required to deliver new materials and dispose of all excavated material plus removal items only on designated haul roads. This also applies to equipment entering and leaving the project site such as backhoes and front end loaders.

B. Allowable City street and project haul roads are described as follows:

1. Webster Street
2. Park Street

C. The Contractor shall confine all operations, ingress and egress to the designated haul roads. The Owner may **assess a fee in the amount of $ 500 per day for each day** that the Contractor occupies or travels on non-designated haul roads. The fee shall be in addition to damages assessed against the Contractor to repair damage caused to the roadway.

D. The Contractor shall maintain and repair any damage to haul roads. Maintenance shall include, but not be limited to, the following: blading, patching, signing, graveling and dust control. This work will be at the Contractor's expense, without any direct compensation being made other than the payment received for Contract items.

E. The Contractor shall be responsible for all roadbed maintenance over backfilled trenches and roadbed subgrade during the construction period.

1.2 REFERENCED SPECIFICATION

A. MnDOT 1513, Restrictions on Movement and Storage of Heavy Loads and Equipment.

B. MnDOT 1515, Control of Haul Roads

C. MnDOT 2051, Maintenance and Restoration of Haul Roads.

D. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. Reclaimed bituminous and salvaged aggregate base may be used for temporary access surfacing. No additional compensation shall be granted for the installation, removal and disposal of materials utilized in this way.

******END OF SECTION******

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SECTION 01562 - AIR, LAND AND WATER POLLUTION

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary for the prevention of air, land and water pollution as indicated on the plans or as specified herein or as directed by the Engineer.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. Payment for the prevention of air and land pollution shall be incidental to the project and no separate compensation will be granted

2. Payment for all work associated with the prevention of water pollution and erosion control shall be incidental to the project and no separate compensation will be granted, unless payment for such work is specifically identified in Section 02370 "Erosion and Sediment Control" of this Project Manual.

B. SPECIFICATION REFERENCES

1. MnDOT 1717 shall apply to the prevention of air, land and water pollution.

2. MnDOT 2573 shall apply to storm water management.

3. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 GENERAL

A. The Contractor shall provide and maintain all sanitary accommodations for use by employees.

B. All solid waste material shall be disposed by the Contractor in accordance with the local and State solid waste disposal regulations.

3.2 DUST CONTROL

A. The Contractor shall perform dust control operations necessary to proactively prevent the production of dust in amounts to cause nuisance or damage to property, vegetation, animals, or persons in the vicinity of the construction.

B. The Contractor shall suspend construction or haul traffic when the Contractor cannot prevent airborne dust until such time as dust control can be re-established to the required levels.

C. The Contractor shall be responsible for any damage resulting from dust originating from the construction. The dust abatement measures shall be continued until the Contractor is relieved of further responsibility under these Contract provisions.

D. Requests by the Owner or Engineer for additional dust control shall be accomplished within 4 hours of notification and shall also include evenings and weekends as required or deemed necessary by the Owner or the Engineer. **Failure to perform the work requested within the 4 hours may result in the Owner or Engineer arranging for dust control by others. A contract deduction shall be made equal to the total of all costs to perform dust control so arranged, including but not limited to labor, materials, equipment and administrative costs.**

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3.3 USE AND ONSITE STORAGE OF CHEMICALS AND HAZARDOUS MATERIALS

A. Examples of chemicals and hazardous materials covered by this section include but are not limited to fertilizer, pesticide, chemical flocculants, oil, diesel fuel, gasoline, hydraulic fluids, paint solvents, petroleum-based products, wood preservatives, additives, curing compounds, paint, and acids.

B. Use of chemicals and hazardous materials shall be in accordance with recommendations provided by the manufacturer or supplier.

C. All onsite storage shall be:

   1. in a secured location that is protected from contact with stormwater and wind erosion, and

   2. in sealed containers to prevent spills, leaks or other discharge

D. All disposal of chemicals and hazardous materials must be in accordance with the local and State waste disposal regulations including secondary containment as applicable.

******END OF SECTION******

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SECTION 01770 - PROJECT CLOSEOUT

PART 1 -- GENERAL

1.1 FINAL INSPECTION

A. After the cleaning up of the work, premises, and all other areas and structures connected with the performance of the contract, the work as a whole, shall be examined by the Engineer and Owner; and, any workmanship or materials found not meeting the requirements of the specifications shall be identified and included on a punch list given to the Contractor.

B. The Contractor shall, at its own expense, promptly remove, replace, repair, or otherwise correct the deficiencies with good and satisfactory workmanship and material to the satisfaction of the Owner and Engineer.

C. In the event that the Contractor does not satisfactorily remove, replace, repair, or otherwise correct the deficiencies within thirty calendar days after receipt of the punch list, the Owner reserves the right to employ the services of other contractors and/or service organizations to conduct the necessary work and deduct any and all associated costs from final payment to the Contractor. The entry of such other agents on the project to perform this work will not relieve the Contractor from any of its warranty, maintenance or start-up obligations.

1.2 PROJECT ACCEPTANCE

A. The project shall be accepted after the final examination has been conducted and all settlement, defects, damages, etc., discovered during the previous examination have been remedied.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION (NOT USED)

****** END OF SECTION ******

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TECHNICAL SPECIFICATIONS

for

Rowena Ponds Park Hockey Rink

City of Elko New Market

Elko New Market, MN

SECTION 02220 - REMOVING PAVEMENT AND MISCELLANEOUS STRUCTURES

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the removal of pavement and miscellaneous structures as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Measurement and compensation for the following items shall be paid according to the referenced specification or as modified below:

1. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

2. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.3 SPECIFICATION REFERENCES

A. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

B. MnDOT 2104 shall apply to the removal of pavement and miscellaneous structures, except as modified herein.

1.4 SUBMITTALS

A. No exception to the referenced specification is made.

PART 2 -- PRODUCTS

2.1 NO EXCEPTION TO THE REFERENCED SPECIFICATION IS MADE.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. Remove existing bituminous, curb and gutter, walks, drives, steps and other specified items where shown on the plans and/or required for the construction of the project.

B. Saw cut bituminous and concrete surfaces prior to excavation, to produce a clean-cut breakage joint.

C. Dispose of all concrete and bituminous removal items, rubbish and debris outside of the construction zone. It shall be the Contractor's responsibility to secure all required permits and pay all fees associated with the disposal of the material and to secure the disposal site.

D. Remove existing mailboxes, street/traffic signs and similar structures that must be removed to construct the project. Restore these facilities to the original location or a location designated by the Owner, when work has progressed past the location of the structure.

E. The Contractor shall take full responsibility to protect structures or other surface improvements from damage that are not to be removed. If damage to these facilities occurs due to the construction of the project, the Contractor shall replace or repair them.

F. The Owner will designate which existing hydrants, valves and boxes, manhole castings and other items removed as part of the construction, are to be salvaged. All other items shall be disposed by the Contractor.

G. All existing watermain, sanitary sewer and storm sewer pipe being removed and replaced by new improvements shall be considered as debris and removed during the construction process.

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H. Where existing pipes are to be abandoned in place, the pipe shall be filled with sand or flowable fill as noted on the plans. The exposed pipe ends shall be bulkheaded shut with a watertight non-shrink concrete grout at a thickness of not less than one pipe diameter.

******END OF SECTION******

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SECTION 02310 - EXCAVATION & EMBANKMENT - SITE GRADING

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the excavation and embankment of the site improvements as indicated on the drawings or as specified herein.

1.2 DEFINITIONS

A. Building Pad - The area under any proposed building, or an area delineated on the plans as the site for a future building.

B. Building Pad Hold-Down - The elevation that the proposed building pad is to be constructed to. This elevation does not represent the finished grade elevation of the proposed building.

C. Compacted Volume (CV) – The volume of material actually placed as determined by computing the difference between original and final cross-sections by the average end area method.

D. Excavated Volume (EV) – The volume of material actually excavated as determined by computing the difference between original and final cross-sections by the average end area method.

E. Excess Material - Material that is not needed to complete the earthwork balance.

F. Structural Improvements - For the purposes of this specification, structural improvements shall refer to any roadway, sidewalk, trail, building, sign, or other improvements requiring suitable soil to support the anticipated loadings.

G. Subcut - Excavation performed below the proposed subgrade or building pad hold-down elevation shown on the plans for the purposes of removing unsuitable material.

H. Subgrade - The top surface of a roadbed upon which the pavement structure (including aggregate base and/or granular subbase) is to be constructed. This is also a general term denoting the soil foundation upon which a proposed improvement is to be placed.

I. Suitable Material - Sand, silty sand or low plasticity clay soils with no organic content. The Engineer shall make the final determination as to what material will be considered suitable.

J. Topsoil - Any soil, generally black in color, containing organic material.

K. Unsuitable Material - Soil with organic content including topsoil, swamp deposits, peat, muck, or other material deemed by the Engineer to be unsuitable for fill or embankment construction.

1.3 METHOD OF MEASUREMENT AND PAYMENT

A. **Payment for all labor,** equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.4 SPECIFICATION REFERENCES

A. MnDOT 2105 shall apply to the excavation and embankment for the site improvements, except as modified herein.

B. MnDOT 2574 shall apply to the excavation and embankment for the site improvements, except as modified herein.

C. Section 01270 “Measurement and Payment” of this Project Manual.

D. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

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PART 2 -- PRODUCTS

2.1 MATERIALS

A. All excess excavated material shall become the property of the Contractor and shall be removed from the site and disposed of at a location secured by the Contractor.

PART 3 -- EXECUTION

3.1 GENERAL

A. Excavated topsoil and suitable material for reuse in the project shall be segregated and stockpiled at a site selected by the Contractor.

B. Frozen material will not be allowed for roadway or building pad construction. The Engineer shall approve locations for placement of frozen material.

C. All excavations shall be kept free of water during the placement of fill.

D. The Contractor shall utilize methods and equipment for excavating that will minimize the disturbance to the subgrade. The use of backhoes rather than scrapers or front-end loaders may be required to minimize repeated passes of equipment over wet subgrade soils.

E. At the end of each day the Contractor shall eliminate surface indentations, including those caused by sheepsfoot rollers, tractor tires and tracked equipment, and roll the surface with a steel wheel or rubber-tired roller.

F. Sufficient common excavation shall be utilized by the Contractor to replace the soil shrinkage from excavation which occurs through the course of construction handling and compaction. The Contractor shall make his own estimate of the amount of shrinkage that will occur.

G. Topsoil

1. Topsoil shall be salvaged and stockpiled in locations shown on the plans or in areas requiring final turf establishment, as approved by the Engineer.

2. Once the salvaged topsoil is stockpiled, the Contractor shall make an estimate of any potential shortage or surplus of topsoil possible in meeting the other provision of this Contract and notify the Engineer of the estimate.

3. The first priority in re-distributing the topsoil on site shall be to meet the minimum depths required over the entire project area.

4. In areas requiring final turf establishment with no proposed or anticipated structural improvements (building pads, etc.), topsoil shall be spread uniformly to a minimum depth of 6.0-inches, unless otherwise indicated in the plans.

5. In areas requiring final turf establishment with proposed or anticipated structural improvements (building pads, etc.), topsoil shall be spread to a depth of 2.0 to 4.0-inches.

6. In areas not requiring final turf establishment with proposed or anticipated structural improvements, no topsoil shall be placed.

H. Material suitable for curb backfill shall be segregated and stockpiled at a site selected by the Contractor. Following curb construction, the material shall be placed behind the curb, allowing for a minimum of 6.0-inches of topsoil, unless otherwise indicated in the plans.

I. In areas where filling above the existing grade is necessary to establish the final designed elevation, the Contractor shall fully remove the topsoil and organic material to the level of stable underlying sand or clay prior to backfilling with suitable embankment material.

J. The Contractor shall make his own determination as to whether the proposed grading has been completed according to the plans. When the Contractor determines that the grading has been completed, he will

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notify the Engineer. Neither the Owner nor the Engineer will provide any intermediate acceptance of the grading improvements until all of the grading has been completed and all topsoil has been spread.

3.2 EXCAVATION AND EMBANKMENT IN AREAS WITH PROPOSED STRUCTURAL IMPROVEMENTS.

A. All vegetation, topsoil, organic, or other unsuitable materials shall be excavated from the area below the structural improvement. Due to the variability of soils, the depth of the excavation in these areas is expected to vary significantly throughout the site. The excavated area shall be inspected by the geotechnical engineer as specified in Field Quality Control.

B. Subcut excavations shall be laterally oversized a distance of 1.0-foot beyond the edges of the proposed structural improvement for each foot of excavation depth (1:1 oversizing). The extents of the structural improvement areas shown on the plans do not necessarily show this 1:1 oversizing.

C. Fill placed from the bottom of the subcut to the subgrade or building pad hold down elevation shall be selected material from the excavation or borrow material. Such material shall consist of suitable material as defined above. Clay fill shall be moisture-conditioned to within 2 percent above or below the optimum moisture content determined from the Standard Proctor compaction test.

D. The embankment material shall be spread in 6.0 to 8.0-inch loose lifts.

E. In all roadway and pavement areas, the Contractor shall perform a roll test on the subgrade prior to placing any portion of the pavement structure. The roll test shall be performed with a fully loaded tandem axle truck. Soils which rut or deflect 1.0-inch or more shall be corrected by scarifying, drying, and recompacting the soils. Subgrade excavation shall only be performed as directed by the Engineer.

F. Subgrade excavation shall be performed only when the Engineer and the Contractor both agree that the inplace soil cannot be made suitable by scarifying, drying, and recompacting. Such excavation shall be backfilled with suitable excess common excavation material, stabilizing aggregate, granular borrow or select granular borrow, as directed by the Engineer. If the Contractor proceeds without approval from the Engineer, all work and material to restore the roadbed to the proper grade shall be at the Contractor's expense.

3.3 EXCAVATION AND EMBANKMENT IN AREAS WITH NO PROPOSED STRUCTURAL IMPROVEMENTS

A. Topsoil or unsuitable material may be used to construct embankments in areas with no structural improvements.

3.4 COMPACTION

A. All embankment grading shall be compacted using the Quality Compaction Method.

3.5 SOURCE QUALITY CONTROL

A. The Owner may arrange for having the following testing performed:

1. One gradation test per each 500 tons or 275 cubic yards (CV) of select granular borrow.

2. One gradation test per each 500 tons or 275 cubic yards (CV) of stabilizing aggregate.

B. All testing shall be performed by an <u>independent</u> testing laboratory approved by the Engineer.

3.6 FIELD QUALITY CONTROL

A. Required Inspections:

1. Areas with Proposed Structural Improvements:

(a) Inspection following the removal of unsuitable material and prior to placement of embankment material to insure that all topsoil and unsuitable material has been removed, and that the exposed subgrade has sufficient bearing capacity for the anticipated structural improvement.

B. The Contractor shall notify the Engineer 24-hours prior to completing the removal of topsoil and unsuitable material in areas with proposed structural improvements to insure that appropriate inspection may be performed.

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C. Samples for testing shall be taken from material at locations approved by the Engineer. All sampling methods shall be approved by the Engineer.

D. The Contractor shall coordinate the site grading and inform the Engineer when the roadway subgrade is ready for test rolling, prior to installing any aggregate base. The Engineer may order some subgrade correction prior to allowing the installation of aggregate base.

E. Should any of the specified tests or inspections fail, the Contractor may arrange and pay for additional tests or inspections as may be necessary to satisfy the Engineer that the specified requirements have been met.

*****END OF SECTION*****

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SECTION 02370 - EROSION & SEDIMENT CONTROL (LESS THAN ONE ACRE DISTURBANCE)

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to storm water management as indicated on the plans, as specified herein or as directed by the Engineer.

B. The Contractor and Owner shall identify a person(s) knowledgeable and experienced in the application of erosion and sediment control BMP's who will oversee the site erosion and sediment control.

C. Minnesota Pollution Control Agency (MPCA) - General Storm Water Permit for Construction Activity (MN R100001)

1. This site as designed will disturb less than 1.0 acres, therefore a NPDES permit is not required.

2. The Contractor shall contact the Owner if it is determined that additional work is required which will increase the total disturbance area to 1.0 acres or more.

(a) The Contractor applies for a NPDES permit from the MPCA.

(b) A copy of the active permit has been posted on the site.

(c) The Contractor shall be responsible for all costs associated with increasing the total disturbance area to 1.0 acres or more except where the change is due to a work change that is directed by the Owner and not a result of recommendations made by the Contractor to accommodate changed work means or methods.

(d) The Contractor shall phase construction to minimize erosion and sediment potential during the project.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

C. No additional payment shall be made for Erosion Control BMP's necessary to accommodate Contractor phasing or work methods including increased quantities, alternative methods, and turf restoration impacts.

1.3 SPECIFICATION REFERENCES

A. MnDOT 2573 – Stormwater Management.

B. MnDOT 2574 – Soil Preparation

C. MnDOT 2575 – Establishing Turf and Controlling Erosion

D. MnDOT 1717 – Air, Land and Water Pollution

E. Section 02920 - Turf Restoration of this Project Manual shall apply to Rapid Stabilization. In the absence of Section 02920, MnDOT 2575, method 3 shall apply.

F. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS

A. Bale checks shall not be used.

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B. Where type and rate of seed, fertilizer, and mulch are not designated on the plans or elsewhere in the specifications, the MnDOT Seed Mix and Turf Establishment recommendations for the district where the project is located shall apply except that the seeding rate shall be 1.5 times the MnDOT indicated rate.

PART 3 -- EXECUTION

3.1 GENERAL

A. Construction and/or installation of all appropriate erosion & sediment control devices shall be completed prior to any soil disturbing activities.

B. Prior to construction, the Contractor shall observe and document the existing storm water outfall system and discharge area. Sediment deposits not documented prior to the construction may be assumed to have originated from the project site and shall be required to remove and dispose of by the Contractor.

C. Exit areas and connected roads shall be kept clean of tracking and sediment release from the site. All material shall be cleaned up the sooner of within 24 hours of discovery or the end of each business day. Washing or sweeping of material into the storm sewer system shall not be allowed.

3.2 CONSTRUCTION REQUIREMENTS

A. The Contractor shall control drainage, erosion, and sediment on the project including: haul roads, temporary construction, waste disposal sites, plant and storage locations, and borrow pits, other than commercially operated sources.

B. If Contractor fails to install, maintain, and/or perform the appropriate erosion and sediment control practices, as determined by the Engineer, the Engineer may issue a written notice to the Contractor. Contractor shall correct the cause and alleviate all sediment deposition to the fullest extent possible within the timeframe in the written notice.

C. Contractor shall be responsible for removing all sediment deposits including, but not limited to, drainage ways, stormwater basins, or catch basins and re-stabilize the areas where sediment removal results in exposed soil. The removal and stabilization shall take place within 7 calendar days of discovery unless precluded by legal, regulatory, or physical access restraints, regardless if a written notice has been issued by the Engineer. If precluded, removal and stabilization must take place within 7 calendar days of obtaining access. The Contractor is responsible for contacting all local, regional, State, and Federal authorities and property owners and obtaining applicable rights of entry, approvals, and/or permits.

D. **A contract deduction shall be made equal to the total of all costs incurred by the Owner due to failure of the Contractor to take corrective action within the required timeframe(s). Such costs include but are not limited to: labor, materials, equipment and administrative costs.**

******END OF SECTION******

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SECTION 02510 - DOMESTIC WATER SYSTEM

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to watermain and service line construction as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.3 SPECIFICATION REFERENCES

A. Reference the following Sections of this Project Manual as appropriate:

1. Section 02320 “Trench Excavation, Bedding and Backfill”.
2. Section 02446 “Trenchless Pipeline”.
3. Section 01330 “Submittals”.
4. Section 02520 “Underground Utility Location System” of this Project Manual.

B. ANSI/AWWA C550 and C116/A21.16

C. ASTM D1248 shall apply, except as modified herein.

D. ASTM D1784 shall apply.

E. ASTM D2513 shall apply, except as modified herein.

F. ASTM D3261 shall apply, except as modified herein.

G. ASTM D3350 shall apply, except as modified herein.

H. AWWA C651 shall apply, except as modified herein.

I. AWWA C900 shall apply, except as modified herein.

J. AWWA C905 shall apply, except as modified herein.

K. AWWA C906 shall apply, except as modified herein.

L. CEAM 2611 shall apply, except as modified herein.

M. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

1.4 SUBMITTALS

A. Work plan for temporary service.

PART 2 -- PRODUCTS

2.1 THREADED ITEMS

A. All threaded items furnished under this contract, including but not limited to mechanical joint connectors, flanged joint connectors, mainline valves, saddles, corporation stops, curb stops, hydrants, and air release valves shall be furnished to the nominal size as specified with ENGLISH threads.

2.2 OPEN CUT WATERMAIN MATERIAL

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A. The following water pipe materials will be allowed for use on this project:

1. Ductile Iron Pipe, Class 52 with conductive gaskets or conductivity strips shall be used.

2.3 TRENCHLESS PIPE MATERIAL & STRUCTURAL REQUIREMENTS

A. All pipe shall be made from virgin material. No rework except that obtained from the manufacturer's own production of the same formulation shall be used.

B. The pipe shall be homogenous throughout and shall be free of visible cracks, holes, foreign material, blisters, and/or other deleterious faults.

C. Any section of pipe with a gash, blister, abrasion, nick scar, or other deleterious fault greater than 10 percent of the wall thickness, shall not be used and must be removed from the site. However, a defective portion of pipe, as defined above may be cut out and butt-fused in accordance with the procedures herein.

D. Any section of pipe having other defects such as concentrated ridges, discoloration, excessive spot roughness, pitting, variable wall thickness or any other defect of manufacturing and/or handling shall not be used and shall be removed from site.

E. The actual inside barrel diameter of the pipe used for pressure pipe shall not be less than that of DIP, Class 52 for the corresponding nominal pipe size.

F. Fusible C900/C905TM

1. As manufactured by Underground Solutions (www.undergroundsolutions.com). ASTM D 1784-02. with Cell Classification 12454. The formulation for extrusion of Fusible C-900™/C-905™/PVC™ shall be compounded to the specific proprietary recipe for Fusible pipe, and meet the requirements of **PPI TR-2**.

2. Butt joint fused PVC pressure pipe conforming to the current requirements of AWWA C900 (DR 18) for pipe diameters 4.0-inch through 12.0-inch or AWWA C905 (DR 25) for pipe diameters 14.0-inch through 24.0-inch. However, structurally stronger pipe may be required to ensure resistance to pulling stresses. Pipe shall be manufactured in cast iron outside diameters. The pipe and components shall meet the requirements of ANSI/NSF 61 for the conveyance of potable water.

3. Pipe fusing shall meet manufacturer requirements.

4. A manufacturer's representative shall be present during fusing and installation.

G. Restrained Joint DIP Pipe and Fittings

1. Flex-Ring Joint Pipe (DIP), as manufactured by American Ductile Iron Pipe or equal. The pipe shall be pressure pipe with a 350 psi working pressure for diameters up to and including 12.0-inch, and 250 psi for diameters 14.0-inch to and including 20.0-inch. Structurally stronger pipe may be needed to ensure resistance to damaging stresses relative to the trenchless construction technique.

2. Joints shall be Flex-Ring Restrained Joint couplings as manufactured by American Ductile Iron Pipe or equal.

H. High Density Polyethylene (HDPE) Pipe and Fittings

1. The pipe material shall be extra high molecular weight, high density polyethylene (EHMW-HDPE, PE3408) conforming with the minimum structural standards of ASTM D3350 with Cell Classification 345434C as manufactured by Chevron Phillips Chemical Company 4000/4100 Series, or equal. All HDPE pipe material shall meet the requirements of ASTM D1248 for a Type III, Class C, Category 5, Grade P34.

2. The pipe to be used shall be (HDPE) pressure pipe conforming to the requirement of AWWA C906 of a 160 psi working pressure. The grade used shall be resistant to aggressive soils or corrosive substances present. Unless otherwise specified, the dimensions and tolerances of the pipe barrel shall conform to ductile iron pipe equivalent outside diameters.

3. The dimension ratio (DR) shall be 11.

4. HDPE pipe shall have butt-fused joints.

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5. The Contractor shall verify the lengths of conduit necessary in the field before fabrication.
6. Polyethylene fittings and adaptors shall be butt-fused, EHMW-HDPE, PE3408 meeting the same resin requirements as specified for the pipeline. In addition, the fittings shall meet the applicable requirements of ASTM D2513 and ASTM D3261.
7. Mechanical joint pressure pipe joints shall be restrained using ductile iron clamps (series Ebaa Iron, Inc. or equal) supplied with a sufficient number of ductile iron bolts to restrain the working and test pressures for this application.

2.4 WATERMAIN FITTING MATERIALS

A. The following pressure pipe fitting materials will be allowed for use on this project:

1. Mechanical Class 350 ductile iron fittings shall be used. Adaptors, back-up rings, and oversize sleeves shall be provided for transitions and connections to dissimilar types of pipe materials. All sleeve fittings shall be long mechanical joint.
2. All fittings, valves, hydrants and restraining rods shall be protected by using sacrificial zinc anode caps, ASTM B418 6 oz. Large Zinc Anode Caps as manufactured by Trumbull Industries Inc., or an approved equal. Contractors shall supply 2 anode caps per mechanical joint gland installed.
3. All fittings, valves, hydrants, etc. shall be secured utilizing COR-BLUE T-BOLTS as manufactured by NSS Industries or approved equal.
4. Quality control of all fitting manufacturers shall conform to the requirements of International Organization for Standardization (ISO).

2.5 FIRE HYDRANTS

A. All hydrants shall be "Pacer" model WB67-250, UL, 250 psi rating as manufactured by the Waterous Company conforming to AWWA C 502.

1. All hydrant extensions shall be manufactured by the same manufacturer as the hydrant.
2. The local fire department shall be contacted before ordering hydrants to obtain the correct nozzle threads and type of operating nut and cap bolts.

2.6 VALVE AND VALVE HOUSING

A. All water valves shall have been manufactured in the year of construction or prior two calendar years.

B. All nuts and bolts shall be 304 stainless steel.

C. Valve Housing

1. Cast-iron screw type valve boxes shall be installed where indicated on underground valves. The cast-iron valve boxes shall be of either the two-piece or three-piece style and shall be furnished with a stay-put cover with raised letters indicating "WATER." The shaft shall be 5¼-inch inside diameter.
2. All valve box assemblies shall be furnished with a valve umbrella anchorage assembly. The valve umbrella anchorage assembly shall be manufactured by Adaptor, Inc., Oak Crest, WI, or equivalent.
3. High Density Polyethylene valve housings will not be allowed on this project.

D. Gate Valves

1. All valves up to and including 12.0-inch diameter to be furnished and installed on the watermain shall be , non-rising stem, iron body, resilient-seated gate valves, with two-inch square opening nut rated for a 200 psi working pressure conforming to the current editions of AWWA C-509-or AWWA C-515. Double disc type valves (AWWA C-500) will not be allowed.

E. Butterfly Valves

1. All valves greater than 12.0-inch diameter shall be butterfly valves conforming to the referenced specification.

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2. All butterfly valves shall be manufactured with the rubber seat bonded to the body. Valve discs shall be furnished with 316 stainless steel seating edge.

2.7 WATER SERVICE PIPE AND FITTINGS

A. Service Pipe and Fittings

1. General

(a) Water service pipe and fittings shall conform to the provisions of 2611.2D, AWWA C800 and the following:

(b) Valves and fitting models to vary according to water main pipe size. See mfg. catalogue data.

(c) Saddles shall be provided for all services if PVC pipe is installed.

(d) Saddles shall be provided for all corporation stops larger than 1½-inches if DIP pipe is installed.

(e) Curb boxes shall be adjustable and 8.0-feet in length with Minneapolis Pattern. Stationary rods are required.

2. Copper Service Pipe Notes & Specifications:

(a) Copper pipe shall conform to ASTM B88, Seamless Copper Water Tubing, Type K, Soft Annealed Copper.

(b) Copper water service pipe connections shall be flared type.

3. Polyethylene (PE) Service Pipe Notes & Specifications

(a) PE pipe shall conform to Grade PE-3408 or PE-4710 pipe and shall be rated for 200 PSI working pressure, SDR-9.

(b) PE pipe shall conform to ASTM D-1248 & D-2737 for Copper Tube Size, outside diameter controlled.

(c) PE water service pipe connections shall be compression type.

(d) PE pipe shall be permanently marked at 2' intervals indicating Mfg., PE Material Type, Date of Manufacture, etc.

(e) Type 304 stainless steel pipe inserts / stiffeners shall be furnished and installed in the ends of the PE pipe at all connections. Inserts shall meet requirements of AWWA C901 and ASTM 240-92B, unless otherwise shown on the plans.

4. Tracer Wire

(a) Tracer wire shall be supplied when using PE water service pipe. Tracer wire shall be fastened to the underside of the top of the curb stop boxes with waterproof connections.

5. The Utility should be contacted before ordering to verify the manufacturers' type and style. The water service materials style commonly used by the Utility are to be considered as a basis for quality are, unless otherwise shown on the plans.

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WATER SERVICE PIPE & APPURTENANCES				
ITEM:	**SERVICE PIPE SIZE**	**FLARED TYPE Valves & Fittings For TYPE K COPPER PIPE**		
		A.Y. McDONALD / SMITH BLAIR MODEL #		**MUELLER MODEL #**
Corporation Stop		**A.Y. McDONALD**		**MUELLER**
	3/4"	74701B		B-25000-N
	1"	74701B		B-25000-N
	1.5"	74701B		B-25000-N
	2"	74701B		B-25000-N
Tapping Saddle		**SMITH-BLAIR**	**SMITH-BLAIR**	**MUELLER**
		for DIP WMN	for PVC WMN	
	3/4"	313	372	N/A
	1"	313	372	N/A
	1.5"	313	372	N/A
	2"	313	372	N/A
Curb Stop		**A.Y. McDONALD**		**MUELLER**
	3/4"	76104		B-25154-N
	1"	76104		B-25154-N
	1.5"	76104		B-25154-N
	2"	76104		B-25154-N
Curb Box	1.5” Diam. Base Tap for ¾” to 1.25” Curb Stops	A.Y. MCDONALD 5614		H-10300
Curb Box	2" Diam. Base Tap for 1.5" to 2" Curb Stops	A.Y. MCDONALD 5615		N/A

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WATER SERVICE PIPE & APPURTENANCES				
ITEM:	**SERVICE PIPE SIZE**	**COMPRESSION TYPE Valves & Fittings For POLYETHYLENE PIPE**		
		A.Y. McDONALD MODEL #		**MUELLER MODEL #**
Corporation Stop		**A.Y. McDONALD**		**MUELLER**
	3/4"	74701BQ		B-25008-N
	1"	74701BQ		B-25008-N
	1.5"	74701BQ		B-25008-N
	2"	74701BQ		B-25008-N
Tapping Saddle		**SMITH-BLAIR**	**SMITH-BLAIR**	**MUELLER**
		for DIP WMN	for PVC WMN	
	3/4"	313	372	N/A
	1"	313	372	N/A
	1.5"	313	372	N/A
	2"	313	372	N/A
Curb Stop		**A.Y. McDONALD**		**MUELLER**
	3/4"	76104Q		B-25155-N
	1"	76104Q		B-25155-N
	1.5"	76104Q		B-25155-N
	2"	76104Q		B-25155-N
Curb Box	1.5” Diam. Base Tap for ¾” to 1.25” Curb Stops	A.Y. MCDONALD 5614		H-10300
Curb Box	2" Diam. Base Tap for 1.5" to 2" Curb Stops	A.Y. MCDONALD 5615		N/A

2.8 RESTRAINED JOINT RETAINER GLANDS

A. Where stainless steel is not used restrained joint retainer glands shall be coated with a 6-8 mil nominal thickness fusion bonded epoxy conforming to the requirements of ANSI/AWWA C550 and C116/A21.16 or approved equal.

2.9 POLYETHYLENE ENCASEMENT

A. The Contractor shall furnish and install polyethylene encasement for the entire main and all appurtenances in accordance with the referenced specification.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. Temporary Service

1. Before proceeding with the project, the Contractor shall establish a work plan and submit the plan to the utility personnel and Engineer for review and comment. The plan shall outline the method to be used to maintain service to the affected consumers and estimate the duration of any anticipated interruptions of service. The plan shall include provisions to fully disinfect all temporary piping, valves and fittings in accordance with CEAM Specification No. 2611. The Contractor is the sole party

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responsible to notify the Utility and consumers who may be affected by limitations and/or interruption of water service. Planned service interruptions shall not exceed 6 hours in any 72 hour period unless previously approved by the Utility.

2. The Contractor shall coordinate watermain shut-downs with the water utility at least 24 hours prior to the requested shut-down.

3.2 INSTALLATION OF PIPE AND FITTINGS

A. Aligning and Fitting of Pipes

1. The Contractor, together with the utility's personnel, shall jointly examine and operate all curb stops and mainline valves prior to final acceptance.

2. Anchoring of Pipe

(a) A thrust block of cast-in-place concrete, which covers the installed fitting, is not permitted. Restrained joint retainer glands shall be provided at all bends, tees, hydrants, valves and plugged crosses or wherever the watermain changes direction or dead ends

B. Polystyrene Insulation

1. The Contractor shall install polystyrene insulation in those areas where the watermain or services may be susceptible to frost or freezing, or as directed by the Engineer.

2. Rigid foam insulation shall be placed between the watermain and storm or sanitary sewer where adequate vertical clearance cannot be maintained. The insulation shall be placed on a bed of sand and sand shall be placed above the insulation to isolate the insulation from rocks and other sharp objects. The ultimate thickness of insulation required shall be achieved by using 2 layers of insulation, the second layer shall be placed perpendicular to first layer and the joints shall be offset.

C. Water Service Installation

1. The Contractor shall keep accurate records as to the location of the service connections, as specified in the referenced specification. Final payment for the project will not be made until the information is in the possession of the Owner.

2. No warranty is expressed or implied as to the location, size or material type of existing service lines. The Contractor shall furnish and install all fittings required to make the connections.

3. The Contractor shall install new service pipe, at 7.0-foot bury depth, from the corporation stop to the property line, or as shown on the plans, or as directed by the Engineer.

4. The water services shall be hydrostatically tested and disinfected.

5. All water services shall be verified as operative and the corporation stops shall be turned to open position prior to backfilling.

D. Polyethylene Encasement

1. The Contractor shall furnish and install polyethylene encasement for the entire main and all appurtenances in accordance with the referenced specification.

3.3 FIELD QUALITY CONTROL

A. Electrical Conductivity Test

1. Conductive Pipe Materials

(a) See CEAM 2611.

2. Non-conductive Pipe Materials.

(a) The conductivity requirements shall be deleted.

3.4 HYDROSTATIC TESTING

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A. Hydrostatic tests shall be conducted in accordance with the referenced specification. Individual tests from valve to valve are required. These tests shall be conducted prior to the bacteriological tests required with the disinfection of the main. No drop in pressure will be allowed during the last two hours of the pressure test.

B. Water services, including corporation and curb stops, shall be tested. The Contractor may choose to include services at the time of watermain testing or as a separate operation at a reduced pressure of 100 psig. If performed separately, testing shall be done with the corporation stops open.

3.5 DISINFECTION

A. The Contractor shall disinfect and perform bacteriological testing on all temporary and permanent water distribution systems in accordance with the provisions of AWWA C651.

B. Testing options A and B as described in AWWA C651 and below shall be required for the bacteriological testing for total coliform analysis.

Option A: Before approving a main for release, take an initial set of samples after flushing and then resample again after a minimum of 16 hours using the sampling site procedures outlined. Both sets of samples must pass for the main to be approved for release.

Option B: Before approving a main for release, flush the main and let it sit for a minimum of 16 hours without any water use. Then collect, using the sampling site procedures outlined and without flushing the main, two sets of samples a minimum of 15 minutes apart while the sampling taps are left running. Both sets of samples must pass for the main to be approved for release.

C. If the initial disinfection fails to produce satisfactory bacteriological results, or if other results indicate unacceptable water quality, the main may be re-flushed and shall be resampled. If check samples fail to produce acceptable results, the main shall be re-chlorinated by the continuous-feed or slug method until satisfactory results are obtained.

D. No lines shall be placed in service until a satisfactory result is obtained.

******END OF SECTION******

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SECTION 02630 - PIPE SEWERS - STORM

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to storm sewer construction as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.3 SPECIFICATION REFERENCES

A. The following Sections of this Project Manual as listed:

1. Section 02320 “Trench Excavation, Bedding and Backfill” of this Project Manual.
2. Section 02446 “Trenchless Pipeline” of this Project Manual.

B. ASTM D543 shall apply, except as modified herein.

C. ASTM D1248 shall apply, except as modified herein.

D. ASTM D1784 shall apply, except as modified herein.

E. ASTM D3034 shall apply, except as modified herein.

F. ASTM D3213 shall apply, except as modified herein.

G. ASTM D3261 shall apply, except as modified herein.

H. ASTM D3350 shall apply, except as modified herein.

I. ASTM F679 shall apply, except as modified herein.

J. ASTM F949 shall apply, except as modified herein.

K. AWWA C900 shall apply, except as modified herein.

L. AWWA C906 shall apply, except as modified herein.

M. CEAM 2621 shall apply, except as modified herein.

N. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 OPEN CUT SEWER PIPE AND FITTINGS

A. Reinforced Concrete Pipe (MnDOT 3236)

1. No exception to the referenced specification is made.

B. Solid Wall Polyvinyl Chloride (PVC) Pipe (MnDOT 3245) (Thermoplastic, TP)

1. 4.0-inch through 15.0-inch Diameters: Smooth-walled polyvinyl chloride pipe and fittings shall conform with the requirements of ASTM D3034 for the Standard Dimension Ratio (SDR) of 35.
2. Over 15.0-inch Diameters: Smooth-walled polyvinyl chloride pipe and fittings shall conform with the requirements of ASTM F679 with a minimum wall thickness for a minimum pipe stiffness of 46.

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3. The connection shall be push-on with elastomeric gasketed joints, which are bonded to the inner walls of the gasket recess of the bell socket.

4. The pipe grade used shall be resistant to aggressive soil and corrosive substances in accordance with the requirements of ASTM D543.

C. Corrugated Polyethylene (CP) Pipe and Fittings (MnDOT 3247)

1. Smooth interior and corrugated exterior polyethylene pipe and fittings (diameters through 36-inches) shall conform to the requirements of AASHTO M294 or ASTM F2648 and MnDOT 3247. All joints shall be installed using an approved watertight sleeve with gaskets meeting the requirements of ASTM F477.

D. Flexible Pipe Jointing

1. Pipe joints for solid wall and profile wall polyvinyl chloride (PVC) pipe shall be in accordance with ASTM 3212 - 89. This includes the flexible elastomeric seals being rated at sustaining an internal pressure of 10.8 psi for 10 minutes.

2. Pipe joints for high density polyethylene (HDPE) pipe shall be in accordance with ASTM D3261.

E. Corrugated Steel (CS) Pipe (MnDOT 3226)

1. No exception to the referenced specification is made.

2.2 MANHOLES & CATCH BASINS

A. Precast Concrete Manholes and Catch Basin Section

1. Storm sewer manholes shall conform to the MnDOT Standard for the design type shown on the plans.

2. Reinforced polypropylene plastic steps shall be furnished for all storm sewer manholes 8.0-feet or more in depth.

B. Castings

1. Salvage & re-use existing castings.

C. Adjusting Rings

1. Ladtech H.D.P.E. adjusting rings are approved as an alternate to concrete adjusting rings.

2.3 GEOTEXTILE FABRIC

A. MnDOT 3733, Type I, non-woven for use in wrapping joints in storm sewer.

PART 3 -- EXECUTION

3.1 MANHOLE AND CATCH BASIN STRUCTURES

A. Raise / Lower Existing Structure

1. Raising and/or lowering an existing manhole to meet a proposed finished rim elevation is performed when the addition and/or deletion of 2.0-inch adjusting rings will not reach a minimum of 2 rings or exceed a maximum of 6 rings. Typically, it will require: the removal of the manhole cone section or the concrete slab top; the addition, removal, or exchange of barrel sections; the replacement of the cone section or the concrete slab top; the installation of the proper number of adjusting rings; and the replacement of the manhole casting and frame.

B. Miscellaneous Work

1. If concrete adjusting rings are used, plaster all manhole adjusting rings installed inside and out, with a minimum thickness of ½-inch of mortar. A maximum of 3 individual adjusting rings shall be used. Taller 6.0-inch or 12.0-inch rings shall be used where adjustment requires more than three 2.0-inch rings.

2. If HDPE adjusting rings are used, the sealant material and method shall be in accordance with manufacturer's recommendations.

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3.2 FIELD QUALITY CONTROL

A. Deflection test - No exception to the referenced specification is made.

B. Visual Inspection - Storm sewer shall be visually inspected between all structures to verify pipe is straight and to grade and all joints are soil tight.

******END OF SECTION******

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SECTION 02720 - AGGREGATE BASE

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to construct the aggregate base course as indicated on the drawings or as specified herein.

1.2 METHODS OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer..

1.3 SPECIFICATION REFERENCES

A. MnDOT 2211 shall apply to the construction of aggregate base, except as modified herein.

B. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS

A. When no percent crushing is designated in the Schedule of Prices, the material to be used shall conform to the Specifications for Aggregate Base Class 5 modified so that the percent passing the No. 200 sieve shall be 5 to 10 percent.

B. When the schedule of unit prices calls for 100 percent crushed aggregate base, the material to be used shall conform to the Specifications for Aggregate Base Class 5, modified so that the material consists of 100 percent crushed rock. The gradation shall also be modified so that the percent passing the No. 200 sieve shall be 5 to 10 percent.

C. Materials included here consist of new Class 5 aggregate base. If additional rock is added to meet the Class 5 gradation, the added materials must pass the Los Angeles Rattler (L.A.R.) test. The percent crushed shall also be tested on the aggregate base class 5 samples.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. At the end of each day the Contractor shall eliminate surface indentations, including those caused by sheeps foot rollers and tractor cletes, and roll the surface with a steel wheel or rubber tired roller.

B. The depth and class of aggregate base to be constructed shall be as shown on the plans. Aggregate base construction shall take place only after the street subgrade condition and grade has been examined by the Engineer.

C. All aggregate base courses shall be compacted using the Quality Compaction Method.

D. The compacted aggregate base shall be test rolled using a fully loaded aggregate truck (tandem) in a pattern approved by the Engineer. The stability of the compacted base shall be considered adequate when the surface shows less than 1.0-inch of yielding or rutting after one pass, or as otherwise approved by the Engineer. The test rolling of the compacted aggregate base using a fully loaded aggregate truck (tandem) shall be incidental.

3.2 SOURCE QUALITY CONTROL

A. The Contractor shall arrange for having the following testing performed:

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1. One gradation test for each 500 tons or 275 cubic yards (CV) of each class of aggregate base.
2. One percent crushing test.
3. One aggregate quality test.

B. Samples for testing shall be taken from material in stock at locations approved by the Engineer. All sampling methods shall be approved by the Engineer.

C. The Contractor shall cooperate fully with the individuals performing the tests.

D. Should any of the specified tests fail, the Contractor may arrange and pay for additional tests as may be necessary to satisfy the Engineer that the requirements have been met.

3.3 FIELD QUALITY CONTROL

A. "Blue Top" stakes shall be provided by the Contractor on a 25-foot grid plus grade breaks to confirm that the base is constructed to the required grades and elevations. Methods other than "Blue Top" staking may be allowed, if approved by the Engineer.

******END OF SECTION******

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SECTION 02740 - PLANT-MIXED BITUMINOUS SURFACING

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the construction of plant-mixed bituminous surfacing utilizing the MnDOT Gyratory Design Specification (2360) as indicated on the plans or as specified herein.

B. This is a Certified Plant Project. The supplier shall have sufficient testing facilities and qualified personnel including Certified Technicians. All required plant and field tests shall be performed in a timely manner and with a good quality control program.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.3 SPECIFICATION REFERENCE

A. Plant mixed asphalt pavement shall conform to the current MnDOT 2360 Plant Mixed Asphalt Pavement and Technical Memoranda in force 30 calendar days prior to bid date and referencing the use of English units of measure, except as modified in these Specifications.

B. MnDOT 2357 shall apply to the construction of bituminous tack coat, except as modified herein.

C. Unless noted otherwise, the provisions in this Section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 MATERIALS

A. Bituminous Tack Coat:

1. Only Certified Sources are allowed for use. MnDOT's Certified Source List is located at the following link: http://www.dot.state.mn.us/products/index.html .

B. Bituminous material and aggregate shall be as shown on the typical sections in the plans.

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. The Contractor is required to use the self-propelled pneumatic tire roller as an intermediate roller on the wearing courses.

B. Cut the adjacent asphalt surface prior to construction of the bituminous surface course to obtain a clean, vertical, solid edge.

C. Compaction of all bituminous mixtures shall be by the Ordinary Compaction Method.

3.2 SOURCE QUALITY CONTROL

A. The bituminous mix shall be designed using Contractor Trial Mix Designs. A current MnDOT mix design may be accepted provided it represents the aggregate source and bituminous plant being used for the project, and is approved by the Engineer. No bituminous mixture shall be placed without an approved mix design.

B. Testing of the material bituminous tack coat may be required, if determined by the Engineer, that the material appears suspect.

3.3 FIELD QUALITY CONTROL

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A. If required by the Engineer, cores for mat density and for lift thickness verification shall be taken as specified in 2360.D.1.h of the referenced MnDOT Specification except that for daily production less than 300 tons, the Engineer may require that two cores are taken (one for Contractor testing and one companion core). Sample locations shall be designated by the Engineer and made with a drilling device that produces clean sharp, vertical edges.

B. Lift Thickness Tolerances:

1. Lift thickness tolerances shall be as specified in MnDOT 2360.
2. If any cores indicate lift thicknesses outside of the specified tolerances, the Contractor may, at its own cost and expense, take additional core samples to further define the extent of the deficiency.
3. The Engineer shall calculate deficient pavement areas using the locations and thickness results of all core samples and prorating the thickness profile.
4. At the discretion of the Engineer as an alternative to removal and replacement, the Engineer may allow a $1.00 deduction per square yard will be made for each 1/8-inch deficiency of thickness beyond the specified tolerances.
5. Reduction in payment for bituminous courses constructed to more than the maximum permissible thickness shall be in accordance with MnDOT 2360.3.E, except that the thickness tolerances specified herein apply.

C. Testing:

1. For projects with 2000 tons or less of a particular mix type, delete Tables 2360-10 and 2360-11 of the referenced MnDOT 2360 and substitute the following:

Production Test	Sampling and Testing Rates (each mix type)	Test Reference (Laboratory Manual unless otherwise indicated)	Spec Section
Bulk Specific Gravity	Divide the planned production by 500. Round up to the next whole number	1806	2360.2.G.7.b
Maximum Specific Gravity		1807	2360.2.G.7.c
Air Voids (calculated)		1808	2360.2.G.7.d
Asphalt Content		1853	2360.2.G.7.a
Add AC/Total AC Ratio (calculated)		1853	2360.2.G.7.a
Adj. AFT (Calculated)		1854	2360.2.E.7.e
Gradation	1 gradation per 500 tons or portion thereof (at least one per day)	1203	2360.2.G.7.f
Coarse Aggregate Angularity	1 test per 500 tons or portion thereof. If CAA >8 percent of requirement, 1 sample per day but test 1 per week.	1214	2360.2.G.7.g
Fine Aggregate Angularity (FAA)	1 test per 500 tons or portion thereof. If FAA >5 percent of requirement, 1 sample per day but test 1 per week.	1213	2360.2.G.7.h
Fines to Effective Asphalt Ratio (calculated)	Divide the planned production by 500. Round up to the next whole number	1203 & 1853	2360.2.G.7.f & 2360.2.G.7.a

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TSR	As directed by the Engineer	1213	2360.G.7.i
Aggregate Specific Gravity	As directed by the Engineer	1204, 1205, and 181	2360.G.7.j
Mixture Moisture Content	Daily unless otherwise required by the Engineer	1805	2360.G.7.k
Asphalt Binder	As directed by the Engineer]	MnDOT Bituminous Manual 5-693.920	2360.G.7.l

2. For projects with more than 2000 tons of a particular mix type, testing shall be performed at the rates specified in Tables 2360-10 and 2360-11 of the referenced specification.
3. Contractor shall send a copy of the testing results to the Engineer.
4. Should any of the specified tests fail, the Contractor shall notify the Engineer immediately and shall arrange and pay for additional test as may be necessary to satisfy the Engineer that the requirements have been met.

******END OF SECTION******

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SECTION 02776 - BITUMINOUS WALKS AND TRAILS

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the construction of bituminous walks and trails as indicated on the plans and/or as specified herein.

1.2 DEFINITIONS

A. Compacted Volume (CV) – The volume of material actually placed as determined by computing the difference between original and final cross-sections by the average end area method.

B. Excavated Volume (EV) – The volume of material actually excavated as determined by computing the difference between original and final cross-sections by the average end area method.

C. Excess Material - Material that is not needed to complete the earthwork balance.

D. Structural Improvements - For the purposes of this specification, structural improvements shall refer sidewalk, trail, or other improvements requiring suitable soil to support the anticipated loadings.

E. Subcut - Excavation performed below the proposed subgrade elevation shown on the plans for the purposes of removing unsuitable material.

F. Subgrade - The top surface of a trail bed upon which the pavement structure (including aggregate base and/or granular subbase) is to be constructed. This is also a general term denoting the soil foundation upon which a proposed improvement is to be placed.

G. Suitable Material - Sand, silty sand or low plasticity clay soils with no organic content. The Engineer shall make the final determination as to what material will be considered suitable.

H. Topsoil - Any soil, generally black in color, 100 percent passing the ¾-inch sieve, 3 percent to 15 percent containing organic material, and a pH of 6.0-7.8.

I. Unsuitable Material - Soil with organic content including topsoil, swamp deposits, peat, muck, or other material deemed by the Engineer to be unsuitable for fill or embankment construction.

1.3 METHOD OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.4 SPECIFICATION REFERENCE

A. MnDOT 2360, Plant Mixed Asphalt Pavement, shall apply to the construction of plant-mixed bituminous surfacing, except as modified herein. A copy of MnDOT Standard Specification 2360 is available from the Engineer upon request.

1. MnDOT 02360.6B4: The maximum payment factor for density is 100 percent.

2. MnDOT 02360.7C (pavement smoothness) is hereby DELETED.

B. Section 02310 “Excavation & Embankment – Site Grading” of this Project Manual, except as modified herein.

C. Section 02335 “Subgrade Preparation” of this Project Manual, except as modified herein.

D. Section 02720 “Aggregate Base” of this Project Manual, except as modified herein.

E. Section 02740 “Plant Mixed Bituminous Surfacing” of this Project Manual, except as modified herein.

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F. MnDOT 2105 “Excavation and Embankment” except as modified herein.

G. Unless noted otherwise, the provisions in this Section are in addition to the referenced specification.

PART 2 -- PRODUCTS (NOT USED)

PART 3 -- EXECUTION

3.1 CONSTRUCTION REQUIREMENTS

A. Common Excavation

1. Excavated topsoil and suitable material for reuse in the project shall be segregated and stockpiled at a site selected by the Contractor.

2. All excavations shall be kept free of water during the placement of fill.

3. At the end of each day the Contractor shall eliminate surface indentations, including those caused by sheepsfoot rollers and tractor cletes, and roll the surface with a steel wheel or rubber tired roller.

4. Sufficient excavation shall be utilized by the Contractor to replace the soil shrinkage from excavation that occurs through the course of construction handling and compaction. The Contractor shall make his own estimate of the amount of shrinkage that will occur.

5. Topsoil

(a) Topsoil shall be separated, stockpiled and respread.

(b) The Contractor shall salvage and stockpile all topsoil removed during the course of the construction. This topsoil shall be used where required for turf establishment as directed by the Engineer.

6. Material suitable for trail backfill shall be segregated and stockpiled at a site selected by the Contractor. Following trail construction, the material shall be placed adjacent to the trail, allowing for a minimum of 6.0-inches of topsoil.

7. In areas where filling above the existing grade is necessary to establish the final designed elevation, the Contractor shall fully remove the topsoil and organic material to the level of stable underlying sand or clay prior to backfilling with suitable embankment material.

8. All vegetation, topsoil, organic, or other unsuitable materials shall be excavated from the area below the structural improvement. Due to the variability of soils, the depth of the excavation in these areas is expected to vary significantly throughout the site.

9. Subgrade excavation shall be performed for the removal of any unstable soils which may be encountered. Such excavation shall be backfilled with suitable excess common excavation material or granular borrow. If the Contractor proceeds without approval from the Engineer or Owner, all work and material to restore the trail bed to the proper grade shall be at the Contractor’s expense.

B. Subgrade Preparation

1. Trail subgrade preparation shall be completed in accordance with Section 02335 “Subgrade Preparation” of this Project Manual.

C. Aggregate Base

1. Aggregate base for trail construction shall be furnished and installed in accordance with Section 02720 “Aggregate Base” of this Project Manual.

D. Bituminous Surfacing

1. The Contractor is required to use the self-propelled pneumatic tire roller as an intermediate roller on the wearing courses.

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2. The bituminous surfacing shall be constructed with maximum deviation of plus or minus ¼-inch from the planned compacted thickness.

   The contact surfaces of all fixed structures, the edge of all in-place bituminous shall be given a uniform coating of Liquid Asphalt or Emulsified Asphalt before placing the adjoining mixture. The bituminous material shall be applied by methods that will ensure uniform coating and in no case shall the application be excessive.

3. Cut the adjacent asphalt surface prior to construction of the bituminous surface course to obtain a clean, vertical, solid edge.

4. MnDOT 2331 - Compaction of all bituminous mixtures shall be by the Ordinary Compaction Method.

3.2 SOURCE QUALITY CONTROL

A. The bituminous mix shall be designed using Contractor Trial Mix Designs. A current MnDOT mix design may be accepted provided it represents the aggregate source and bituminous plant being used for the project and is approved by the Engineer. No bituminous mixture shall be placed without an approved mix design.

B. Source quality control for aggregate base shall be in accordance with Section 02720 “Aggregate Base” of this Project Manual.

3.3 FIELD QUALITY CONTROL

A. Field quality control for subgrade preparation shall be in accordance with Section 02335 “Subgrade Preparation” of this Project Manual.

B. Field quality control for aggregate base shall be in accordance with Section 02720 “Aggregate Base” of this Project Manual.

C. Field quality control for bituminous surfacing shall be in accordance with Section 02740 “Plant-Mixed Bituminous Pavement” of this Project Manual.

D. Three-inch diameter core samples shall be taken by the Contractor to verify the thickness of the compacted finished bituminous structure. Sample locations shall be designated by the Engineer and made with a drilling device that produces clean sharp, vertical edges.

E. If any cores prove deficient, the Contractor may, at its own cost and expense, take additional core samples to further define the extent of the deficiency.

F. The Engineer shall calculate deficient pavement areas using the locations and thickness results of all core samples and prorating the thickness profile.

G. Reduction in payment for bituminous courses construction to more than the maximum permissible thickness shall be in accordance with MnDOT 2360, except that the thickness tolerances specified herein apply.

H. Testing:

Quantity Mixture Type	REQUIRED CONTRACTOR TESTING			OWNER ARRANGED INDEPENDENT ASSURANCE TESTING			
	VMA & Air Voids	Gradation	Spot Check	VMA & Air Voids	Gradation	Spot Check	Extraction
0-500 Ton	2	1	1	1	1		1
500-1000 Ton	3	1	1	1	1		1
1000+ Ton	4 First Day 1/1000 Ton Thereafter with Min. 2/day	2/Day	2/Day	1	1	1	1

1. Contractor shall send a copy of the testing results to the Engineer.

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2. Should any of the specified tests fail, the Contractor shall notify the Engineer immediately and shall arrange and pay for additional test as may be necessary to satisfy the Engineer that the requirements have been met.

******END OF SECTION******

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SECTION 02821 - WOOD RAIL FENCE

PART 1 -- GENERAL

1.1 SUMMARY

A. This section covers the furnishing of all labor, materials, tools, equipment and performances of all work and services necessary or incidental to the construction of wood rail fence as indicated on the drawings or as specified herein.

1.2 METHOD OF MEASUREMENT AND PAYMENT

A. Payment for all labor, equipment, materials, and supplies necessary to complete the work specified in this section shall be included in the lump sum bid for the project or appropriate bidding section.

B. The Contractor shall not perform work that the Contractor considers Extra Work without the written approval of the Engineer.

1.3 SPECIFICATION REFERENCES

A. MnDOT 2557 shall apply to fencing except as modified herein.

B. Unless noted otherwise, the provisions in this section are in addition to the referenced specification.

PART 2 -- PRODUCTS

2.1 GENERAL

A. All fencing shall have a height of 3½-feet unless noted otherwise in the drawings, with posts set 2.0-feet deep and spaced not to exceed 10.0-feet center to center. All wood rail fence shall conform to MnDOT 3413.

PART 3 -- EXECUTION

3.1 INSTALLATION

A. All earth, brush or other obstructions which interfere with the proper alignment of construction of fences shall be removed and disposed of.

B. All posts shall be spaced in the line of fence not to exceed 10.0-foot centers and set 2.0-feet in the ground.

******END OF SECTION******

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STAFF MEMORANDUM

SUBJECT:	Coronavirus Relief Fund (CRF) Certification
MEETING DATE:	July 9, 2020
PREPARED BY:	Mark Nagel, Assistant City Administrator
REQUESTED ACTION:	Authorize City Administrator to sign and submit CRF Certification Form to the State of Minnesota.

COMMUNITY VISION:

- ☐ A mature growing freestanding suburb of the Twin Cities Metropolitan Area, preserving historic landmarks and small town character while providing suburban amenities and services, as well as full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities for citizens and visitors
- ☐ Promote a diverse commercial base including light industrial and facilitating planned redevelopment which will be aesthetically pleasing with architectural standards that promotes quality development
- ☐ Provide a full range of municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community
- ☐ A comprehensive park and trails system that will have sufficient facilities, play fields and open space to meet the needs of residents
- ☐ An effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate
- ☐ Provide community oriented local government and be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on tax payers

5 YEAR GOALS:

- ☐ Diverse tax base, employment opportunities, additional businesses and services, promote high quality broad spectrum of residential development
- ☐ Advance “shovel ready” status of areas guided for commercial and industrial development
- ☐ Acquisition of land for public purposes, position City to take advantage of land acquisition opportunities
- ☐ Enhance quality of life through parks, trails, recreational programming and cultural events
- ☐ The development of residential lots and an increase in residential building permit activity

COMMUNITY ORIENTED LOCAL GOVERNMENT:

- Community Involvement
- ☐ Organizational Improvement
- ☐ Problem Solving
- ☐ Performance Measurement
- ☐ Professionalism

INTRODUCTION

Under a recently released Executive Order by Governor Walz, local governments are eligible for federal aid Minnesota received from the Coronavirus Relief Fund (CRF), which will be distributed by the Minnesota Department of Revenue. The City is eligible to receive $359,298 in CRF aid to be used for eligible expenses related to COIVD-19 incurred between March 1, 2020 and November 15, 2020.

DISCUSSION

To be eligible to receive the aid, local governments must certify that they will follow state and federal guidelines for use of the relief funds. Specific requirements and instructions for obtaining these funds are outlined in the following MN Department of Revenue and Management and Budget memo: https://www.revenue.state.mn.us/sites/default/files/2020-06/LGD_Instructions_and_Requirements_2020_06_29b.pdf. In addition, federal guidance on the use of these funds is provided by the U.S. Department of Treasury in the following memo: https://home.treasury.gov/policy-issues/cares/state-and-local-governments The attached Certification Form signed by the Mayor, City Administrator or Emergency Management Director needs to be submitted to the MN Property Tax Division prior to disbursement of those funds. Assuming approval of the motion, and submittal by July 20th, the funds would be available to the City before the end of July.

BUDGET:

The funds would have a positive effect on the 2020 City Budget by recovering expenses due to COVID-19 already made and covering expenses of the City through November 15, 2020 related to the pandemic.

ACTION REQUESTED

Motion to Authorize the City Administrator to sign the Coronavirus Relief Fund Certification Form, as attached, and Direct the City Administrator to submit the completed from to the State Property Tax Division.

Attachments

Coronavirus Relief Fund Certification Form

DEPARTMENT OF REVENUE

Coronavirus Relief Fund Certification Form

The Coronavirus Relief Fund (CRF) Certification Form must be submitted prior to disbursement of the funds.
Submit by email to proptax.admin@state.mn.us or by mail to Property Tax Division, Mail Station 3340, St. Paul, MN 55146

Name of Local Government (if city or town include county)	SWIFT Supplier ID # (if known)	Phone Number
City of Elko New Market, Scott		(952)461-2777
Name and Title of Person Filling Out Form		**Email Address**
Thomas Terry, City Administrator/Clerk		tterry@ci.enm.mn.us

By submitting this application, the above-named local government ("local government") certifies that it will honor all commitments in the statements below and the Information and Requirements document.

1. The distributed funds will be used by the local government only to cover those costs that:
    a. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) ("necessary expenditures"), as described and defined by official federal guidance on section 601(d) of the Social Security Act, as added by section 5001 of Public Law 116-136 ("federal guidance");
    b. Were not accounted for in the budget most recently approved as of March 27, 2020, for the local government; and
    c. Were or will be incurred during the period that begins on March 1, 2020, and ends on December 1, 2020. A cost is incurred when the local government has expended funds to cover the cost.
2. The funds distributed pursuant to this certification will not be used by the local government in any manner contrary to federal guidance. This includes, but is not limited to:
    a. As a revenue replacement for lower than expected tax or other revenue collections; and
    b. For expenditures for which the local government has received other emergency COVID-19 supplemental funding for that same expense, regardless of the funding source.
3. The local government is responsible for repayment of any funds used by the local government in any manner contrary to federal or State of Minnesota guidance.
4. The local government will periodically report expenditures from the Coronavirus Relief Fund as required by Minnesota Management and Budget.
5. Any aid amount remaining unexpended by an eligible city or town on November 15, 2020, must be sent to the home county in which the city or town is located. For cities located in Hennepin County the funds must be transferred to Hennepin County Medical Center or granted to another hospital in the county's boundaries. For the cities or towns located in Ramsey County the funds must be granted to Regions Hospital or another hospital in the county's boundaries. The transfer must be made no later than November 20, 2020. Any amount of aid remaining unexpended by an eligible county by December 1, 2020 must be returned to Minnesota Management and Budget by December 10, 2020.
6. The local government will maintain copies of any agreements to share Coronavirus Relief Funds pursuant to a joint powers agreement under Minn. Stat. § 471.59. Copies of such agreements and accounting records must be sufficient to document the funds distributed to other local governments.
7. The local government is responsible for FEMA nonfederal share, increased workers compensation costs, and costs of supporting its Community Health Board COVID-19 response, and should not anticipate additional state funds for these purposes.
8. The local government understands that these funds are subject to the requirements under the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

I certify that I have the authority to complete this certification on behalf of the local government.

Signature of Chief Executive of Local Government	Title	Date
	City Administrator/Clerk	7/09/2020

Federal Award Name and CFDA Number: 601(d) of the Social Security Act (CARES Act) CFDA Number 21.019

STAFF MEMORANDUM

SUBJECT:	Monthly Public Works Report – June 2020
MEETING DATE:	July 9, 2020
PREPARED BY:	Corey Schweich, Public Works Superintendent
REQUESTED ACTION:	Information Only

COMMUNITY VISION:

- ☐ A mature growing freestanding suburb of the Twin Cities Metropolitan Area, preserving historic landmarks and small town character while providing suburban amenities and services, as well as full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities for citizens and visitors
- ☐ Promote a diverse commercial base including light industrial and facilitating planned redevelopment which will be aesthetically pleasing with architectural standards that promotes quality development
- ☐ Provide a full range of municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community
- ☐ A comprehensive park and trails system that will have sufficient facilities, play fields and open space to meet the needs of residents
- ☐ An effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate
- ☐ Provide community oriented local government and be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on tax payers

5 YEAR GOALS:

- ☐ Diverse tax base, employment opportunities, additional businesses and services, promote high quality broad spectrum of residential development
- ☐ Advance “shovel ready” status of areas guided for commercial and industrial development
- ☐ Acquisition of land for public purposes, position City to take advantage of land acquisition opportunities
- ☐ Enhance quality of life through parks, trails, recreational programming and cultural events
- ☐ The development of residential lots and an increase in residential building permit activity

COMMUNITY ORIENTED LOCAL GOVERNMENT:

- ☐ Community Involvement
- ☐ Organizational Improvement
- ☐ Problem Solving
- ☐ Performance Measurement
- ☒ Professionalism

BACKGROUND:
Staff is presenting a written report for Public Works activities in June.

DISCUSSION:

- Staff has attended multiple construction meetings for the roundabout project and will continue until the project is complete. Staff has had to make adjustments in operations since the road has been closed, many tasks take much longer as Staff has to drive around the detour like the rest of the residents. Mowers are now stored at the garage on Williams St. to be more efficient while mowing, and only come back to the Public Works Facility, if repairs are needed. Staff has been responsible for placing and moving the traffic counter and the speed trailer, this will also continue for the duration of the project.
- As part of the Woodcrest sewer project from last fall, Staff graded and hydro-seeded the final property that had been disturbed. Staff will continue to be responsible for turf restoration for future projects in Woodcrest as we are able to keep the project costs down by doing it in-house.
- Staff borrowed a bucket truck from Scott County to trim some trees that were not able to cut from the ground because they were too high.
- The Department has started to jet and clean sanitary sewer mains throughout the community, this work will continue throughout the summer, as time permits.
- Staff worked with JTN Communications to install equipment on the Xerxes tower to provide another internet option for residents in the City and surrounding Townships.
- The Department has started full on summer operations, including mowing and trimming.
- Staff has continued to check and clean storm structures. Many times, pond inlets and outlets can get plugged up with garbage, leaves, sticks, logs, plastic bags and other debris.
- The basketball hoops have been installed at little Windrose Park.
- Staff has finished the grading and hydro-seeding on the Rowena Park ballfield relocation project. The backstop will be installed later this season.
- The Public Works Department has graded the trail connection between Windrose and Woodcrest. At this point, the trail is gravel and usable and will be paved sometime next month.
- Staff has started to perform ditch mowing, and will continue as time permits.
- The Public Works Department has been assisting many residents that have been experiencing drainage issues on their property. Many times homeowners don’t know where to start or even who to call. Staff will meet with the residents and point them in the right direction, if it is a city issue Staff will make repairs as needed. Most residents seem to really appreciate the help and direction from City Staff.
- Staff placed warning signs to play at your own risk and follow social distancing guidelines at all of the parks and opened up all of the playground equipment. The skate park and basketball hoops at little Windrose are still closed, but expected to be opened up sometime next month.
- Due to COVID-19 the department has taken special precautions while working. Staff has been advised to follow all of the social distancing guidelines while working. All meter checks have been cancelled for the foreseeable future as we are able to read meters from a vehicle. Staff will have limited contact with residents unless it is an emergency.
- Superintendent Schweich will continue to train newer Staff how to run and operate the Water Treatment Facility.

- Staff delivered the new plow trucks to the Crysteel to have the snow and ice control equipment installed. They are shooting for a delivery date in October but this could be delayed due to COVID-19.
- Due to COVID-19 there was no training with the regional safety group made up of Elko New Market, Lakeville, and Farmington. Staff will continue to attend monthly safety trainings through this group when restrictions are lifted.
- Superintendent Schweich attended project team meetings with the architects that have been contracted to perform the design work associated with the Police Department renovation. There will be more meetings to attend in the coming months.
- The Department has been extremely busy dealing with various minor breakdowns within the Department's fleet. Joe, the Mechanic, continues to do an excellent job juggling projects, depending on equipment needs.

STAFF MEMORANDUM

SUBJECT:	Monthly Police Activity- June 2020
MEETING DATE:	June 11, 2020
PREPARED BY:	Brady Juell, Chief of Police
REQUESTED ACTION:	Information Only

COMMUNITY VISION:

- ☐ A mature growing freestanding suburb of the Twin Cities Metropolitan Area, preserving historic landmarks and small town character while providing suburban amenities and services, as well as full range of employment, housing, business, service, social, technology infrastructure and recreational opportunities for citizens and visitors
- ☐ Promote a diverse commercial base including light industrial and facilitating planned redevelopment which will be aesthetically pleasing with architectural standards that promotes quality development
- ☐ Provide a full range of municipal services to its residents. The City will allocate sufficient resources to meet the growing needs of the community
- ☐ A comprehensive park and trails system that will have sufficient facilities, play fields and open space to meet the needs of residents
- ☐ An effective and efficient transportation system, including access to the greater metropolitan area, transit opportunities, and improved connectivity to the interstate
- ☐ Provide community oriented local government and be financially sound, engaging in long-term financial planning to provide municipal services without undue burden on tax payers

5 YEAR GOALS:

- ☐ Diverse tax base, employment opportunities, additional businesses and services, promote high quality broad spectrum of residential development
- ☐ Advance “shovel ready” status of areas guided for commercial and industrial development
- ☐ Acquisition of land for public purposes, position City to take advantage of land acquisition opportunities
- ☐ Enhance quality of life through parks, trails, recreational programming and cultural events
- ☐ The development of residential lots and an increase in residential building permit activity

COMMUNITY ORIENTED LOCAL GOVERNMENT:

- ☐ Community Involvement
- ☐ Organizational Improvement
- ☐ Problem Solving
- ☐ Performance Measurement
- ☒ Professionalism

BACKGROUND:
Staff is presenting a written report to the City Council reporting on Police Department activities for the past month.

DISCUSSION:
ATV/GOLF CART INFORMATION - As of the writing of this memo, over **170** permits have been issued for ATV/Golf Carts/UTV.

The Police Department either through proactive patrol or call in complaints has had **9** ATV/GC/UTV related incidents. This is down from **15 in May**. One party was warned for a baby being unrestrained on ATV (second incident and different person).

DETOUR INFORMATION - Council will notice in the stats for this month that the Department had almost double the number of normal traffic stops (226) in June. This is due to the increased amount of dedicated patrol and enforcement. Officers gave 151 warnings and 64 citations during this month. These stats still demonstrate our education oriented enforcement philosophy. Many of the citations were for peripheral violations to speeding such as seatbelt, no driver's license, and no insurance violations. The trend still appears to be moving down overall. Officers are seeing less speeding violations as the detour has been in place longer. A total of 11 shifts equaling 33 hours of dedicated patrol have taken place as the this report. We will evaluate how many more of these details and the frequency of them will occur.

Officer Brentan Carkhuff is slated to be done with Field training and on his own next week.

The Police Department continues on its current Covid protocols for responding to medicals and calls. A decision will be made at a later and appropriate time to resume the "New Normal" operations and guidelines.

On June 23rd, Officers and Fire Department staff helped celebrate the 98rd birthday of Bill Vogel with participating in a drive by parade. Word from his daughter was that Bill really enjoyed the parade.

In the wake of the Gorge Floyd incident, citizens continue to show their support of their local law enforcement. The Department continues to receive incredible gift baskets and packages. See pictures below of the most recent packages.

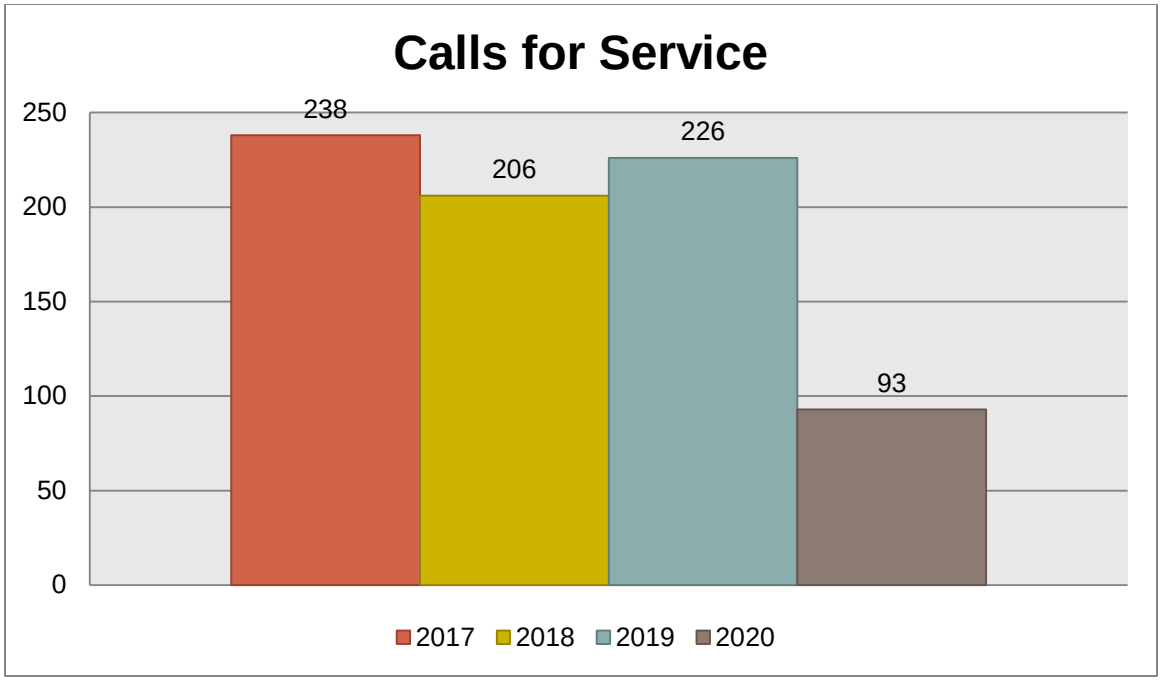
Calls are down by 60% over last year and 64% over May's numbers. Chief Juell has seen this trend before in his 25 year career. For this incident, it can be called the Floyd effect. When a Law Enforcement Crisis happens such as the Gorge Floyd incident, people get a sense of "The police don't need to hear my petty problems" philosophy. Chief Juell has witnessed these same trends after large national tragedies such as 9/11, the Ferguson Riots, and the Philando Castile shooting. This is similar to the above mentioned outpouring of gratitude we are experiencing from citizens. People just feel that their problems do not rise to the level that they should "bother" the police with. Chief Juell believes that things will return to normal call levels The further away from the incident we get.

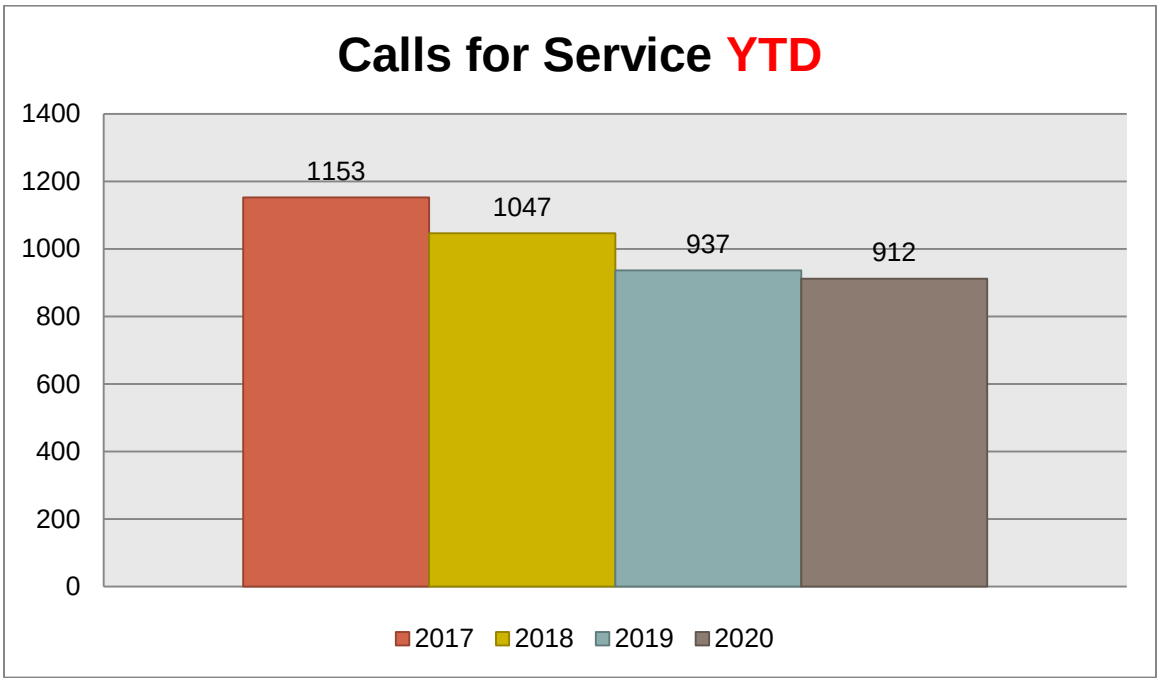
From
NewDay
Church
To The Devoted
Elko New Market
Police Department

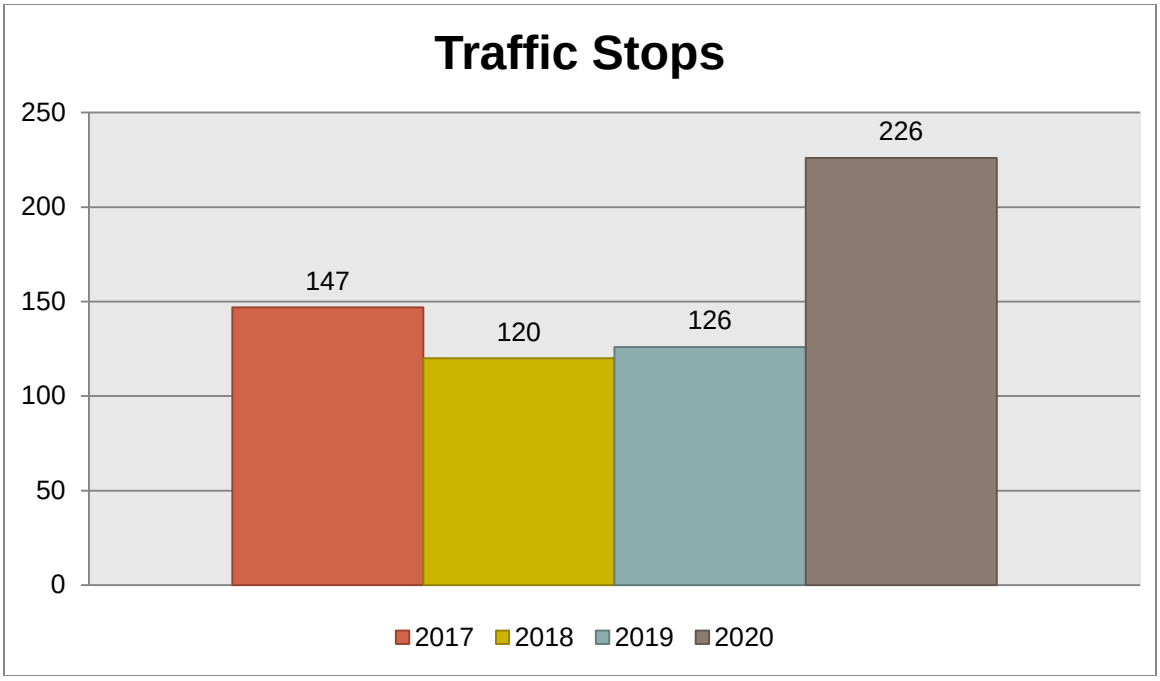
SALTED
PEANUTS
PLANTERS
BUGLES
Cheetos
Lay's
Fritos

STATISTICAL INFORMATION –June, 2020

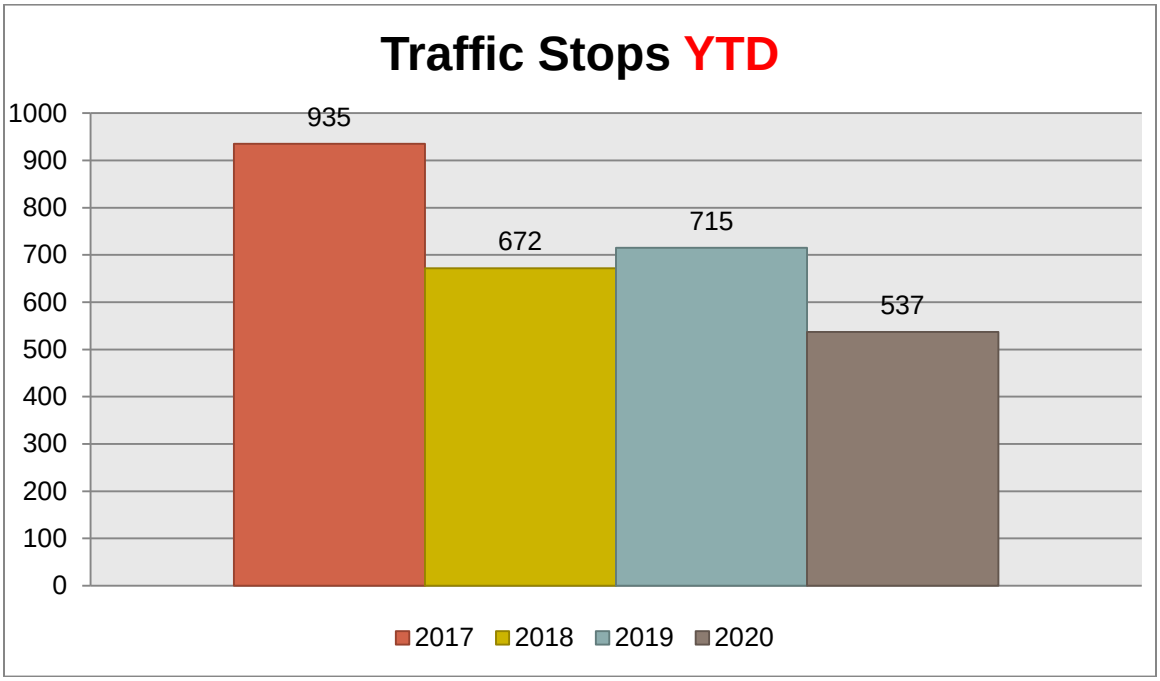
0	Burglary
0	Fire Calls
22	Ordinance reports
1	Property Damage
3	Motor vehicle crash/Accident
5	Noise/nuisance complaints
13	Public Assists
6	Motorist Assist
11	Community Engagement
8	Hazards
1	DWI
15	Administration (Rec. Fire Permits, Records checks, etc.)
14	Suspicious persons/vehicles/activities
0	Crimes against family
0	Juvenile Complaints
4	Theft
2	Threats
7	Medicals
2	Alarms
0	Lock outs
25	Assists to other agencies (Agency Assists)
251	Extra Patrols
13	Traffic complaints

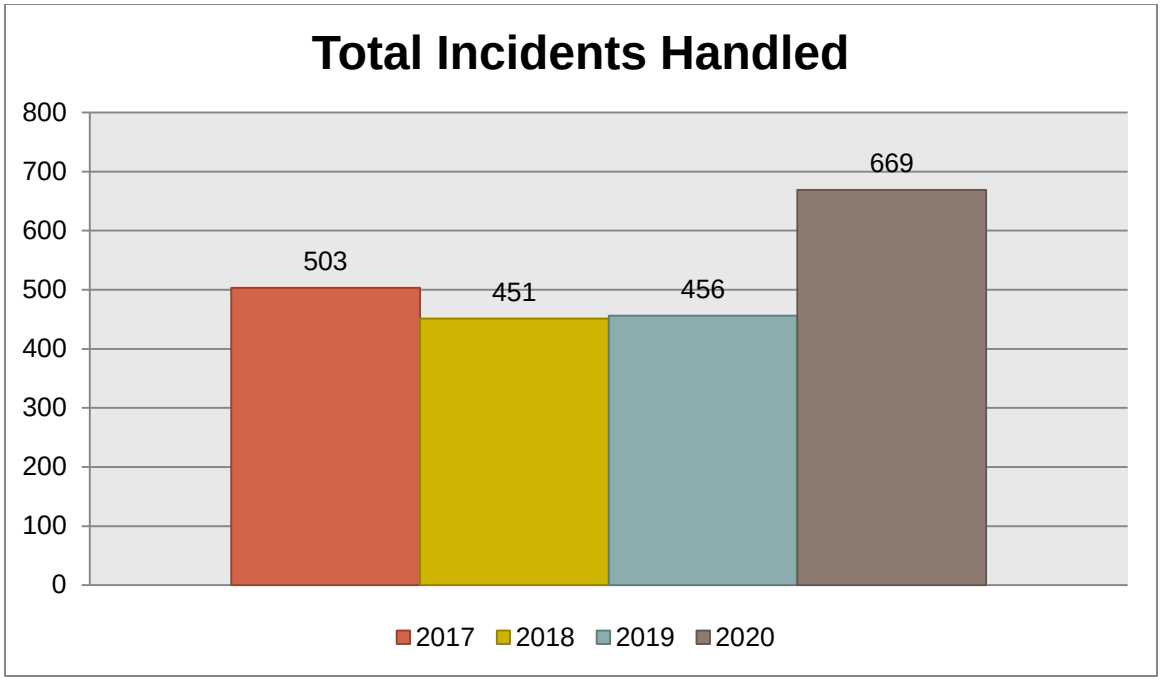

Calls for Service
250
200
150
100
50
0
238
206
226
93
2017
2018
2019
2020

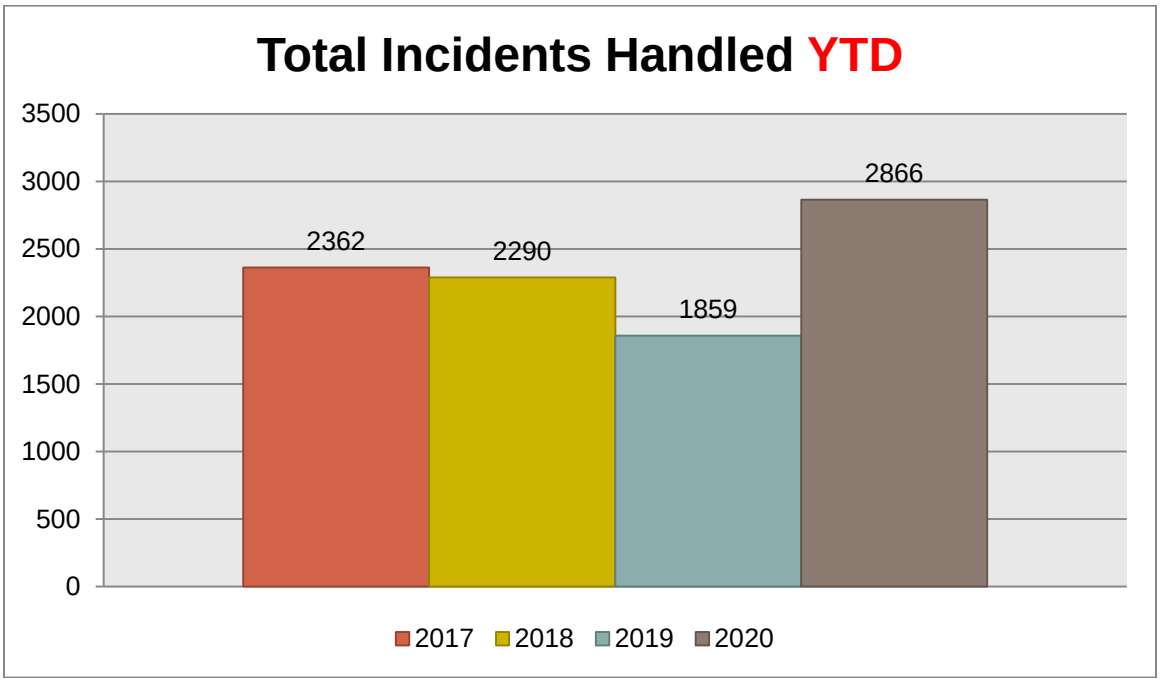

Calls for Service YTD
1400
1200
1000
800
600
400
200
0
1153
1047
937
912
2017
2018
2019
2020



226 Traffic Stops were conducted in March, 2020. **151 verbal and written warnings** issued and **64 citations** issued for speed, expired registration, no proof of citations insurance/no insurance, careless driving, and driving after revocation. **0 Winter Parking** Citations.**1 DWI**. **(Traffic stops, warnings and citations will not equal out due to some violations a party is warned for one violation and cited for another.)**




Total Incidents Handled
800
700
600
500
400
300
200
100
0
503
451
456
669
2017
2018
2019
2020


Total Incidents Handled YTD
3500
3000
2500
2000
1500
1000
500
0
2362
2290
1859
2866
2017
2018
2019
2020

ENM Parks Commission Update
June 30, 2020

1. As you know, the City received a $10,000 grant from the Twins to assist in the relocation of Rowena Pond Park T-Ball Diamond. The City Council accepted the grant on April 9 and I sent in the signed grant agreement the following day. The City received the Check from the Twins Foundation for the project on May 11th. The relocation of the ballfield got underway the week of May 4th with grading and placement of drain tile. The recent rainy weather has slowed down progress, but the project remains "on track" with the field now just about complete. We are waiting for the delivery of the backstop and fencing to complete it. Scheduled for the July 9th City Council Meeting is the approval of plans and specs for the combination hockey rink and basketball court, which can get started in August, since the 2020 Kid's baseball/softball season was cancelled the first week of June.
2. The City stopped accepting Wagner Park Shelter Rental Apps on Monday, March 23rd for 2020…Staff will be cancelling reserved dates with a month advance notice. Currently, all reservations are tentatively cancelled thru August 31. The only use of the Wagner Parks Shelter is the Food Shelf Program, which has expanded to the 1st and 3rd Wednesdays of each month thru September due to increasing demand.
3. The Windrose 8th/Woodcrest Trail is back on track! I sent out letters to adjacent property owners notifying them that the work will get started on April 10th with brush clearance and leveling the trail for future paving. Public Works has completed this part of the project. We are waiting for bids from contractors to do the paving. If the bids are low enough, then the City will repave the entire trail.
4. I applied for a free $31,000 BCI Burke Playground Set in late February, as part of their "Great Playground Giveaway", but did not get it. I also was unsuccessful in applying to 1 of 5 free hand sanitizer stations for Little Windrose from GameTime. Always worth a try!
5. That said, the trial run for the hand sanitizing station at Wagner park has been successful. I will be back at the July meeting asking to rent another one Schlomka's Portable Restrooms for Little Windrose Park.
6. Applications for the Recreational Specialist position closed on Friday, May 8th at 4:30 PM yielded 9 applications. Staff reviewed them and 6 met the qualifications. Interviews for the 6 were held June 10th with the finalist

interviews taking place on June 24th. An offer has been made and, at this time, the candidate is undergoing the background check. I hope to have an announcement at the July 9th Parks Commission meeting.

7. As you know, the Parks Commission made a final decision at the November 2019 Meeting to accept the proposal from Webber Recreational Design, which included an Accelerator Swing and Ten Spin to replace an old swing set and balance beam at Old City Hall Park. The final cost for the 2 pieces was $8,452.48. The city purchased the equipment prior to the end of 2019 to take advantage of the almost 30% discount on the equipment. The PW Department removed the old equipment saving more dollars. The new playground equipment is now open for use…go take a look!
8. American Ramp Company, which built and installed the SkatePark equipment, and I discussed options for additional pieces of equipment for the SkatePark, which I presented at the May Parks Commission Meeting, I have firmed up final costs and updated Capital Outlay Plan for further discussion and a decision at the July Parks Commission Meeting.
9. As you know, we work with area Boy Scouts and Girl Scouts on their projects. Right now, I am working with Ryan Huberty on his Eagle Scout project of upgrading the Wagner Park Veteran's Flag and Garden over the 4th of July Holiday. It will be complete before the next Council Meeting. He raised over $2,500 to make this project happen! Sheridan Liggett is working on her Gold Award to build 3 "Little Libraries" in the City – in front of City Hall, Little Windrose Park, and Whispering Creek Park – starting in late July. She raised $400 to make this project happen!
10. The Final draft of the revised Wagner Park Shelter Rental Form is now ready for use. While the update of the Rental Form was due to COVID-19 concerns, it had been almost 4 years since the last changes to it, so a number of minor changes were also made like available equipment, clarifying wording, and raising the age to rent the Shelter from 18 to 21. I will have a copy for you at the July Parks Commission Meeting.
11. Again, our thanks to outgoing member Eve Zahratka for her years of service – Eve was one of the original members of the Elko New Market Parks Commission appointed in 2008. City Council honored with a Certificate of Appreciation at the June 11th meeting. Here are the comments made by Mayor Julius in making the presentation: "Eve Zahratka has been on the ENM Parks Commission since its inception in 2008 - a total of 12 years of service to the rebuilding and planning of the City's park and trail

system. She has helped complete projects such as the award-winning Wagner Park Shelter; 2 new parks; the redevelopment of the SkatePark; nearly 5 miles of new trails; and the agreements with New Prague and Lakeville Community Ed for recreational programming - she served as the Parks Commission representative to the New Prague Community Ed Advisory Board since 2012. Before her work on the merger, Eve served on the Elko Park Board from 2002 until 2008; the Joint Sewer Board from 1990 to 2006; and Elko City Clerk from 1970 to 1974.An advocate of the Summer events sponsored by the Parks Commission and New Prague Community Ed, she has donated over $1,000 for those events. Her dedication and positive impact on ENM's parks and trails will be enjoyed by residents for years to come...thank you, Eve...it's an honor to present you this Certificate of Participation for your 12 years of service."

12. At the May Parks Commission Meeting, Commissioners approved a proposal for doing playground assessments for 3 of our playgrounds – Woodcrest Park, Wagner Park, and Windrose Park – to make sure that they are incompliance with CPC and ASTM standards. These assessments were done on Thursday, June 11th and be ready for review at the July Parks Commission Meeting.
13. The Grand Opening of the Disc Golf Course will now be held on Thursday September 10th. More details to follow, but Cale Leiviska, the designer of the course and professional disc golfer, will be there to help us cut the ribbon! I have also asked him to provide some quotes for hole signs, so, hopefully, I'll have them for consideration at our July 114th meeting. The course is getting some good use now that the weather is better!
14. I presented the 2020 - 2025 Parks CIP to the City Council at their Thursday, June 11th Meeting. I reviewed each of the projects, including the SkatePark additions, with the Council. There were a few questions, but no changes to the CIP presented at the June Parks Commission meeting.
15. Facebook works! We posted the need for an Archery Instructor on the City's Facebook page the week of June 15th and we found a certified person a week later! We currently have 19 kids for our Archery program run by NP Community Ed beginning in late July.
16. Then next Parks Commission Meeting will be on Tuesday, July 14th @ 4 PM. At this time, it will be another Zoom Meeting, but you likely will have the option to attend the meeting "in person" at City Hall, as well. Our new day

and time for Parks Commission meetings will start in August – 8/11/20 @ 6 PM via ZOOM or at ENM City Hall.