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INDIANA UTILITY
REGULATORY COMMISSION

KLM-5(a)



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Commissioner

VIA ELECTRONIC MAIL

May 10, 2021

The Honorable Anthony Copeland, Mayor
City of East Chicago
4527 Indianapolis Boulevard
East Chicago, Indiana 46312

Dear Mayor Copeland:

Re: Long Term Control Plan
Implementation Schedule
City of East Chicago
NPDES Permit No. IN0022829
SJA No. 45D02-0710-CC-85
Lake County

The Indiana Department of Environmental Management (IDEM) Office of Water Quality (OWQ) has conducted a review of the City of East Chicago's revised Combined Sewer Overflow (CSO) Long-Term Control Plan (LTCP) Implementation Schedule originally submitted on April 14, 2010, with the latest revision submitted April 23, 2021, and by this letter grants approval of the revised LTCP Implementation Schedule.

The controls outlined in Phase I have been completed and the controls in Phase II of the LTCP approved on December 30, 2011 have been changed. The projects within the LTCP have not changed but have been pushed back in the schedule. The reason for the delay in these projects starting was due to a Cost of Service (COS) study completed that determined the City would need to raise rates to fund the Phase II projects. However, the rate increase was not approved by the City's Common Council. Therefore, East Chicago Sanitary District (ECSD) pursued a legislative amendment that would permit a rate increase through the Indiana Utility Regulatory Commission (IURC). In the meantime, ECSD secured a Bond Anticipation Note (BAN) in June 2020, which the City used to secure an agreement with Kokosing Industrial to commence construction of the Phase II improvements.

Additionally, the City is currently working on reevaluating LTCP projects within Phase III to determine if the current projects are the most cost effective and will produce the greatest environmental benefit. The City has committed to the following dates regarding the changes to Phase III projects:

- Submit LTCP Update Schedule: May 31, 2021
- Submit LTCP Amendment: December 31, 2021

The Honorable Anthony Copeland, Mayor
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The revised LTCP Implementation Schedule does not change the original level of control approved on December 30, 2011. The revised schedule does change the overall schedule length approved in the original LTCP but does change project dates within the schedule. Pursuant to the State Judicial Order No. 45D02-0710-CC-85, the revised LTCP Implementation Schedule will supersede the previous schedule. The City of East Chicago shall implement the schedule accordingly. All other terms and conditions of the State Judicial Order remain in effect.

Please contact Cara Kitchen at 317-233-6870 or by e-mail at ckitchen@idem.in.gov if you have questions regarding this letter.

Sincerely,



Leigh Voss, Chief
Municipal NPDES Permits Section
Office of Water Quality

cc: Abderrahman Zehraoui, ECSD Director of Utilities
Ken Myers, ECSD Compliance Manager
Scott Chin, Legal Counsel, City of East Chicago
Joe Allegretti, Legal Counsel, City of East Chicago
Sierra Alberts, IDEM Attorney
Pat Colcord, IDEM Enforcement Case Manager
Nick Ream, IDEM Inspector
IDEM Northwest Regional Office

KLM-5(b)



CITY OF EAST CHICAGO

DEPARTMENT OF UTILITIES
5201 Indianapolis Blvd • East Chicago IN 46312
Phone 219-391-8466 • Fax 219-391-8254



Honorable Anthony Copeland, Mayor

May 28, 2021

Ms. Cara Kitchen

Indiana Department of Environmental Management
CSO Project Manager
100 N Senate Avenue, IGCN 1255
Indianapolis, IN 46204

**Subject: Agreed Judgment Cause No. 45D02-0719-CC-85
NPDES Permit No. IN0022829**

Ms. Kitchen:

On April 15, 2021, pursuant to IDEM's letter dated March 16, 2021, The East Chicago Sanitary District (ECSD) submitted a letter amending its LTCP schedule as follows:

Task	Start Date	Construction Complete
Phase II		
145th Street Pump Station Rehabilitation	April 2021	September 2022
Alder Street Pump Station Rehabilitation	April 2021	September 2022
Roxana Pump Station Rehabilitation	April 2021	September 2022
Conveyance System to WWTP and CSO Lagoon	April 2021	September 2022
Phase III		
WWTP – Ultraviolet (UV) Disinfection of CSO Lagoon Discharge	September 2024	March 2026
North Harbor/Michigan Avenue Sewer Separation*	November 2024	December 2032

* To be revisited under updated LTCP

After a thorough review of its 2007 LTCP and 2011 Supplemental Work Plan, ECSD feels a comprehensive update to its LTCP is warranted. The updated plan will utilize improved modeling tools,

account for recent changes in the collection system, update construction costs, and update financial planning. A list of major tasks to be performed in updating the LTCP Update are as follows:

1. Import SWMM model into modern software. Check model calibration;
2. Update model to reflect current collection system configuration;
3. Update alternative analyses, particularly regarding the Michigan St pumpstation;
4. Evaluate CSO lagoon operational strategy;
5. Confirm adequate WWTP capacity to dewater CSO lagoon by running "typical year" simulation;
6. Estimate % capture of "typical year" CSO volume;
7. Update Financial Capability Analysis (FCA);
8. Update CSO LTCP Implementation Schedule;
9. Prepare Post-Construction Compliance Monitoring Plan strategy;
10. Prepare and **submit updated CSO LTCP to IDEM by December 31, 2021.**

In addition, ECSD noted IDEM's May 5, 2021 Draft NPDES Permit No. IN0022829 mandates that ECSD implement the recommended CSO abatement alternative from the original 2007 LTCP and 2011 update. ECSD intends to submit a comment noting that this is not currently acceptable as the plan on which these improvements are based is currently being reviewed as described above. Specifically, ECSD intends to recommend either (1) the comment period be extended to allow time to complete the update to the LTCP, (2) change the permit language from specific improvements to those to be included in the forthcoming update to the LTCP, or (3) to simply include a disclaimer that the improvements listed in the permit are subject to change pending completion of the updated LTCP.

Please contact me or Joe Allegretti (joe@joeallegretti.com) with any questions that you may have.

Respectfully,



Kenneth L. Myers, Director of Wastewater Operations

cc: Scott Chin, Legal Counsel, City of East Chicago
Joe Allegretti, Legal Counsel, City of East Chicago
Michel J. Hickey, MJHY LLC
Paul Shadrake, Donohue & Associates
Jerry Dittmer, IDEM Chief of Permits Branch, Office of Water Quality
Sierra Alberts, IDEM Attorney
Pat Colcord, IDEM Enforcement Case Manager
Nick Ream, IDEM Inspector
IDEM Northwest Regional Office

KLM-6



3862 N COMMERCIAL PKWY | GREENFIELD IN 46140
PHONE 317.891.1136

July 28, 2020

Ms. Jenny Banks
Director of Communications
Indiana Department of Local Government Finance
100 N. Senate Ave., N-1058B
Indianapolis, IN-46204

Re: East Chicago Sanitary District, 145th Street & Alder Street Pump Station Rehabilitation Project –
LTCP Phase II GSC

Dear Ms. Banks,

In accordance with IC 36-1-12.5-10, attached please find the executed contract between the East Chicago Sanitary District and Kokosing Industrial, Inc. for 145th Street & Alder Street Pump Station Rehabilitation Project. The Guaranteed Savings Contract was executed on July 23, 2020. The Notice to Proceed is anticipated for September 8, 2020. The expected final completion date is December 2, 2022.

Please do not hesitate to call (260-444-8363) or email (tgw@kokosing.biz) with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Tina G. Wolff".

Tina G. Wolff, PE
Project Development Manager

cc:

T. Lemen, Alan Holding, Kokosing Industrial
Dr. Abdul Zehraoui, Joe Allegretti, Ken Myers, ECSD



AN EQUAL
OPPORTUNITY
EMPLOYER



GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

THIS GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT (herein sometimes "Agreement" and sometimes "Contract"), made this day 13 of July 2020, by and between **East Chicago Sanitary District**, East Chicago, Indiana, a municipal Corporation (hereinafter called "Owner") and Kokosing Industrial, Inc. an Indiana corporation (hereinafter called "Contractor"),

WITNESSETH:

WHEREAS, Contractor has submitted to Owner a proposal (the "Proposal") for the installation of energy related upgrades at facilities owned by Owner and located in Lake County, Indiana (herein the "Facilities"), the specific details of such Proposal are outlined in the Exhibits attached to this Agreement; and

WHEREAS, Owner has accepted the terms of the Proposal, and the Owner and Contractor desire to enter into this Agreement in order to memorialize their respective agreements and undertakings with respect to the Project (as defined hereinafter).

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Integration; Conflict; Agreement Conditional.

The parties hereby incorporate by reference the same as if fully set forth herein, the following documents and instruments, all of which together are herein referred to as the "Contract Documents":

- Exhibit A Scope of Work
- Exhibit B Proposal & Open Book Structure
- Exhibit C Performance Guarantee
- Exhibit D Support Services
- Exhibit E Project Completion Schedule
- Exhibit F Drawing and Specification Modifications

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement and signed by an authorized representative of each of Owner and Contractor.

In the event there is a conflict between the provisions of this Agreement and any other Contract Document, except Exhibit F, the provisions of this Agreement shall be controlling with respect to the subject matter hereof. Exhibit F shall control with respect to any conflict between it and any other Contract Document, including this Agreement.

2. Scope of Project.

For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECM's" or "Energy Conservation Measures") at the Owner's Facilities as **described in Exhibits A and F.**

The Contractor represents (i) that the Project constitutes the installation of "energy conservation measures" as defined in I.C. 36-1-12.5-1 *et seq.* (herein the "Act"), and (ii) that this Agreement is a "guaranteed energy savings contract" as defined in the Act. The Contractor further represents that it is a "qualified provider" of "energy conservation measures", as defined in the Act. The Contractor also represents that it has issued the report containing all data and information required by I.C. 36-1-12.5-6.

The Contractor further represents that the Project will result in energy and water savings in the total amount of \$12,353,760 and operational savings in the total amount of \$2,835,000 during the fifteen (15) year period following completion of the Project. The Contractor represents that such total savings in the amount of \$15,188,760 (herein the "Total Guaranteed Savings") exceeds the Owner's total cost of the Project. The Contractor hereby guarantees that it will reimburse the Owner for the difference between the Total Guaranteed Savings and the actual savings realized by virtue of the installation of the Energy Conservation Measures. The Total Guaranteed Savings are identified on Tables 1 through 5 attached to this Agreement and Savings Calculation documents, also attached to this Agreement (all of the foregoing, collectively, the "Savings Documents"). The Savings Documents are hereby incorporated into and made a part of this Agreement by this reference. The parties stipulate and agree that the operational, energy and wastewater savings shall be considered fully satisfied upon the Owner's Final Acceptance of the Project (as defined hereinafter). The energy, wastewater savings and operational savings will be realized over a period of fifteen (15) years following final installation of the Project, which term of years the Contractor represents is less than the average life of the Energy Conservation Measures. The term of this Agreement shall extend for fifteen (15) years effective with the Owner's acceptance of all Energy Conservation Measures.

3. General Obligations and Rights of Contractor.

Unless otherwise expressly provided herein or directed in writing by Owner, Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, efficiently, in a good and workmanlike manner, and in compliance with all laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits, fees, and licenses, which may be required in connection with the Project.

Contractor shall preserve and maintain, to the greatest extent possible and consistent with good engineering and design, the natural terrain and existing trees on the real estate, and shall remove only those trees necessary for the location of the Structure and approved by Owner for removal.

Contractor shall commence the work immediately upon receipt of the Notice to Proceed in accordance with the Specifications and Drawings, General Conditions and Supplementary Conditions (each as defined in Exhibits A and F) and shall diligently prosecute and complete the

Project without interruption in accordance with the Project Completion Schedule attached hereto as Exhibit E, subject only to work stoppages or delays due to acts of God and other causes beyond control of Contractor and not the fault of Contractor. Time is of the essence of this Contract. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Section Nine. They also recognize the delays, expense and difficulties involved in proving in legal or arbitration proceedings 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 a penalty) Contractor shall pay Owner Five Hundred Dollars and No Cents (\$500.00) for each day that expires after the times specified in Section Nine for Final Completion and Milestone Completion Dates.

Contractor shall not permit any liens for labor, materials or equipment performed or furnished in connection with the Project to be filed against the Facilities or any real estate of Owner by any person, firm or corporation and Contractor shall indemnify, defend and hold Owner and the Real Estate harmless from and against any and all such other liens, claims, suits, liability or expense (including, without limitation, attorney's fees) resulting therefrom. Contractor further agrees that upon the completion of the performance of this Contract, the Facilities and all real estate of Owner shall be free and clear of any mechanic's and materialmen's liens, not only of the Contractor but also of any and all permitted subcontractors, suppliers, materialmen, laborers or permitted sub-subcontractors, who may furnish any labor, material, services, fixtures, apparatus, machinery, equipment, improvements, repairs or alterations in connection with, or to, the Facilities, in connection with the Project referred to in this Contract.

3.1. Contractor's Representations.

Contractor hereby represents and warrants to Owner that all materials furnished by Contractor, if any, and all workmanship performed by Contractor in connection with the Project, shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall perform the Work using personnel of required skill, experience and qualifications in a professional and good and workmanlike manner in accordance with the best industry standards for similar services in order to meet its obligations under this Agreement on a timely basis and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor further represents and warrants that the completed Project shall be suitable, fit, and capable for the intended use and purpose thereof, according to the Contract Documents. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The representations and warranties set forth herein (including, without limitation, in the incorporated Specifications and Drawings, General Conditions and Supplementary Conditions) shall continue to be effective for a period of one (1) year following Substantial Completion of the Energy Conservation Measures, after which Contractor shall thereafter be relieved of all responsibility and liability under this representation and warranty, excluding Contractor's liability for claims that arose during the warranty period. Owner shall give Contractor written notice of all

defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner.

CONTRACTOR MAKES NO OTHER REPRESENTATIONS, EXPRESS OR IMPLIED, OTHER THAN THOSE REPRESENTATIONS SPECIFICALLY STATED IN THIS AGREEMENT. To the extent possible, Contractor shall assign to Owner all representations that Contractor receives from its vendors and/or subcontractors which are or are to become permanent features of the Project.

3.2. Approvals.

Upon completion of the Project, the Contractor shall obtain approval of the installation of the Energy Conservation Measures constituting the Project from the Indiana Department of Health, the Office of the State Fire Marshal, the Office of the State Building Commissioner, and any other State agency designated by the Act or any other State statute or regulation. The installation of the Energy Conservation Measures constituted in the Project also shall be approved by an architect or engineer licensed under I.C. 25-4 or I.C. 25-31, such approval to be obtained at the expense of the contractor. The receipt of all such approvals (together collectively, the "Approvals") shall constitute a condition precedent to the Contractor's entitlement to receive the final payment of the Contract Price (as defined hereinafter) and the payment of all Retainage (as defined hereinafter) withheld with respect to each installment payment of the Contract Price.

3.3. Indemnification.

Contractor shall indemnify and hold harmless the Owner, its agents, employees and representatives, and their respective successors and assigns, and any assignee of the Contractor (all of the foregoing, collectively, the "Owner Indemnified Parties") against all liability and loss as a result of negligence or misconduct in connection with the Project by Contractor, its permitted subcontractors, or the agents, employees, or representatives of Contractor or its permitted subcontractor(s), including any injury or death sustained by or any damage to the property of any person; provided however, that Contractor shall not be responsible for any injury or death, damage, or loss, including reasonable attorneys' fees and costs or other disbursements, to the extent caused by the negligence of any Owner Indemnified Parties, nor shall Contractor be held responsible to the extent of any concurrent or contributory negligence of any Owner Indemnified Parties or non-party.

Contractor shall be liable for, and agrees to indemnify, save and hold Owner Indemnified Parties, harmless from the payment of any sum of money whatsoever (including reasonable attorneys' fees and expenses) on account of any laborer's, mechanic's, materialman's or any other lien against Owner's Facilities and property related to Contractor's performance of the Project, unless the lien is caused solely by some fault of Owner or some person or entity acting on Owner's behalf.

Owner shall indemnify, defend (at Owner's option) and hold harmless Contractor, and the officers, shareholders, directors, and employees of the Contractor (herein the "Contractor Indemnified Parties") against all liability and loss as a result of the negligence or misconduct in connection with the Project by Owner and agents, employees or representatives of Owner,

including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorney's fees and disbursements) to the extent caused by the negligence of any Contractor Indemnified Parties, nor shall Owner be held responsible to the extent of any concurrent or contributory negligence of any Contractor Indemnified Parties.

3.4. Bonds.

Before entering upon the performance of this Agreement, the Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner. Each bond shall be in an amount equal to the total Contract Price (as defined below in Section 5 of this Agreement), and the provisions of I.C. 36-1-12-13.1 and I.C. 36-1-12-14, if applicable to this Project, shall become a part of the terms of such bonds.

Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Contractor's guaranty obligations set forth in Exhibit C Performance Guarantee, or any related provisions.

3.5. Limitation of Liability.

Except for Contractor's guaranty obligations, the negligence, willful misconduct or recklessness of a party, a party's indemnification obligations under this Agreement (or breach thereof) or for any claims for bodily injury, death or damage to real or personal property, the total liability of either party to the other on all claims, whether in contract, warranty, tort, strict liability, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. EXCEPT FOR THE NEGLIGENCE, WILLFUL MISCONDUCT OR RECKLESSNESS OF A PARTY, A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT (OR BREACH THEREOF), INTEREST COSTS OR OTHER COSTS WHICH OWNER MAY INCUR AS A RESULT OF CONTRACTOR'S FAILURE TO COMPLETE THE PROJECT IN A TIMELY MANNER, OR FOR ANY CLAIMS FOR BODILY INJURY, DEATH OR DAMAGE TO REAL OR PERSONAL PROPERTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES, .

3.6. Insurance.

3.6.1. Obtaining Proper Insurance.

Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.6; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that (a) Owner is an additional named insured, and (b) such insurance coverage is in effect and will not be canceled or materially altered without thirty (30) calendar days prior written notice to Owner. All insurance provided by Contractor hereunder shall provide for a waiver of subrogation against Owner. In the event that permitted subcontractors are not covered by the Contractor's policies of insurance, each permitted subcontractor shall secure policies of insurance, which meet the requirements of this Section 3.6.

3.6.2. Amount of Insurance.

Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project.

a. Worker's Compensation, Employer's Liability, and Occupational Disease Insurance.

Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent provided by the Worker's Compensation Act and the Occupational Disease Act of the State of Indiana, on all of Contractor's employees engaged in the Project;

b. Public Liability.

Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations (for at least two (2) years following completion) coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) in one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) annual aggregate;

c. Automobile Liability.

Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile, with such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person, not less than One Million Dollars (\$1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage.

d. Contractor's Risk Insurance.

Contractor's Risk Insurance for the benefit of Owner, Contractor, Engineer, Engineer's Sub consultants, any and all of the permitted subcontractors as their interest may appear, and for the benefit of all parties furnishing financing to the Owner for construction to be done hereunder, all of the same to be named insureds on the said Contractor's Risk policy. The perils covered shall include fire and extended coverage, plus other perils (including theft, vandalism and malicious mischief) which extend coverages to the broadest form of "all risk" coverage. This "all risk" coverage shall be in the amount of 100% of the completed insurable value of the Project. Proceeds of such Contractor's Risk Insurance shall be payable to Contractor, as trustee for all interested parties, and Contractor shall adjust all losses and claims with the insurer, subject, however, to the rights of any mortgagee. Contractor may be required by Owner, in its sole discretion, to post a reasonable bond in order to act as trustee for such insurance proceeds. Such coverage shall insure items of labor and materials connected with the Project, whether in or adjacent to the Facilities insured, materials in place or to be used as part of the permanent construction, including surplus materials, shanties, protective fences, bridges, temporary structures, miscellaneous materials and

supplies incident to the work, and such scaffolding, stagings, towers, forms and equipment as are not owned or rented by Contractor, the cost of which is included in the cost of the work.

3.7. Environmental Protection.

Contractor shall perform all work in connection with the Project in an environmentally sound manner and shall strictly comply with all environmental protection laws and legal requirements, including, but not limited to, statutes and regulations governing the handling, generation, transportation, and disposal of hazardous waste.

Except as provided in the immediately following paragraph, should any discharge, leakage, spillage, emission, or pollution of any type (hereinafter called "Pollution") occur upon or from the Facilities due to the fault of Contractor or its subcontractors, Contractor shall clean or otherwise re-remediate such site and any other lands upon which Pollution occurs, to the satisfaction of Owner and any governmental authority having jurisdiction. Such re-remediation shall be performed by Contractor or someone hired by Contractor, at its sole cost, risk and expense, and Contractor shall indemnify, defend and hold harmless Owner from and against all loss, costs, liability, expenses, judgment, fine, and/or penalty imposed upon or assessed against Owner as a result of any Pollution or the remediation caused by Contractor or its subcontractors; provided, however, that the foregoing shall not prevent Contractor from seeking contribution or indemnity from any other party bearing full or partial responsibility for said Pollution; and provided further, Contractor's recourse against Owner shall be limited to Owner's own direct contribution to the occurrence of the Pollution.

4. Building Insurance.

The Owner's fire and extended coverage insurance now in effect on the Facilities will cover the Owner's interest or equity in the Project; however, it will not cover the equity or interest of the Contractor nor of its materials and/or equipment at the Facilities. The coverage of the Contractor's equity and/or interest, as above, shall be the responsibility of the Contractor.

4.1. Title.

Title to all Energy Conservation Measures shall vest with the Owner upon Owner's Final Acceptance and approving payment to the Contractor. Such title shall continue to be subject to the provisions of this Agreement. It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

The Owner shall be responsible for operating, maintaining, and insuring all Energy Conservation Measures that are installed, except as otherwise set forth in Agreement, from and after the date of Owner's Final Acceptance.

5. Contract Price and Payments.

5.1. Contract Price.

In consideration of Contractor's performance of the work necessary for the completion of the Project, Contractor shall be paid sums not to exceed the amounts **described in Exhibit B and Exhibit B-1** (herein the "Contract Price). Any cost and expense for the installation of the Project in excess of the Contract Price shall be and remain the sole and exclusive liability and obligation of Contractor, unless such additional cost results from the issuance of a change order by Owner that is approved by Contractor and signed by an authorized representative of Contractor and Owner.

By executing this Contract, Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Project, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Project or its costs, and has included provision for all such conditions in the Contract Price, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during performance of the Project. Contractor also represents that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Facilities, including all exploratory work done by Owner, as well as from the specifications made a part of this Contract. Failure by Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Project, or for proceeding to successfully perform the Project without additional expense to Owner.

Prior to Substantial Completion (as defined in the General Conditions), the Owner shall retain 10 percent of the amount of each payment for the work completed. If the work has been 50 percent completed as determined by Engineer, and if the quality and progress of the work have been satisfactory to Owner and Engineer and in accordance with the Contract Documents, Owner, on recommendation of Engineer, may determine that as long as the quality and progress of the work remain satisfactory to them and in accordance with the Contract Documents, there will be no additional retainage; and 50 percent of cost of materials and equipment not incorporated in the work (with the balance being retainage). Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

Owner shall make progress payments on account of the Contract Price on the basis of Contractor's applications for payment on or about the 15th day of each month during performance of the Project. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions

Contractor shall include in each permitted subcontract a limitation on the markup that Subcontractors can include in approved Change Orders. The cumulative total of markup (subcontractor markup plus all lower-tier subcontractor markups) shall not exceed fifteen percent

(15%) of the cost of any approved Change Order. As Contractor's markup is accounted for in the fixed fee, there will be no additional Contractor's markup for changes in scope associated with Owner approved work that expends project savings and contingency dollars.

5.2. Completion and Inspection; Acceptance.

Completion and inspection will be in accordance with the Specifications and Drawings, General Conditions and Supplementary Conditions. In addition, Owner will not give Contractor notice of acceptance until Contractor has obtained all Approvals, as required by I.C. 36-1-12.5.

6. Independent Contractor.

It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be subject only to its orders and supervision, and shall be paid directly by Contractor. Neither Owner nor its agents, servants, or employees shall have the right to direct, supervise, or control the manner or method in which Contractor or its subcontractors perform the Project, except as otherwise expressly provided herein; provided, however, Owner shall have the right to inspect the Project at any time for the purpose of determining whether the Project is being carried out in conformity with the Contract Documents.

7. Inspection; Defective Work.

The Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by Owner. Contractor shall, within twenty-four (24) hours after receiving written notice from the Owner's Authorized Representative to that effect, proceed to remove from the Facilities all materials, which fail to conform to the Contract Documents.

Contractor shall retain in its records copies of all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, and its construction. Contractor shall maintain substantiating records for seven (7) years after the date of final payment or for any longer period of time as may be required by law or good construction practice. Contractor shall promptly make such records available for inspection by Owner upon request during such retention period. If Contractor receives a notification of dispute or the commencement of litigation regarding the Project within this seven (7) year period, Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

8. Termination for Failure to Perform; Rights Thereunder.

The Contractor shall use all due diligence in an effort to complete the entire work required by this Contract within a minimum period of time. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality, or fail to prosecute the work with promptness and diligence, the Owner shall be at liberty, after thirty (30) days written notice to the Contractor and Contractor's failure to remedy the problem within

that time period, to provide any such labor or materials and to deduct the costs thereof from any money then due or thereafter to become due to the Contractor under the Contract, and Owner shall also be at liberty to terminate this Agreement with the Contractor for the Project and to enter upon the Facilities and take possession for the purpose of completing the work to be done under this Contract, to use all materials of the Contractor available for such work, and to employ any other person or persons to finish the work and to provide such additional materials therefore as may be necessary; and in case of such discontinuance of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the balance to the Owner. The expenses incurred by the Owner as herein provided, either for the furnishing of materials or for finishing the work, and any damage incurred through such fault of the Contractor shall be certified by the Owner, and payment shall be made upon such certification.

9. Extension of Time for Completion of Project.

Should the Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of the Owner or by any other damage or act beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within two (2) business days of the occurrence of such delay. Contractor's nonperformance of its obligations under this Agreement will be excused (or, if practicable, the time period within which Contractor may perform an obligation shall be extended) if and solely to the extent: (i) Contractor's failure to perform, or failure to timely perform, an obligation results from Owner's failure to perform or failure to timely perform its responsibilities, (ii) Contractor provides Owner with prompt and reasonable notice of Owner's nonperformance, and (iii) Contractor uses commercially reasonable efforts to perform its duties notwithstanding Owner's failure to perform.

10. No Acceptance of Defective Work.

No certificate given or payment made under this Contract, except the final certificate and final payment thereon, shall be conclusive evidence of the performance of this Contract either wholly or in part; provided, that no payment or certificate, including, without limitation, the final payment and certificate, shall be construed to be an acceptance of defective work, improper materials or unauthorized substitutions.

11. Owner to be Held Harmless.

Owner shall not in any manner be answerable or accountable for any violation of the City of East Chicago ordinances or state or federal law by the Contractor or of anyone in its employ, nor for any loss or damage arising from negligence of the Contractor, or anyone in its employ, to any person or persons and their property, and the Contractor agrees to make good to the Owner any loss, damage, or expense incurred by the Owner by reason of any such violations or

negligence, on the part of the Contractor or anyone in its employ, including any subcontractor, together with reasonable attorneys' fees.

12. Contractor to Furnish Required Statements.

The Contractor shall, at no additional cost, provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation (including, without limitation, the Act) or by City ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and the Contractor hereby acknowledges receipt of notice from the Owner to furnish same.

13. Nondiscrimination in Hiring Employees.

The Contractor, as required by I.C. 5-16-6-1 *et seq.* and I.C. 22-9-1-10, shall comply with the following:

A. The Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.

B. This Contract involves the construction, alteration, or repair of a public building or public work, therefore the Contractor further agrees:

(1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

(2) That the Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry;

C. The Contractor affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require its subcontractor, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

The Owner may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the Owner.

14. Applicable State Laws Part of Contract - Conflict With Laws.

This Contract shall include in its terms all of the applicable laws of the State of Indiana, and any provision of this Contract, including the plans and specifications, which are a part of this Contract in conflict with the laws of the State of Indiana, are hereby declared to be inoperative, but the invalidity of any part of this Contract shall in no way affect the validity of the remainder of this Contract insofar as permitted by law. Special attention of the parties hereto is called to the I.C. 5-16-5-1 *et seq.*, as amended, I.C. 5-16-7-1 *et seq.* as amended, and I.C. 36-1-12.5-1 *et seq.* as amended, which, together with all other applicable laws, are part of this Contract.

15. Miscellaneous Provisions.

15.1. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

15.2. Notices.

Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to the addressee, in the case of a Notice to be given to Contractor, or personally delivered to the addressee in the case of a Notice to be given to Owner, or (ii) upon the earlier of actual receipt or refusal of delivery when sent via traceable overnight courier (e.g., FedEx) or when sent in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: Dr. Abderrahman Zehraoui, Director
 East Chicago Sanitary District
 5201 Indianapolis Blvd
 East Chicago, IN 46312

If to Contractor: Todd A. Lemen, Asst. Vice President, Indiana Regional
 Manager

Kokosing Industrial
3862 N Commercial Pkwy
Greenfield, IN 46140

15.3. Claims for Damages.

Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

15.4. Assignment.

Without Owner's prior written consent, Contractor shall not, and will not, assign, subcontract, transfer, pledge, hypothecate, or grant any security interest in, or otherwise dispose of, this Agreement, or any portion of this Agreement.

Contractor, without the consent of the Owner, may assign its right to receive payment hereunder in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that Contractor or the Assignee shall act as a collection and paying agent for holders of certificates of participation in this Agreement, or may provide that a third party trustee or agent shall act as a collection and paying agent for any Assignee, provided Owner receives written notification of the name and address of the trustee or the agent and a copy of the pooling and fractionalization agency or trustee agreement, if any such Assignee shall have all or a part of the assigned rights of Contractor under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Any assignment or reassignment of any of Contractor's right to receive payment hereunder shall be effective upon receipt by Owner of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee, and where applicable, to whom further payments hereunder should be made. Owner agrees to acknowledge, in writing, any assignments if so requested.

Owner agrees that, upon notice of assignment of payment rights, if so instructed, it shall pay directly to the Assignee, or its Trustee or Agent without abatement, deduction or setoff (except as permitted by this Agreement), all amounts, which become due hereunder.

Contractor does hereby assign to Owner, to the greatest extent permitted by law, all warranties of any manufacture of supplies, equipment, and all other materials used in the performance of the Project. Contractor agrees to use reasonable efforts to assist Owner in seeking any redress under any such warranties.

15.5. Nonwaivers and Defaults.

The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights. Except as otherwise expressly provided herein, no default by either party hereto in the performance of any of its

covenants or obligations hereunder, which except for this provision would be the legal basis for the rescission or termination hereof by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the same within fifteen (15) calendar days after written notice thereof is given to such defaulting party by the other party hereto.

15.6. Remedies Cumulative.

Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity.

Upon the occurrence of a default, hereunder and subject to the provisions of Section 10 hereof, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, (ii) recover damages for breach of this Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement, and for all legal fees and other costs and expenses, including court costs, incurred with respect to the enforcement of any of the remedies listed above or any other remedy available to either party to this Agreement.

Except as otherwise provided in this Contract, in the event of a claim, controversy or dispute between Owner and Contractor, the performance of any portion of the Project, the delivery of any materials, the payment of disputed monies or otherwise (the parties acknowledging that undisputed monies will be paid when due), Owner and Contractor agree that pending the resolution of such claim, controversy or dispute, Owner and Contractor shall continue to perform their respective obligations under this Contract without interruptions or delay, and Contractor agrees not to directly or indirectly stop or delay the performance of the Project, including the delivery of materials to the Facilities.

15.7. Tests.

If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the work, Contractor shall give the Owner timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that the Owner may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to Owner's Authorized Representative. The obligations of Contractor under this Section 15.7 include, without limitation, the obligation to conduct all audits required by the Act (Contractor's current reporting form as of the date of this Agreement is attached hereto as **Exhibit D**).

15.8. Amendments.

No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto, and the Contractor's assignee, if any.

15.9. Headings.


The headings of sections and subsections of this Agreement are for convenience of reference only and shall not constitute, affect the meaning, construction, or effect of, any provision hereof.

15.10. Entire Agreement.


This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto and supersedes all prior negotiations, representations and agreements whether written or oral. To the extent of any conflict between this Agreement and its Exhibits and the Specifications and Drawings, General Conditions and Supplementary Conditions, the terms and conditions of this Agreement shall prevail and supersede solely to the extent of any such conflict.

Authority to Execute Contract. This Contract is executed for the East Chicago Sanitary District pursuant to the approval of the East Chicago Sanitary Service Board at its regular meeting, duly called and held July 23, 2019.
2020

EAST CHICAGO SANITARY BOARD

By: 
Printed: Miguel Rivera
Its: Board President

KOKOSING INDUSTRIAL, INC.

By: 
Printed: Todd A. Lemen
Its: Indiana Regional Manager

ATTEST:

By: 
Printed: Anthony Herrera
Its: Board Secretary

CERTIFIED CORPORATE RESOLUTION Kokosing Industrial, Inc.

The Board of Directors of **Kokosing Industrial, Inc.** (the "Corporation"), a corporation duly organized and existing under the laws of the State of Ohio, approved the following resolution in writing pursuant to Ohio Revised Code Section 1701.59 on February 21, 2020, and that said resolution has not been modified, amended or rescinded and remains in full force and effect:

RESOLVED: That the following named individuals are authorized to hereby sign bid documents and contracts on behalf of the Corporation in accordance with the attached *Signature Authorization* dated August 1st, 2017:

Wm. Brett Burgett – Chief Executive Officer
Thomas G. Muraski – President
Daniel B. Walker – Executive Vice President
Kenneth A. Gonya - Vice President of Operations & Assistant Secretary
Spencer C. Beeching – Vice President of Operations & Assistant Secretary
Chad R. Lampe - Vice President Estimating & Assistant Secretary
Aaron Harke - Vice President, Durocher Marine Division
Todd Lemen – Assistant Vice President & Assistant Secretary
Wm. Barth Burgett - Executive Vice President
Timothy J. Freed – Treasurer
Gabe J. Roehrenbeck - General Counsel
Scott B. Erick - Vice President Human Resources
Nick E. Vranak – Vice President Safety
Brooke E. Hoeflich – Secretary
Mark Henrikson - Assistant Secretary
Brittney R. Burgett – Assistant Secretary

The undersigned hereby certifies that she is the duly elected, qualified and Acting Secretary of the Corporation, and that she is authorized to give this Certified Corporate Resolution.

Certified this 21st of February, 2020.



Brooke E. Hoeflich, Secretary

**ACTION BY WRITTEN CONSENT OF THE SOLE DIRECTOR OF
KOKOSING INDUSTRIAL, INC.
CORPORATE SIGNATURE AUTHORIZATION**

PURSUANT to the authority of Section 1701.54 of the Ohio Revised Code, the undersigned, being the sole duly elected director of **Kokosing Industrial, Inc.**, an Ohio corporation (the "Corporation"), and the only person who would be entitled to notice of a meeting as the sole member of the Board of Directors of the Corporation (the "Board"), does hereby waive notice in writing of such a meeting and hereby adopt by this Action by Written Consent, the following resolutions with the same force and effect as if they had been unanimously adopted at a duly convened meeting of the Board as of the 1st day of August, 2017:

RESOLVED: That this resolution hereby replaces and supersedes any other resolutions relating to signature authority on behalf of the Corporation.

FURTHER RESOLVED: That the following individuals are hereby provided the following signature authority:

The Chief Executive Officer

All documents, contracts, and agreements on behalf of the Corporation.

President, Executive Vice President, Senior Vice Presidents, Vice Presidents, and Mark Henrikson

All contracts and contract change orders related to construction projects, proposals and bid documents, subcontracts, purchase orders and change orders, and other contracts or documents specifically related to construction projects.

Assistant Vice Presidents and Todd A. Lemen

All contracts and contract change orders, proposals and bid documents, subcontracts, purchase orders and change orders, and other contracts or documents specifically related to construction projects up to \$30 million.

Vice President of Human Resources

All contracts in relation to purchasing of insurance on behalf of the Corporation, employment proposals, contracts for training services, and settlements related to workers' compensation and insured liability claims.

Treasurer

All contracts related to bank financing, establishing bank accounts, equipment leases, credit applications, bonding agreements, execution of corporate tax returns, and amendments to the 401k plan.

General Counsel

All documents and contracts related to legal matters.

Vice President Safety

All contracts in relation to contracting of safety related services on behalf of the Corporation and regulatory filings related to safety.

Area Managers, Project Executives, Project Managers

Proposals, change orders, subcontracts, and purchase orders under \$500,000:

Project Engineers and Estimators

Proposals under \$50,000, and subcontracts, purchase orders and change orders under \$100,000.

SCHEDULE 1

FINAL ACCEPTANCE CERTIFICATE
(TO BE COMPLETED AND SIGNED AFTER INSTALLATION OF ALL ECM'S)

Kokosing Industrial
3862 N Commercial Pkwy
Greenfield, IN 46140

Re: Guaranteed Energy Savings Performance Contract, dated as of _____, 20____,
(the "Agreement"), between Kokosing Industrial, Inc. (the "Contractor") and the
East Chicago Sanitary District (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, the Owner hereby certifies and represents to, and agrees with, Kokosing Industrial follows:

All of the ECM's (as defined in the Agreement) comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted as of _____
(the "Completion Date").

Owner has conducted an inspection and/or testing of the ECM's or other measures comprising the Project as it deems necessary and appropriate and hereby acknowledges that it accepts the Project for all purposes, subject to all terms and conditions of the Agreement.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, a default, is known by the Owner to exist at the date hereof.

Sincerely,

East Chicago Sanitary District

By: _____
Name

Its: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

Project: 145th Street & Alder Street Pump Station Rehabilitation Projects – LTCP Phase II

Projects will be completed under the conditions of the 2007 Version of EJCDC C-700 Standard General Conditions of the Construction Contract (the “General Conditions”) as amended by the Owner’s Supplementary Conditions (the “Supplementary Conditions”). The Scope of Work shall be as set forth in the GMAX Basis for the Specifications, Drawings and Project Manual (the foregoing, collectively, the “Specifications and Drawings”) as modified by EXHIBIT F, and as described below. The Specifications and Drawings, General Conditions and Supplementary Conditions are hereby incorporated into, and made a part of, this Agreement by this reference. Significant changes in scope of work will be documented by a Scope Modification Agreement.

145th Street Pump Station

- Testing of motors of two (2) existing pumps
- Installation of three (3) new pumps
- Removal and refurbishment of two (2) existing pumps
- Expansion of existing electrical building
- Installation of associated electric and control systems
- Construction of new force main including valve vault
- Construction of new discharge pipes with associated isolation valves
- Miscellaneous improvements as directed by the Owner and approved by the Engineer

Alder Pump Station

- Removal of three (3) existing sanitary pumps
- Installation of three (3) new sanitary pumps
- Installation of associated electric and control systems
- Miscellaneous improvements as directed by the Owner and approved by the Engineer

Roxanna Pump Station

- Removal of two (2) existing sanitary pumps
- Installation of two (2) new sanitary pumps
- Installation of associated electric and control systems
- Replacement of discharge header piping to the existing mag meter
- Replacement of existing mag meter
- Installation of new backup generator
- Miscellaneous improvements as directed by the Owner and approved by the Engineer

CSO Lagoons

- Construction of new diversion piping and valve system including piped connection from existing forcemain to the existing WWTP influent, the new valve vault, valves, and associated electric and control systems
- Construction of connecting force main from the new Valve Vault to the stub out located on the SE corner of Indianapolis Blvd and 152nd Street
- Installation of new 36” mag meter inside existing meter vault including associated electric and control systems
- Replacement of existing 10” mag meter inside existing meter vault Construction of new headwall inside the CSO Lagoon influent channel
- Extension of existing 72” force main through the new headwall
- Construction of connecting force main from the stub out on the hillside adjacent to the CSO lagoon influent chamber to the new headwall
- Modification of the influent weir to the CSO Lagoon
- Miscellaneous improvements as directed by the Owner and approved by the Engineer

Miscellaneous Improvements

- Additionally identified modifications associated with the reinforcement of the CSO Lagoons influent structure
- Additional items of scope may be incorporated at the Owner’s direction and Engineer approval for the construction, installation, or improvement of assets related to the wastewater system.

Proposal Clarifications, Assumptions, and Exceptions:

1. The pricing above does not include additional costs for BF&S to perform I&C/Electrical Review or the NIPSCO Utility Coordination.
2. The pricing breakouts provided above are for your reference only. Our pricing is based upon being awarded the quoted work in its entirety. Our pricing is based on being awarded the Lump Sum Guaranteed Maximum Price.
3. Cleaning in the wet wells at the 145th and Alder St. Pump Stations are to be performed by ECSD.
4. Our pricing assumes the plug valves and knife gate valves at the Alder St. Pump Station are in working order and will stop flow when closed. We have not included bypass pumping or other means in the event the valves do not hold.
5. Our pricing assumes the isolation valves at Roxanna Pump Station are in working order and will stop flow when closed. Bypass pumping assumes use of ECSD’s existing stand-by pump and appurtenances. We have not included additional bypass pumping or other means in the event the valves do not hold.
6. We have assumed the system indicated on sheet 37 (existing meter vault) is not active and the work can be completed without the need for bypass pumping.
7. Sales taxes on all permanent materials is excluded. The Owner will provide us a tax exemption certificate.
8. The I&C Scope and pricing is based on Austgen Electric Inc’s understanding of what the ECSD desires in terms of the I&C scope and their proposal submitted to ECSD dated July 7, 2020. This scope and pricing supersedes the scope of work as indicated on the drawings and specifications.
9. For the work at 145th Street Pump Station, our pricing assumes bypass pumping into the adjacent ditch as directed by ECSD.
10. Disposal of transformers and VFD’s is not included. We have included hauling to a location within the ECSD properties, as determined by ECSD, but have not included the cost of disposal.
11. We have included \$25,000 allowance for NIPSCO fees.

12. We have included replacing one (1) 12" magmeter at the Roxanna Pump Station.
13. We have not included any local building permits or roadcut permits for forcemain work across 152nd Street.
14. Our pricing does not include bypass pumping of the existing 72-in force main influent to the existing lagoon influent structure while performing proposed piping and structure modifications. Our price assumes that the existing 72-in force main can be shut down and/or re-routed during the duration of the lagoon influent piping modification work.
15. Our price does not include hauling off any unsuitable soils from the 48-in force main work at the existing WWTP. Our price includes utilizing existing soils as backfill materials except under roadways.

EXHIBIT B

PROPOSAL & OPEN BOOK STRUCTURE

Project: 145th Street & Alder Street Pump Station Rehabilitation Projects – LTCP Phase II

This is a “Cost Plus a Fixed Fee” proposal with a “Guaranteed Maximum Price” or “GMP”. Exhibits B-1 is hereby incorporated by reference into, and made a part of, this Exhibit B. In exchange for payment by Owner to Contractor, Contractor shall complete, without exception, and shall furnish required process know-how, labor, supervision, materials, tools, equipment, transportation, permits, and incidentals to accomplish the Project, including, without limitation, the following:

- B-1. Construction Costs: The following project specific personnel costs including, but not limited to, Contract Manager, Project Manager, Project Engineer, Project Coordinator, Safety Manager, Corporate Safety Director (site visits only), General Superintendent (site visits only), Project Field Superintendent, Project Field Engineer are all eligible personnel. In addition the following project cost including, but not limited to, project materials, consumable materials, subcontracted work, heavy equipment usage, mobilization & demobilization costs, office/tool trailers, initial site surveying, construction laydown/parking area requirements, medium tools, dumpsters, drinking water, drawing/specification, reproductions, on-site phones, faxes, computers, printers, subsistence and other travel expenses, sanitary facilities and utility consumption charges are all eligible for reimbursement. Mobilization & demobilization is limited to 5% of construction cost on the schedule of values and the full amount will be billed in the first payment of application.
- B-2. Fixed Provider/Contractor Fee: Contractors fee for overhead and profit. The Provider/Contractor Fee will appear as a line item on the schedule of values and will progress on a percentage basis of project completion.
- B-3. Construction Contingency: The Contractor’s GMP Proposal contains, as part of the estimated Cost of the Project, the Construction Contingency, a sum agreed upon to cover costs which are properly reimbursable as a Cost of the Project, whether or not such cost is the basis for a Change Order. The Contractor shall regularly (no less than on a monthly basis during the term of this Agreement) provide The Owner with an accounting of all charges against the Construction Contingency.
- B-4. Final Report, Project Savings: At the time of Final Completion, the Contractor shall provide a Final Contract Price Report with an invoice to the Owner that includes the cost of Project to date. If at such time the Final Contract Price is less than the Guaranteed Maximum Price referenced in Exhibit B-1, then the East Chicago Sanitary District shall keep 100% of the savings. Reports, referred to as buy sheets, will be given to the East Chicago Sanitary District by the Contractor monthly or bimonthly during construction documenting savings or losses.

Exhibit B-1
CONTRACTOR'S OPEN BOOK PRICING MODEL & PROPOSAL

Project: 145th Street & Alder Street Pump Station Rehabilitation Projects – LTCP Phase II

Pricing is Composed of the Following Breakdown:

Construction Cost	\$ 10,230,000
Owner's Allowance: Lagoon Discharge Repairs	\$ 30,000
Construction Contingency	\$ 404,000
Provider Fixed Fee	\$ 958,000
<u>Allowance: Local Labor Compliance</u>	<u>\$ 610,000</u>
GUARANTEED MAXIMUM PRICE:	\$ 12,232,000

**Contractor's Open Book Guaranteed Maximum Price
Twelve Million, Two Hundred Thirty-Two Thousand dollars**

EXHIBIT C

PERFORMANCE GUARANTEE

Project: 145th Street & Alder Street Pump Station Rehabilitation Projects – LTCP Phase II

SAVINGS GUARANTEE

Kokosing Industrial guarantees that the program described in the Guaranteed Energy Savings Performance Contract (the “Agreement”) to which this Performance Guarantee is attached as Exhibit C will recover a total of **\$15,188,760** in energy, wastewater, and operational savings during the first fifteen (15) years of operation, beginning on the first day of the month following completion and final acceptance by the East Chicago Sanitary District regarding the installation of the equipment provided under the Agreement.

If, at the end of any year during the guarantee period, the program has failed to achieve the annual guarantee of energy savings, Kokosing Industrial will pay the East Chicago Sanitary District the difference between the annual energy guarantee and the actual energy savings amount.

Energy savings that are achieved by the upgrades and the modifications in the Agreement prior to completion of the entire retrofit project (construction period savings) will be added to the first year actual annual energy savings amount.

Kokosing Industrial and the East Chicago Sanitary District also agree that if the actual annual energy savings amount exceeds the annual energy guarantee amount, such excess energy savings amounts will be added to the savings for any future year before calculating the savings amount.

This guarantee, whether or not exercised, is Kokosing Industrial’s sole liability with respect to any claim of energy savings.

METHODOLOGY

The savings are calculated with all assumptions, variables, and equations are shown on each page. The total annual savings, including energy, wastewater and operational, are stipulated between the East Chicago Sanitary District and Kokosing Industrial in the Agreement. Stipulated savings are savings that are agreed to be satisfied throughout the term of this performance guarantee. Any changes to the operation of the equipment or systems can be accounted for through calculation and the annual savings adjusted accordingly. The Tables below summarize the guaranteed annual savings from the calculations. This saving guarantee is dependent upon these conditions being met.

Any shortfall payments between the East Chicago Sanitary District and Kokosing Industrial will be made within 90 days of the end of each annual period.

Table 1: Annual Savings Summary

ECM	Description	Capital Avoidance Savings (Table 3)	Operational Savings (Table 4)	Energy Savings (Table 5)	Total Savings
1	LTCP Phase II	\$784,667	\$189,000	\$38,917	\$1,012,584

Table 2: Annual Guaranteed Savings by Year of Contract

Contract Year	Calendar Year	Total Annual Savings
1	2021	\$1,012,584
2	2022	\$1,012,584
3	2023	\$1,012,584
4	2024	\$1,012,584
5	2025	\$1,012,584
6	2026	\$1,012,584
7	2027	\$1,012,584
8	2028	\$1,012,584
9	2029	\$1,012,584
10	2030	\$1,012,584
11	2031	\$1,012,584
12	2032	\$1,012,584
13	2033	\$1,012,584
14	2034	\$1,012,584
15	2035	\$1,012,584
Total		\$15,188,760

Table 3	
Capital Avoidance Savings Summary	
Component	Total Capital Avoidance Savings
Engineer's Estimate	\$11,770,000
Total Capital Avoidance Savings	\$11,770,000
Annualized over 15 years	\$784,667 / yr

Table 4	
Operational Savings Summary	
Component	Annual Operational Savings
Cost of Disruption: 145 th St Pump Station	\$79,000
Cost of Disruption: Roxanna Pump Station	\$110,000
Total	\$189,000

Table 5	
Energy Savings Summary	
Component	Annual Energy Savings
Alder PS VFD	\$34,320
Roxanna VFD	\$4,597
Total	\$38,917

CAPITAL AVOIDANCE SAVINGS DETAILED CALCULATIONS

As part of the Preliminary Engineering Report submitted for State Revolving Loan Fund funding, the following estimate of construction costs was developed and submitted.

Component	Capital Value (non-AIS)
145 th Street Pump Station	\$ 3,670,000
Conveyance to the WWTP and CSO Lagoon (incl. Alder and Roxanna Pump Stations)	\$ 7,030,000
SUBTOTAL	\$ 10,700,000
Contingency	\$ 1,070,000
Estimated Project Cost	\$ 11,770,000

OPERATIONAL SAVINGS DETAILED CALCULATIONS

145th Street Pump Station: Cost of Disruption.

The work at 145th Street Pump Station will resolve long-term issues of cavitation at the storm water pump station, which consequently have led to reliability issues. Operational failure of the station in the past has led to upstream surface flooding of roads and properties. Note: flooding of basements has not been associated with this station. The cost of disruption associated with the station are estimated for an average 6-hour outage to be:

O&M Cost to repair station	\$15,000
Cost to City of East Chicago (street department, police) to manage flooding	\$ 7,500
Cost to affected persons (homeowners, motorists, pedestrians)	\$ 5,000
Cost to affected businesses (lost sales, production)	\$12,000

TOTAL cost of disruption per average event \$39,500

Based on the experience of ECSD operators, it is reasonable to assume such outages occur an average of 2 times per year.

ANNUAL TOTAL cost of disruption = \$39,500 * 2 events/year = \$79,000 / year

Roxanna Pump Station: Cost of Disruption.

The work at Roxanna Pump Station includes the addition of a backup generator that will eliminate reliability issues associated with power outages. Operational failure of the station leads to the flooding of basements in the sewershed. The cost of disruption associated with the station are estimated for an average 6-hour outage to be:

O&M Cost to mobilize / use portable generator	\$ 5,000
Cost to affected persons (\$5,000 * 10 affected properties)	<u>\$50,000</u>
TOTAL cost of disruption per average event	\$55,000

Based on the experience of ECSD operators, it is reasonable to assume such outages occur an average of 2 times per year.

ANNUAL TOTAL cost of disruption = \$55,000 * 2 events/year = \$110,000 / year

ENERGY SAVINGS DETAILED CALCULATIONS

Alder Pump Station VFDs

VFDs are being installed on the three 250 hp motors. The savings from the VFD large occur during the start of each motor and under dry weather conditions, when the flow is pumped to the lower head WWTP. Under all weather conditions, one pump is operating, two are stand-by. Alder pumps operate 24 hours of a day. The calculations below show the energy usage for constant speed pumps vs adjustable speed.

Constant Speed Pump

Pump 1 Dry Weather

$$250 \text{ hp} * 0.745 \text{ hp/kW} * 24 \text{ hr/day} * 0.6 * 365 \text{ days} = 978,930 \text{ kWh / year}$$

Pump 1 Wet Weather

$$250 \text{ hp} * 0.745 \text{ hp/kW} * 24 \text{ hr/day} * 0.4 * 365 \text{ days} = 652,620 \text{ kWh/hr}$$

Total Power usage: 1,631,550 kWh/hr

Adjustable Speed Pumps

Pump 1 Dry Weather

$$166 \text{ hp} * 0.745 \text{ hp/kW} * 24 \text{ hr/day} * 0.6 * 365 \text{ days} = 650,009 \text{ kWh / year}$$

Pump 1 Wet Weather

$$250 \text{ hp} * 0.745 \text{ hp/kW} * 24 \text{ hr/day} * 0.4 * 365 \text{ days} = 652,620 \text{ kWh/hr}$$

Total Power Usage: 1,302,629 kWh/yr

Savings from VFD = 328,921 kWh/hr @ \$0.104343 kWh = \$34,320 per year

Roxanna Pump Station VFDs

VFDs are being installed on the two 125 hp motors. The savings from the VFD large occur

during the start of each motor and under dry weather conditions, when the flow is pumped to the lower head WWTP. Under all weather conditions, one pump is operating, one stand-by. On average, Alder pumps for 9 hours of a day. The calculations below show the energy usage for constant speed pumps vs adjustable speed.

Constant Speed Pump

Pump 1 Dry Weather

$$125 \text{ hp} * 0.745 \text{ hp/kW} * 9 \text{ hr/day} * 0.6 * 365 \text{ days} = 183,549 \text{ kWh / year}$$

Pump 1 Wet Weather

$$125 \text{ hp} * 0.745 \text{ hp/kW} * 9 \text{ hr /day} * 0.4 * 365 \text{ days} = 122,366 \text{ kWh/hr}$$

Total Power usage: 305,915 kWh/hr

Adjustable Speed Pumps

Pump 1 Dry Weather

$$95 \text{ hp} * 0.745 \text{ hp/kW} * 9 \text{ hr/day} * 0.6 * 365 \text{ days} = 139,497 \text{ kWh / year}$$

Pump 1 Wet Weather

$$125 \text{ hp} * 0.745 \text{ hp/kW} * 9 \text{ hr /day} * 0.4 * 365 \text{ days} = 122,366 \text{ kWh/hr}$$

Total Power Usage: 261,863 kWh/yr

Savings from VFD = 44,052 kWh/hr @ \$0.104343 kWh = \$4,597 per year

EXHIBIT D

SUPPORT SERVICES

ENERGY AUDITS

As part of the Guarantee, Kokosing Industrial agrees to complete the annual report to be filed with the Department of Local Government Finance.



GUARANTEED ENERGY SAVINGS CONTRACT ANNUAL SAVINGS REPORT
State Form 55896 (R2 / 7-16)
Department of Local Government Finance

Guarantee Period Covered by this Report (M/D/Yr): 11/8/22 through 11/7/23 Report Year: 1 of 15

Institution: <u>East Chicago Sanitary District</u>	Contractor: <u>Kokosing Industrial</u>
Contact: <u>Dr. Abderrahman Zehrouai</u>	Contact: <u>Tina Wolff</u>
Telephone: <u>219-391-8466</u>	Telephone: <u>260-444-8363</u>
Address: (number and street, city, state, and ZIP code) <u>5201 Indianapolis Blvd, East Chicago, IN 46312</u>	Address: (number and street, city, state, and ZIP code) <u>3862 N. Commercial Parkway, Greenfield, IN 46140</u>
E-mail Address: <u>kmyers@eastchicago.com</u>	E-mail Address: <u>tgw@kokosing.biz</u>

Contract Dates: Signed (M/D/Yr): 8/15/20 Expires (M/D/Yr): 11/8/22

Project Dates: Initiated (M/D/Yr): 8/15/20 Completed (M/D/Yr): _____

Total Project Cost (with Financing): _____ Total Guaranteed Savings: _____

	(A) Baseline Constant (from contract)	(B) Actual Post-Project	(C)* Adjustment	(D) ** Savings (A-B+C)	(E) Guaranteed Savings (From Contract)	(F) Difference + or - (D minus E)
1. Energy Saved (MMBTU):						
2. Energy Costs Saved:	\$38,917.00					
3. Operating Costs Saved:	\$973,667.00					
4. Total Costs Saved:	\$1,012,584.00					
5. Total Thru Previous Years:	\$0.00					
6. Accumulated Totals Thru This Period (4 + 5):	\$1,012,584.00					

* Note: Provide attachment showing all assumptions (bill totals, measurement and verification, stipulations) and calculations used to determine adjustments.

** Note: If column A, B, or C is blank or the listed savings have not been calculated using actual utility bills and operating costs, the reported figures have been stipulated and represent an estimation of savings.

Total Square Footage of Buildings in GESC: N/A Pre-project Energy Cost: _____

Buildings Included in Contract:
N/a

Savings Measures Included in Contract:
Future capital cost avoidance,
Reduced O&M at 145th Street PS

Name and Organization of Person Filing this Report:
Tina Wolff, Kokosing Industrial

Approved by and Title of Authorized Institution Official:
Dr. Abderrahman Zehrouai, Director

Send annually to the Department of Local Government Finance, 100 N Senate Ave, IGC-N, Room N1058, Indianapolis, Indiana, 46204 no later than sixty (60) days after the anniversary of each savings guarantee period.

Questions? Call the DLGF at (317) 232-3777. Email to: gesc_reports@dlgf.in.gov

EXHIBIT E

PROJECT COMPLETION SCHEDULE

Kokosing Industrial understands the importance of time to the Owner related to the CSO LTCP. Kokosing Industrial will work in good faith to diligently execute the work for a timely delivery, however certain elements are outside of the Contractor's control. Owner understands equipment lead times, winter weather conditions, and groundwater conditions are variable with the potential to significantly affect the Contractor's ability to work and that the schedule reflects this uncertainty.

Notice to Proceed	Anticipated August 14, 2020
Substantial Completion	725 days after NTP
Define Punch List Items	Upon Substantial Completion
Final Project Completion	90 days after Substantial Completion

145th Pump Station

Definition of Substantial Completion does not include the rehabilitation or replacement of the existing pumps and motors. The schedule for this work will be based on the manufacturer's recommendations after testing at their facility.

Restoration – All Sites

Restoration at all sites, including but not limited to seeding, planting, and asphalt, are as permitted by weather. Where weather conditions do not allow for the performance of work, Final Completion will be adjusted as necessary.

EXHIBIT F

DRAWINGS AND SPECIFICATIONS MODIFICATIONS

Project: 145th Street & Alder Street Pump Station Rehabilitation Projects – LTCP Phase II

The modifications contained in this exhibit represent the scope of the work of the contract as mutually determined by the OWNER, the ENGINEER, and the CONTRACTOR. These modifications supersede the content in the Drawings and Specifications. Where there is a conflict between the Drawings and Specifications and this Exhibit, this Exhibit shall govern. These modifications are reflected in an interim set of documents labeled Exhibit F Scope Verification November 15, 2019.

Bidding of Work

All documents associated with the “bidding” of work are deleted from the front end of the Project Manual

- Advertisement to Bid
- Instruction to Bidders
- Bid Package

Agreement

All documents associated with the agreement between the OWNER and the CONTRACTOR, including but not limited to the agreement, General Conditions, and Supplementary Conditions are deleted.

General Specification

Where the General Specifications conflicts with the Technical Specifications, the Technical Specifications shall govern.

145th Street Pump Station New Pressure Sensor

A new pressure sensor is to be located on the force main down pipe of the 30” plug valve. Engineer to provide location and specification for the sensor. The Proposed Valve Structure will be modified to accommodate the sensor. The location of the 48”x30” MJ-RJ Reducer will also be modified. Final configuration and dimensions to be provided by the Engineer in the Intended For Construction set prior to construction. This affects the following drawings:

- Sht 5 of 41 145th Street Pump Station – Modifications
- Sht 6 of 41 145th Street Pump Station – Modifications
- Section 40 91 00 Instrument Components – specification needed for new pressure sensor

Alder Pump Station Bypass Piping and Mag Meter

All work associated with the Alder Pump Station bypass piping and mag meter replacement is removed from this project. This includes, but is not limited to, structure modifications, piping, valves, meters, sump pumps, I&C, and power associated with the existing meter vault. This affects, at a minimum, the following drawings and specifications:

- Sht 16 of 41 Alder Street Pump Station – Demolition

- Sht 18 of 41 Alder Street Pump Station – Modifications
- Sht 19 of 41 Alder Street Pump Station and Power Plan – Modifications
- Sht 23 of 41 Alder Street Pump Station – Schedules
- Section 01 10 00 Summary of Work 1.2.B
- Section 33 05 50 Laying and Jointing Buried Pipelines
- Section 40 91 00 Instrument Components 2.2.A.1.b (1)
- Section 40 05 10 Erection and Jointing Interior and Exposed Exterior Piping Schedule
- Section 40 05 20 Valve Schedule

Radio Communications

All work associated with radio communications is removed from this project. However, existing radio equipment is to remain in place to preserve the integrity of the radio mesh. This affects the following drawings:

- Sht 25 of 41 Alder Street Pump Station – PLC-400 Panel Detail
- Sht 34 of 41 Roxanna Pump Station – PLC-500 Detail

Electrical Drawing Modifications

Electrical scope of work provided in handwritten electrical markups to Kokosing on January 23, 2019 supersede the provided drawings. The Engineer shall provide updated drawings in an Intended For Construction set reflecting the markups prior to the start of construction.

Digital Copies on USB Drive

Digital copies of Operations and Maintenance Manuals, Operator Interface Programs, and other project documentation shall be on USB Drives. No CD-ROM formats will be provided.

Specifications

Section 01 10 00 Summary of Work

1. 1.2 B Modify as follows “Work to be done under this Contract consists of the replacement of three (3) VFD controlled pumps with new larger capacity sanitary pumps, ~~isolation valves, 36” magnetic flow meter and bypass piping,~~ all controls and electrical ~~and structural upgrades~~ at the Alder Street Pump Station.”
2. 1.2 C.2 Delete in its entirety

Section 01 12 00 Allowances. Delete in its entirety.

Section 01 76 00 Operation and Maintenance Manuals

1. 1.1 A. Scope. Modify as follows “Furnish to ENGINEER ~~10~~ **4 hard and 4 digital** copies of an Operation and Maintenance Manual for all equipment and associated control systems furnished and installed.”
2. 1.3 A. Submittals. Modify as follows. “Within 30 days after the ENGINEER’s approval of the two-copy submittal, furnish to the ENGINEER the remaining ~~eight (8)~~ **hard and electronic** copies of the manual.”
3. 1.5 CD-ROM Manuals. Replace with “USB DRIVE MANUALS”

4. 1.5 A. Modify as follows: “Provide ~~5 CD-ROM~~ **4 USB Drive** copies of the accepted and complete manual”
5. 1.5 A.1 Delete
6. 1.5 A.11 Modify as follows: “Use standard ~~CD-ROM~~ **USB** media.”

Section 01 79 00 Training

1. 1.2 B. Modify the schedule as follows

40 90 00	Control System OITS and SCADA	4 10
40 90 00	HMI and PLC	120
40 90 00	Networking and Panels	32
40 98 00	Instrumentation	8
43 12 17	Vertical Wet Pit Column Pumping Equip	4
43 21 24	Non-Clog Pumps	4
43 21 29	Screw Centrifugal Pumps	4

Section 22 14 29 Sump Pumps

1. 1.1 B.1 Modify as follows: “~~Simplex~~ **Duplex** Submersible Sump Pump”

Section 26 05 13 Medium-Voltage Cables. Incorporate specification provided herein.

Section 26 05 80 Electric Motors

1. 2.2 B.9 Delete and replace with “Inverter duty that comply with NEMA MG1 part 31 when powered from an adjustable frequency drive. Motors labeled “inverter duty” that do not meet NEMA MG1 part 31 will not be accepted.”

Section 26 12 13 Liquid-Filled, Medium Voltage Transformers. Incorporate specification provided herein.

Section 26 12 19 Pad-Mounted, Liquid-Fill, Medium-Voltage Transformers. Incorporate specification provided herein

Section 26 24 22 Prefabricated Electrical Structure. Incorporate specification provided herein, listed in the original Table of Contents but missing from the set.

Section 26 29 23 Adjustable Frequency Drives

1. 2.2 K. Modify as follows “Communications: Provide an addressable communication card capable of transmitting the following data over a ~~two-wire network to the Plant SCADA system~~ **Cat6 Ethernet/IP, or thinnet devicenet if Ethernet/IP is not offered, connection to the local PLC Controller.**”

Section 26 32 13 Diesel Emergency Engine Generator. Replace specification in its entirety with that provided herein

Section 33 05 50 Laying and Jointing Buried Pipelines

1. 3.5 B Delete Alder St PS Meter Bypass from the schedule

Section 40 05 19 Erection and Jointing Interior and Exposed Exterior Piping

1. 3.5 B Delete Alder St PS Valve Vault from the schedule. Remove WWTP Magoun FM Extension from schedule. Remove WWTP Filter Backwash Extension from Schedule.

Section 40 05 20 Valve Schedule

1. 3.5 B Delete Alder St PS Meter Bypass from the schedule

Section 40 90 00 General and Functional Requirements

1. 1.5 G Coordination Meetings. Delete the following subsections:
 - a. 2. System Integrator Qualifications
 - b. 3. Financial Statements
 - c. 4. Organization Chart
 - d. 5. Evaluation Factors
2. 1.6 C. Design Requirements. Delete the following subsections:
 - a. d. Radio Communication Path Study
 - b. e. Radio and associated devices such as antennae and poles manufactures and installation details
3. 1.8 F. Project Record Documents. Delete requirements to submit digital copies on CD ROM. Digital copies shall be submitted on USB drives.
4. 3.3 Training. Delete this section in its entirety and replace with the following:
 - a. A. Training on new or modified OITS shall be provided as one 2-hour on-site session for each site
 - b. B. SCADA training covering all system modifications shall be provided as one 4-hour session. Training will be scheduled after all systems have been commissioned

Section 40 91 00 Instrument Components

1. 2.2 A. Modify as follows “Magnetic Flow Meters (~~FIT-100 & FIT-101~~)”
2. 2.2 A.1.b (1) Modify as follows “~~Size 36” (FIT-400) and 42” (FIT-120),~~ **10” (FIT-130) and 12” (FIT-XXX)(Roxanna)**”
3. 2.2.B Non-Contract Ultrasonic-Type Level Meter. (LE-300 & LE-301) Delete in its entirety. Not in project.
4. 2.2 C Insertion Capacitance Type Level Transmitter (LT-112). Delete in its entirety. Not in project.
5. New pressure sensor specification needs to be added

Section 43 21 16 Vertical Wet Pit Column Pumping Equipment

1. 2.6 Adjustable Frequency Drives. Delete. Pumps are to be constant speed.

Section 43 21 24 Nonclog Pumps

1. 2.13 Adjustable Frequency Drives. Delete and replace with the following. “Pumps will be fed from VFDs provided under the electrical specification.”

Section 43 21 29 Screw Centrifugal Pumps

1. 2.11 Adjustable Frequency Drives. Delete and replace with the following. “Pumps will be fed from VFDs provided under the electrical specification.”

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 Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 2. *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.
 3. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 5. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 6. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 7. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
 8. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
 9. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

10. *Contractor*—The individual or entity with whom Owner has entered into the Agreement. Whenever the word CONTRACTOR (with uppercase font) is used it shall have the same meaning as the word Contractor. *Cost of the Work*—See Paragraph 11.01 for definition.
11. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
12. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
13. *Engineer or Design Engineer*—The individual or entity named as such in the Agreement. The term Engineer shall include individuals and companies providing subsidiary or subcontracted engineering professional services to Engineer for the Work. Whenever the word ENGINEER (with uppercase font) is used it shall have the same meaning as the word Engineer. Whenever the word Architect is used it shall have the same meaning as the word Engineer. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
14. *General Requirements*—Sections of Division 1 of the Specifications.
15. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
16. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
19. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
20. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
21. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. Whenever the word OWNER (with uppercase font) is used it shall have the same meaning as the word Owner.
22. *PCBs*—Polychlorinated biphenyls.

23. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
24. *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.
25. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
26. *Project Manual*—The bound documentary information prepared for constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
27. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
28. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
29. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
30. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
31. *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.
32. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
33. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
34. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
35. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

36. *Submittal*—Written product data, Shop Drawings, Samples, and other documentation required to be submitted by Contractor for Engineer’s review. The terms Shop Drawing and Sample, as used in the General Conditions, shall refer to Submittals unless the context indicates otherwise.
37. *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.
38. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
39. *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 Subcontractor.
40. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
41. *Unit Price Work*—Work to be paid for on the basis of unit prices.
42. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
43. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the 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 Paragraph 9.09 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 has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

- 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. 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.

2.02 *Evidence of Insurance: When Contractor delivers the executed Agreement to Owner, Contractor shall also deliver to Owner, with a copy to each additional insured and loss payee certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Article 5. Copies of Documents*

- A. Owner shall furnish to Contractor up to five printed or hard copies of the Drawings and Project Manual and one set in electronic format (CD). Additional copies will be furnished upon request at the cost of reproduction

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during

performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *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 2.05.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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce

the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

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

3.02 *Reference Standards*

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the Effective Date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. 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 Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

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 knew or reasonably should have known thereof.

B. *Resolving Discrepancies:*

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

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier 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
 2. 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.
- 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.

3.06 *Electronic Data*

- A. The data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:*

- 1. Engineer relied upon the reports of explorations and tests of subsurface conditions at the Site, if any, provided in Section 00310 – Geotechnical Data and Section 00320 - Subsurface Utility Engineering in the preparation of Drawings and Specifications.

2. In the preparation of Drawings and Specifications, Engineer relied upon the following other drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the Site:
 - B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on such “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. In the preparation of the Drawings and Specifications, Design Engineer may utilize other reports of explorations, tests of subsurface conditions, and drawings of physical conditions. Contractor will be provided, when available, any reports of explorations and tests of subsurface conditions at or contiguous to the Site; that Engineer has used in preparing the Contract Documents; and those drawings of physical conditions in or relating to existing surface or subsurface at or contiguous to the Site (except Underground Facilities) that Design Engineer has used in preparing the Contract Documents.

4.03 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
 1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such

condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments*:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others.

1. Owner and Engineer shall not be responsible for 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 such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings*: In the preparation of the Contract Drawings and Specifications, Design Engineer did not utilize any reports or drawings related to Hazardous Environmental Conditions at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Except for such reliance on such “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. Contractor’s 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. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- D. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- E. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. 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 4.06.E.

- F. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- G. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- H. 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.
- K. LEAD-BASED PAINT. Lead-based paint is considered a hazardous material and Contractor shall follow all requirements for a Hazardous Environmental Condition, as listed in G.C. 4.06

when encountering lead-based paint. The Contractor shall not apply any lead-based paint and will take all necessary steps to reduce the hazard from lead-based paint already on surfaces.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent 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 each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall 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 requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required.
- B. Bonds and insurance are to be placed with carriers with a Best's rating of no less than A- and with a financial size category of no less than VII. Owner may accept coverage with carriers having lower Best's ratings upon review of Contractor's and insurance carrier's financial information.

5.03 Certificates of Insurance

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee, certificates of insurance and change endorsements indicating addition of the additional

insureds (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. Owner shall deliver to Contractor certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- F. Contractor and Owner shall provide a copy of the policy notice provisions for all policies of insurance required to be purchased by each. The policy notice provisions shall be attached to the certificate of insurance and provide at least thirty (30) days notice of any change excepting solely for non-payment of premium.
- G. Contractor and Owner shall notify and provide a copy of all change endorsements and notices to all certificate holders within 5 days of receipt for any notice for all insurance each is required to purchase and maintain.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner, Engineer and Design Engineer, all of whom shall be listed as additional insureds, and 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;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in these General Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- C. Contractor's liability insurance shall contain an endorsement on the general liability policy that will provide limits on a "per project" basis.

- D. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Worker's Compensation, and related coverage, under Paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:
 - a. State: Statutory
 - b. Employer's Liability: \$1,000,000.00
 2. Contractor's General Liability under Paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions, which shall include completed operations and product liability coverages:
 - a. General Aggregate (Except Products-Completed Operations): \$ 1,000,000
 - b. Products-Completed Operations Aggregate: \$ 1,000,000
 - c. Personal and Advertising Injury (Per Person/Organization): \$ 1,000,000
 - d. Bodily Injury and Property Damage (Each Occurrence): \$1,000,000
 - e. Umbrella Liability: \$5,000,000

Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
 - a. Combined Single Limit: \$1,000,000
 - b. Non-owned and Hired Automobile Liability: \$1,000,000
 - c. Aggregate: \$1,000,000
4. The Contractual Liability coverage required by Paragraph 5.04.D.4 of the General Conditions shall provide coverage for not less than the following amounts:
 - a. Bodily Injury:
 - 1) Each Accident: \$1,000,000
 - 2) Annual Aggregate: \$1,000,000

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

- A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, Design Engineer, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 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, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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 these General Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include OWNER as the loss payee,
 7. be subject to deductible amounts of no more than \$10,000 or as required by Laws and Regulations,
 8. include testing and startup; and
 9. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer as loss payees (and the officers,

directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

- 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.

6.02 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.
- C. If it shall become absolutely necessary to perform Work at night or on Saturdays, Sundays, or legal holidays, written notice shall be submitted to Owner and Engineer at least (--3--) days in advance of the need for such Work. Owner will only consider the performance of such Work as can be performed satisfactorily under the conditions. Good lighting and all other necessary facilities for carrying out and observing the Work shall be provided and maintained where such Work is being performed at night.

6.03 *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.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract

Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 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; and
 - 3) it has a proven record of performance and availability of responsive service.
 - 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.
 2. *Substitute Items:*
 - a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. 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:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) 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
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures*: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation*: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- C. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- D. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor. OWNER or ENGINEER may furnish to any such Subcontractor, Supplier, or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR in accordance with CONTRACTOR'S Applications for Payment.
- E. 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.
- F. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- 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, Engineer and Design 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.

6.08 *Permits*

- A. 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 Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work. Provide copies of all construction permits and licenses to Owner and Engineer prior initiation of Work necessitating the permit or license.

6.09 *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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known, on the Effective Date of the Agreement having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. Pursuant to the Indiana State Gross Retail Sales Act, Owner is exempt from payment of Indiana General Sales Tax on all materials to be incorporated into the Work.
 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

6.11 Use of Site and Other Areas

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner 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 claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and

surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Not Used
- 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 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or 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 for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Shop Drawings, Samples, and other submittals provided to Engineer shall be deemed to be for Work within the scope of the Project. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.

- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- 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 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 and approval of that 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 both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval 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 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

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.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and Design Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of 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 or Design 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 or the issuance of a notice of acceptability by Engineer or Design Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner 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 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's 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.

6.21 *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 law.
- 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, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, 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 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

- 6.22 Compliance with E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program

("Program"). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in General Requirements:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.
- B. Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

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

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. 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.

8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the General Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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 General Conditions.
- B. The Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement

to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with 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, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly

proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If 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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either

may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be

reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such Costs 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 11.01.B, 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, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Other expenses identified in Contractor's rate schedule included as part of Exhibit B to the Agreement shall specifically be included as part of the Cost of Work.
6. 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—Costs for equipment and machinery owned by Contractor will be paid at a rate as established in Exhibit B to the Agreement.
- 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 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

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

Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee*: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

1. 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.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 9 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be 9 percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to nine percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim

to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, 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.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay

all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. repair such defective land or areas; or
 2. correct such defective Work; or
 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 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. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- 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 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include

but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

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

14.02 Progress Payments

A. *Applications for Payments:*

1. At least 20 days before the date established 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 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. As required by I.C. 36-1-12-14, an escrow account shall be established to receive and hold funds retained in accordance with the Contract. The Contractor shall select an Escrow Agent and complete the Escrow Account Agreement on the forms included herein. The completed forms signed by the Contractor and the Escrow Agent, shall be submitted to the Board of Public Works within 10 days of the Contractor's receipt of Notice of Award. Owner will sign the forms and return copies to the Contractor and Escrow Agent after issuing Notice to Proceed. Statements on the escrow account shall be provided to both Owner and Contractor.

B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, 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 Documents; 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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such

action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

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 14.02.C.1 and subject to interest as provided in the Agreement.

E. *Other Payment to Contractor Provisions*

1. **Uncorrected Work.** Should the OWNER direct the CONTRACTOR not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Amount shall be made to compensate the OWNER for the Uncorrected work.
2. **Payment for Removal of Rejected Work and Materials.** The removal of work and materials rejected in accordance with paragraph 13.06 and the re-execution of acceptable work by the CONTRACTOR shall be at the expense of the CONTRACTOR, and he shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.
 - a. **Removal by OWNER:** Removal of rejected work or materials and storage of materials by the OWNER, in accordance with paragraph 13.06, shall be paid by the CONTRACTOR within 30 days after written notice to pay is given by the OWNER. If the CONTRACTOR does not pay the expenses of such removal and after ten (10) days' written notice being given by the OWNER of his intent to sell the materials, the OWNER may sell the materials at auction or at private sale and will pay the CONTRACTOR the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the CONTRACTOR.
3. Procedure for payment associated with approved Extra Work shall be the same as that for original Contract Work.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. 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 tentative list.
- F. An amount equal to 200% of the estimated value of the remaining work will be withheld pending satisfactory completion of all remaining Work, which payment will constitute final payment for the project as described in Paragraphs 14.07 through 14.08.

14.05 *Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
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 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which

a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner 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.

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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from

failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

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

15.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. 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
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, 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;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in these General Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

SUPPLEMENTARY CONDITIONS

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Although SUGGESTED language from **EJCDC Design and Construction Related Documents** may be used in this document, we hereby do NOT represent that this document is an EJCDC document as substantial modifications are clearly intended as provided for in the EJCDC License. However, all proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.

I. SPECIFIC COMMENTS

These Supplementary Conditions amend or supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

SC-2.03 Commencement of Contract Times; Notice to Proceed

Delete Paragraph 2.03.A in its entirety and insert the following in its place:

- A. The Contract Times will commence to run as stated on the executed Notice to Proceed.
- B. Delays associated with Owner's project financing arrangements or with receipt of required permits as noted in the Attachments to Supplementary Conditions may result in extension of Contract Time.

SC-5.04 Contractor's Insurance

Add the following new paragraph immediately after Paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 shall be as outlined by the Guaranteed Savings Contract Section 3.6.

SC-5.05 Owner's Liability Insurance

Delete paragraph 5.05 in its entirety and insert the following in its place:

- A. The Contractor, under paragraph GC 5.04, shall provide such contractual coverage sufficiently broad to insure the Owner, the Engineer, their consultants, and each of their officers, agents, and employees as additional insured under the comprehensive general liability insurance required.

SC-5.06 Property Insurance

SC-5.06.A. Delete Paragraph 5.06.A in its entirety and insert the following in its place:

- A. Contractor shall purchase and maintain Contractor's Risk Insurance as outlined by the Guaranteed Savings Contract Section 3.6.

SC-5.06.B. Delete Paragraph 5.06.B in its entirety and insert the following in its place:

- B. Contractor shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Laws or Regulations which will include the interests of the Contractor, Owner, Subcontractors, Engineer, and Engineer's Consultants in the Work, all of whom shall be listed as insured or additional insured parties.

SC-5.06.E Delete Paragraph 5.06.E in its entirety.

SC-6.08 Permits

Delete Paragraph 6.08 in its entirety and insert the following in its place:

- A. Owner shall obtain and pay for all federal and state construction permits. Contractor shall pay for all local permits, licenses, and fees for the prosecution of the Work which are applicable. Owner shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

SC-6.09 Laws and Regulations

Add the following new paragraph immediately after Paragraph 6.09.C:

- D. Each laborer or mechanic of the Contractor or Subcontractor engaged in the Work shall be paid not less than the hourly wage rate and fringes listed for the trade or occupation category listed in the Common Construction Wage Determination, which is attached to and made a part of these Supplementary Conditions. The hourly rate paid shall not be less than the listed hourly rate regardless of any contractual relationship which may be alleged to exist between the Contractor and any Subcontractors and such laborers and mechanics.
- E. Any Contractor on municipal, Township, County, or State Work in the State of Indiana, whose official address and/or place of business is outside the State of Indiana, must register with the Indiana State Department of Revenue and make arrangements for payment of State Gross or Adjusted Gross Income Tax. Satisfactory evidence of the registration must be submitted to the Owner prior to approval of any progress payment.
- F. The Contractor will work in good faith to comply with the requirements of East Chicago Municipal Ordinances, including Equal Employment Opportunity, sections 39.20-39.28, City Contracts, sections 39.01-39.08, insofar as such qualified people exist and are capable of working under the Contractor's signatory labor agreements. Where the Contractor anticipates not fully complying with the requirements of the above ordinances, the Contractor shall promptly give notice to the Owner and Engineer, whereupon additional actions, if any, shall be determined.

SC-6.10 Taxes

Add the following paragraph to the end of Paragraph 6.10.A:

- B. Governmental units are exempt from the Indiana Gross Tax (i.e., sales and use tax). All materials incorporated as a material or integral part of construction work for the State, County, Township, Municipality, its agencies and instruments are exempt from this tax. The Contractor shall apply for an "Exemption Certification for Construction Contractor's," with the Indiana Department of Revenue.

SC-6.11 Use of Site and Other Areas

Add the following new paragraph immediately after Paragraph 6.11.D:

- E. Property Release
 - 1. Releases are required from property owners where Contractor for any reason worked outside the permanent or temporary right-of-way in conjunction with the project. It is not the intent that a property release be secured from every abutting property owner.
 - 2. The property release document shall identify the project and be signed by the property owner. The property release shall be generally written as follows:

"We (or I), the undersigned property owners (owner) of land along _____, adjacent to the above noted project constructed by _____, hereby state that our (my) property has been left in a satisfactory condition and we (I) release the Contractor from any claim for use or damage to said property"

SC-7.04 Other Work

Add the following new paragraphs immediately after paragraph 7.03:

7.04 *Other Work*

- A. Should Contractor cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against Contractor, Owner, Engineer, Engineer's Consultants, or the construction coordinator, Contractor shall promptly attempt to settle with such separate contractor by agreement, or to otherwise resolve the dispute by mediation or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultants, 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 separate contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants, 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, Engineer's Consultants or the construction coordinator on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing Work by an act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Time 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, Engineer's Consultants, and construction coordinator for any delay, disruption, interference, or hindrance caused by any separate contractor. This paragraph does not prevent recovery from Owner, Engineer, Engineer's Consultant, or construction coordinator for activities that are their respective responsibilities.

SC-9.03.B Project Representative

Add the following immediately after paragraph GC-9.03.A:

- B. The duties and responsibilities of the Resident Project Representative (RPR) are described as follows:
 - 1. General: RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner 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 superintendent and assist in understanding the 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 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 with RPR's recommendations 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 proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice 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 Startups:
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems startups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. Records:

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies of Engineer.
- c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

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. Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.
- d. Report immediately to Engineer the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

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 Specifications 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. Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion of correction.
- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Resident Project Representative 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 Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
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 unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety 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-11.03.C Unit Price Work

Delete paragraph 11.03.C in its entirety and insert the following in its place:

- C. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
1. if the total cost of a particular item of Unit Price Work amounts to 10% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25% 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-12.03 Delays

Delete the words “or arbitration” from paragraph 12.03.D.

SC-13.04.C Uncovering Work

Delete the words “or arbitration” from paragraph 13.04.C.

SC-13.06.A Correction or Removal of Defective Work

Delete the words “or arbitration” from paragraph 13.06.A.

SC-13.08.A Acceptance of Defective Work

Delete the words “or arbitration” from paragraph 13.08.A.

SC-13.09.C Owner May Correct Defective Work

Delete the words “or arbitration” from paragraph 13.09.C.

SC-14.02.A.2 Application for Payments

Delete Paragraph 14.02.A.2 in its entirety and insert the following in its place:

2. Beginning with the second Application for Payment, each Application shall include and affidavit signed under oath 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.

SC-14.02.B.2.b Review of Applications

Delete the word “generally” from Paragraph 14.02.B.2.b.

SC-14.02.B.2.c Review of Applications

Delete the words “appear to” from Paragraph 14.02.B.2.c.

SC-14.02.C Payment Becomes Due

Delete Paragraph 14.02.C.1 in its entirety and insert the following in its place:

1. Approximately 30 days after presentation of the Application for Payment to Owner with Engineer’s recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

SC-14.05 Partial Utilization

Add the following new paragraph immediately after paragraph 14.05.A.1:

2. Owner may at any time request Contractor in writing to permit Owner to take over operation of any part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer, and within a reasonable time thereafter Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment.

If Contractor does not object in writing to Owner and Engineer that such part of the Work is not ready for separate operation by Owner, Engineer will finalize the list of items to be completed or corrected and will deliver such lists to Owner and Contractor together with a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties, and guarantees for that part of the Work which will become binding upon Owner and Contractor at the time when Owner takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, Owner shall allow Contractor reasonable access to complete or correct items on said list and to complete other related Work.

Paragraph 14.05.A.2, 14.05.A.3, and 14.05.A.4, shall be renumbered to 14.05.A.3, 14.05.A.4, and 14.05.A.5, respectively.

SC-15.02.A.1 Owner May Terminate for Cause

Delete the word “persistent” from Paragraph 15.02.A.1.

SC-15.02.F Owner May Terminate for Cause

Delete Paragraph 15.02F in its entirety and insert the following in its place:

- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of these Standard General Conditions of the Construction Contract shall supersede the provisions of the performance bond.

SC-16 Dispute Resolution

Delete Paragraph 16.01 in its entirety and insert the following in its place:

- A. Owner and Contractor agree that they shall submit any and all unsettled Claims or counterclaims, disputes, or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to mediation.
- B. In the event a dispute is not finally and completely resolved by mediation as provided in the preceding subparagraph, owner and Contractor specifically reserve all of their legal and equitable remedies applicable to any dispute arising from or related to the Contract Documents and performance of the Work. Any legal or equitable actions regarding the Contract Documents shall be commenced and tried in a state court in the county where the Project is located and the Owner and Contractor specifically consent to the personal jurisdiction and venue of such court or courts.

SC-17.05.A Controlling Law

Delete Paragraph 17.05.A in its entirety and insert the following in its place:

- A. This Contract is to be governed by, interpreted and enforced in accordance with the law of the state in which the project is located.

KLM-7



Wastewater Treatment Plant and Collection System

CITY OF EAST CHICAGO

SANITARY WASTEWATER DISTRICT

5201 Indianapolis Blvd • East Chicago IN 46312

Phone 219-391-8466 • Fax 219-391-8254





EAST CHICAGO QUICK FACTS



- Located in Northwest Indiana and bounded by Lake Michigan to the north, Whiting and Hammond to the west, Hammond to the south and Gary to the east.
- Area – 16.155 square miles
- Population – 29,698 (2020 census).
- Nearly 80% of the land is zoned for heavy industry.
- Indiana Ship Canal provides a navigable waterway linking the Grand Calumet River to Lake Michigan.





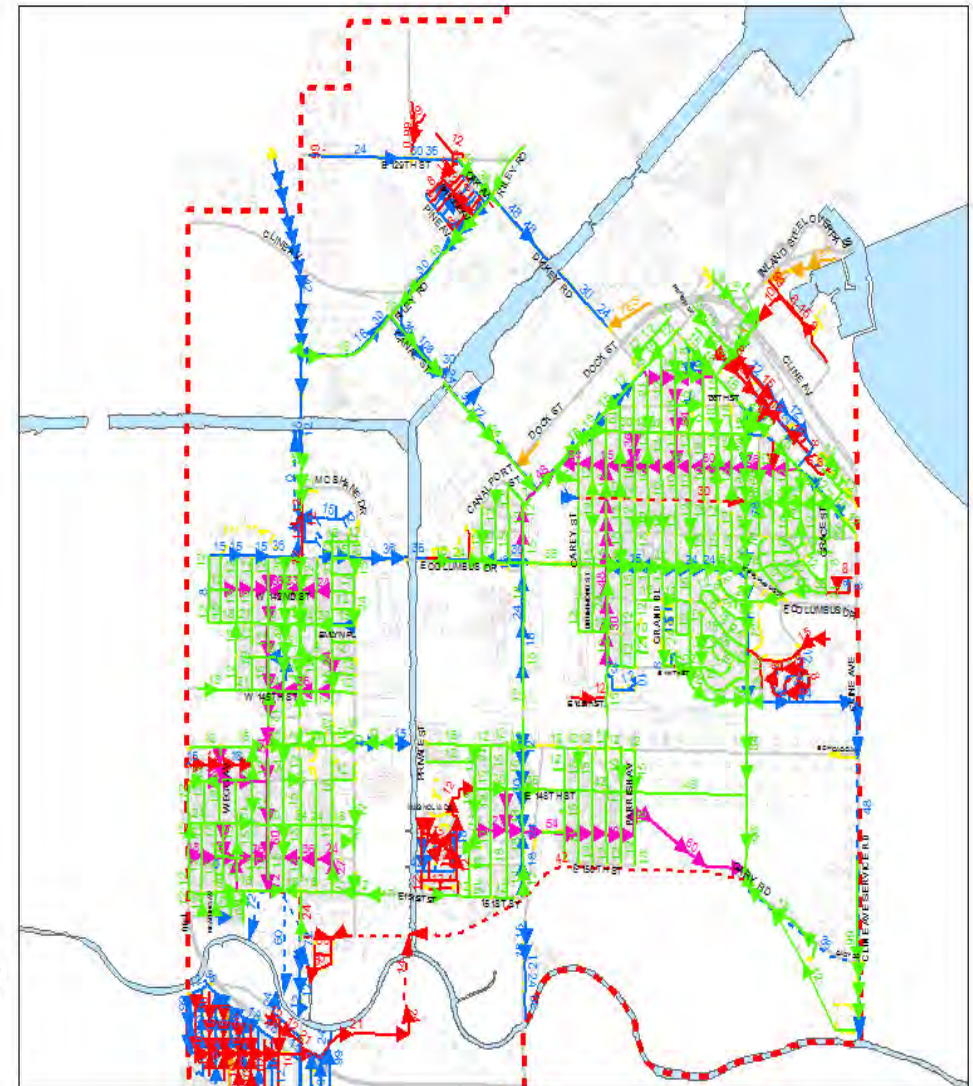
ECSD WWTP QUICK FACTS



- The WWTP collection system consists of approximately 80 miles of sewer, 45% of which are considered combined.
- ECSD serves approximately 5,440 residential, 200 public/government, 1,265 commercial and small, unpermitted industrial, and 20 permitted industrial accounts.
- WWTP Sanitary District operating budget is approaching \$9,000,000

Legend

- Combined
- Sanitary
- Storm
- Relief
- - - Sanitary F.M.
- - - Storm F.M.
- Inlet Connector
- Unknown
- ▭ Buildings





ECSD WWTP QUICK FACTS



- The ECSD POTW collection system is a combined sanitary and storm sewer system with three permitted Combined Sewer Overflow (CSO) locations.
- During CSO events (heavy rains), the Magoun Avenue, Alder Street, and Michigan Avenue pump stations discharge combined sewer overflow.
- The Michigan Avenue pump station discharges to the Indiana Harbor Ship Canal (Outfall 002), the Alder Street pump station discharges to the Grand Calumet River (Outfall 003) and the Magoun Avenue pump stations discharges to the WWTP CSO Lagoon (Outfall 005).



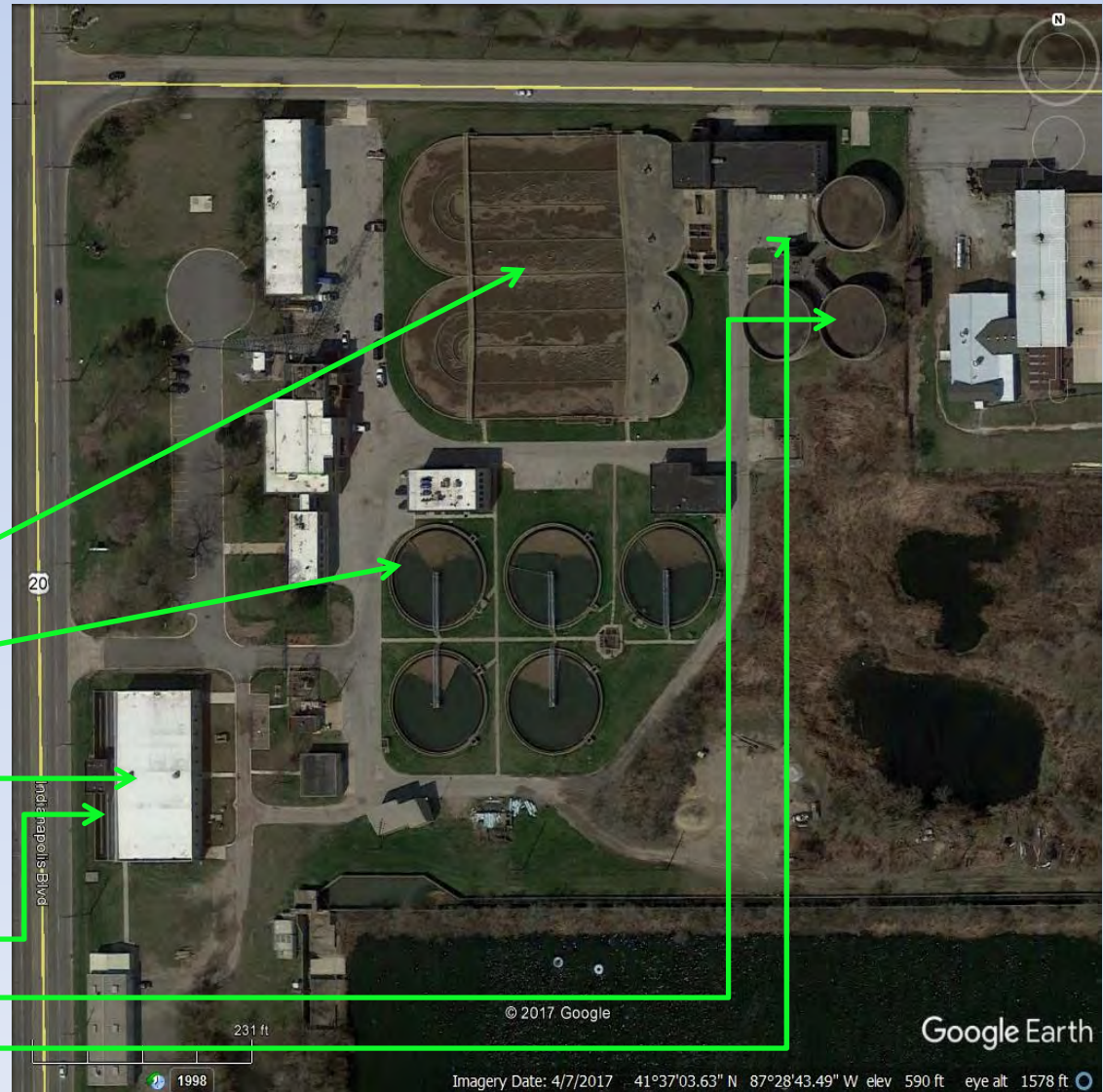


ECSD WWTP QUICK FACTS



- WWTP originally constructed in 1944, re-constructed in 1958, and re-constructed into present day operations in 1988
- Average Design Flow 15 MGD
- Peak Hourly Flow 36 MGD
- Max Daily Flow 27 MGD

- WWTP consists of:
 - 2 Oxidation ditches
 - 5 Clarifiers
 - 6 Automatic backwash sand filters
 - 2 UV Disinfection and Aeration chambers
 - 3 Sludge holding tanks
 - 2 Sludge dewatering presses



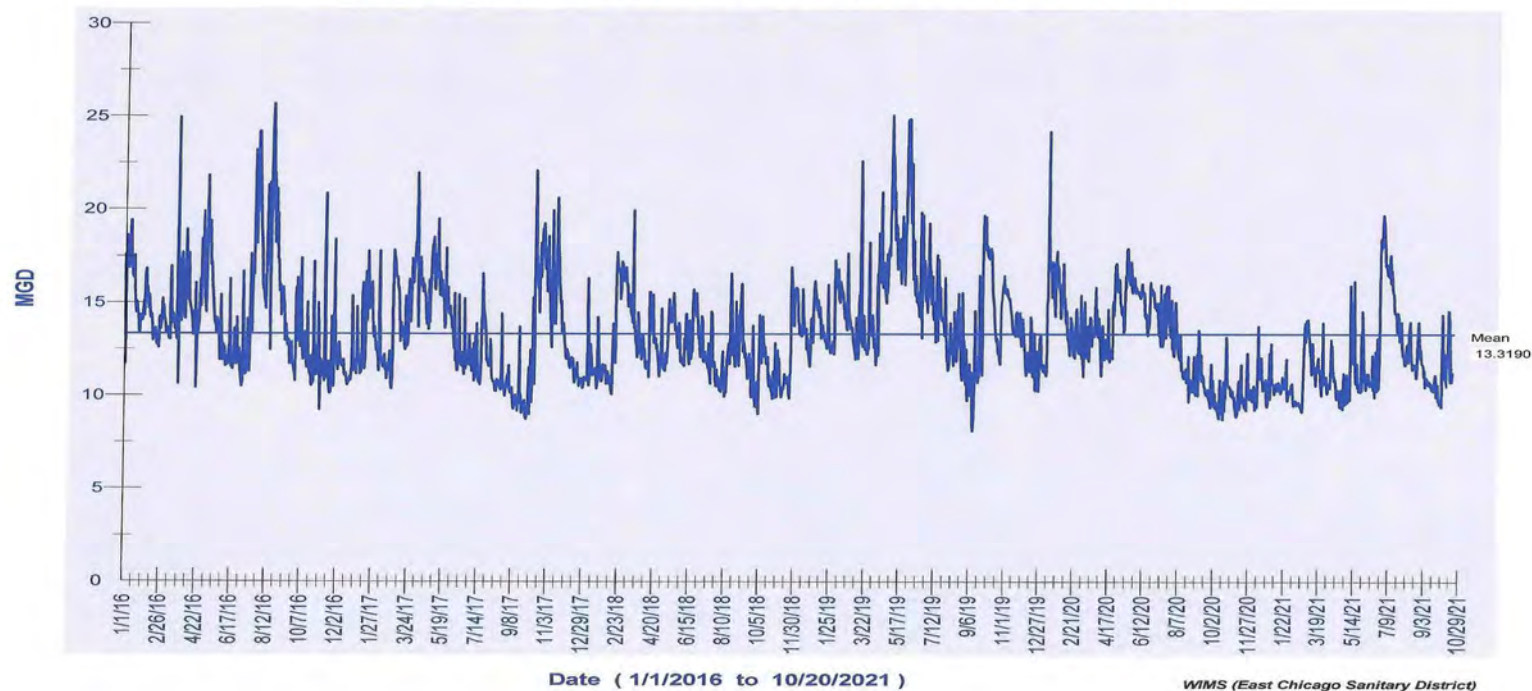


ECSD WWTP QUICK FACTS

2016 – 2021 Influent Flows

- Mean Daily Influent to WWTP is **13.3 Million gallons per day**
- Annually treat over **4.85 Billion gallons per year**

Influent Flow (2016 thru 2021)



WMS (East Chicago Sanitary District)
Influent Flow (2016 thru 2021)



Administration Building, constructed 1959, former sanitary operations building in background



Sanitary operations building 2021



Administration building 2021



Headworks building – 2 mechanical bar screens



Headworks building – Vulcan grit removal cyclone



Headworks – Parshall flume measuring influent flow



8.4 million gallon oxidation ditch with 4 aerators



Clarifier drained for repairs



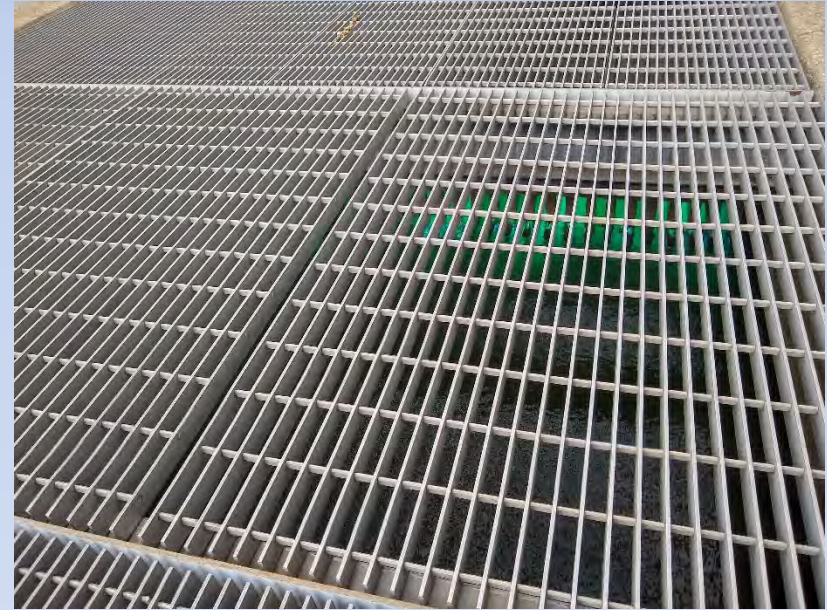
5 clarifiers (2 new clarifiers were constructed as part of 1988 improvements, the other 3 constructed in 1950s)



6 Automatic backwash filters with traveling bridges



Influent knife gate valve – each knife valve (12 total) needs repair or replacement to provide complete isolation of sand filter



Ultraviolet disinfection and aeration chambers



CSO influent channel and CSO dewatering wet well



CSO Influent channel with new CSO conveyance piping installed



CSO Storage Lagoon and CSO Outfall #005



Dewatering building – 2 Ashworth sludge dewatering belt presses



Dewatering building –3 sludge holding tanks, originally constructed in 1940's



Sludge tanks showing seepage out of sidewalls

KLM-8

East Chicago Sanitary District Identified Capital Improvements

Short Term Capital Improvements

- Replace sand in all 6 filters, repair limited amount of underdrains, and replace epoxy seals. Have 2018 proposal for \$82,057 per filter (\$492,343 total estimate).
- Replace influent and effluent gate valves at each of the sand filters. Have 2020 proposal for the replacement of the 12 gate valves for the Automatic Backwash Filters (sand filters) Est. \$700,000.
- Cleaning /relining of Alder CSO main from Guthrie to Alder Street Lift Station (underway, \$14.5 Million total project, partially funded by Sanitary District).
- Cleaning of Alder Street Lift Station wet well, including removing and replacing gate valves, with significant bypass pumping.
- Cleaning, video inspection, repair and relining of Roxanna sanitary and storm collection systems) (underway, \$3.5 Million funded through Engineering and Stormwater Departments).
- Review current WWTP SCADA system to correct deficiencies including misidentification of equipment, identification of missing/inoperable equipment, address communication failures, etc. Contracted to Austgen Electric, \$39,925 to be completed before end of the year 2021).
- Add equipment for measuring levels in three sludge holding tanks, operable flow meter for wasting operations, add weather stations to WWTP and select lift stations (Magoun, Alder, Michigan), if SCADA communication systems allow.
- Modifications to CSO lagoon to improve flow to dewatering wet well with SCADA improvements to monitor water level in CSO.
- Replace and upgrade District's computers, monitors and wireless capabilities.
- Repair of drain/sewer from Chemical Feed Bldg chemical storage area believed to be collapsed.
- Add electronic overhead opener on outside of tank storage room for doors to access storage tanks.
- Inspect and repair tow bridge, A-frames and clarifier skim arms in all five clarifiers. Have 2021 quote for fabrication of parts of \$138,613; will need to contract separately for removal and replacement of skim arms with construction firms).

Long Term Capital Improvements

- Engineering assessment of existing sand filters after valve replacement complete to determine if we want to repair/replace underdrains and other items or go with replacing/retrofit of sand filters with cloth filters.
- Possible sand filter replacement--have 2018 quote for 3 filters of \$2,675,000, need a 4th (~\$4,000,000) for redundancy/ability to take one out of service for maintenance (will need to contract separately for engineering and construction related services).
- Replace UV disinfection system @ 18MGD \$400,000, @36 MGD \$700,000 (based on 2018 quotes), does not include construction/engineering costs if self-cleaning UV system is selected.
- Back-up generator for WWTP. Have 2021 quote of \$1,757,000.
- Replace collapsing box culvert storm drain from Alder lift station to Grand Calumet River along Gary Ave and Cline Ave frontage road.
- Ongoing CSO sewer separation in northside/Harbor (costs picked up/shared with Engineering Department).
- Assess additional plant capacity - increase over current 15 MGD design flow; determine if additional clarifier and what other improvements are necessary.

- SCADA improvements. Provide fiber optic feeds to several pump stations (Magoun and Michigan Ave.), where fiber optic feeds are not practical, upgrade to AT&T-based router communication systems (Canal, Marktown, Marina), provide equipment upgrades for both fiber optic and router based communications.
- Back-up Generator for 145th lift Station.
- Paving of WWTP Plant, not sure of needs at lift station.
- Repair/ replace any failing roof systems at WWTP and lift station buildings.
- Tree removal around the entire dike wall around perimeter of CSO lagoon.
- HVAC replacements (\$33,000 for Operators bldg. scheduled for later this year) (Need HVAC at Roxana lift station to protect new motor controls/PLCs).
- Lighting improvements