# PROJECT MANUAL

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**TOWN OF LOCHBUIE – GREENWAY TRAIL**

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SECTION 00010

ADVERTISEMENT TO BID

GREENWAY TRAIL
TOWN OF LOCHBUIE

The Town of Lochbuie (Town, Owner) will receive sealed Bids for the construction of the Greenway Trail until 12:00 pm (noon), M.D.T., August 31, 2023, at the Lochbuie Town Hall, 703 Weld County Road 37, Lochbuie, CO 80603, at which time bids will be opened publicly. Bids shall be clearly marked “Town of Lochbuie – Greenway Trail: CR 37 to Stagecoach Ave.”

A Non-mandatory Pre-Bid Conference will be held at the Lochbuie Town Hall, 703 Weld County Road 37, Lochbuie, CO 80603, at 9:00 am, M.D.T, on July 31, 2023. A non-mandatory tour of the project location will follow the Pre-Bid Conference.

The work will include the following:

   All necessary labor, supervision, equipment, tools, and materials for: Greenway Multi-use Trail and related work at roadway crossings. Additionally, the work included, but is not limited to, concrete paving, curb, gutter, sidewalk, earthwork, traffic control, signage, striping, and stabilization.

Bidding documents may be obtained electronically from the Engineer, Martin/Martin, Inc. or paper copies may be picked up at 12499 W Colfax Avenue, Lakewood, CO 80215 or by calling (303) 431-6100 for a non-refundable deposit of $150.

No Bid will be received unless accompanied by a cashier’s, certified, or bank check or a Bid Bond equal to at least ten percent (10%) of the maximum Bid, payable to the Owner as a guarantee that after a Bid is accepted, Bidder will execute and file the Agreement and 100 percent (100%) Performance and Payment Bonds within ten days after the Notice of Award.

The Town of Lochbuie reserves the right to reject any or all Bids, to waive any informality or technicality, and to accept any Bid which it deems advantageous. All Bids shall remain subject to acceptance for 60 days after the time set for opening Bids.

Published by the authority of the Town of Lochbuie.
SECTION 00100

INVITATION TO BID

1.0 RECEIPT OF BIDS

The Town of Lochbuie (Town, Owner) will receive sealed Bids for the construction of the Greenway Trail until 12:00 pm (noon), M.D.T., August 31, 2023, at the Lochbuie Town Hall, 703 Weld County Road 37, Lochbuie, CO 80603, at which time bids will be opened publicly. Bids shall be clearly marked “Town of Lochbuie – Greenway Trail: CR 37 to Stagecoach Ave.”

Any bid received after the above stated time will be returned to the Bidder unopened. Under no circumstance will any bid be accepted by fax or email. There will be no exceptions made for any late, lost by the post office or express carrier, or misdirected submittals.

2.0 DESCRIPTION OF WORK

All necessary labor, supervision, equipment, tools, and materials for: Greenway Multi-use Trail and related work at roadway crossings. Additionally, the work included, but is not limited to, concrete paving, curb, gutter, sidewalk, earthwork, traffic control, signage, striping, and stabilization.

3.0 DOCUMENT INSPECTION AND PROCUREMENT

The Bidding Documents may be inspected at the following locations:

Rocky Mountain Bid System (web based service only)
https://www.bidnetdirect.com/colorado

Lochbuie Town Hall
703 Weld County Road 37
Lochbuie, CO 80603

Bidding documents may be obtained electronically from the Engineer, Martin/Martin, Inc. or paper copies may be picked up at 12499 W Colfax Avenue, Lakewood, CO 80215 or by calling (303) 431-6100 for a non-refundable deposit of $150.

4.0 BONDS

No Bid will be received unless accompanied by a cashier’s, certified, or bank check or a Bid Bond equal to at least ten percent (10%) of the maximum Bid, payable to the Owner as a guarantee that after a Bid is accepted, Bidder will execute and file the Agreement and 100 percent (100%) Performance and Payment Bonds within ten days after the Notice of Award.

5.0 PRE-BID MEETING

A Non-mandatory Pre-Bid Conference will be held at the Lochbuie Town Hall, 703 Weld County Road 37, Lochbuie, CO 80603, at 9:00 am, M.D.T., on July 31, 2023. A non-mandatory tour of the
project location will follow the Pre-Bid Conference.

6.0 BID SCHEDULE

The last date for questions answered by the Engineer is 5:00 pm, M.D.T., August 11, 2023. Any addendum information will be issued via email by close of business on August 21, 2023.

7.0 DOCUMENT INSPECTION AND PROCUREMENT

The Owner reserves the right to reject any or all Bids, to waive any technicality, and to accept any Bid which it deems advantageous. All Bids shall remain subject to acceptance for 60 days after the time set for opening Bids.

All Bidders must complete CDOT Form 606, 1413, and 1414. If any of the required forms are not complete or signed at the time of bid opening, the bid will be non-responsive and will be rejected.

Published by the authority of the Town of Lochbuie.
SECTION 00200
INSTRUCTION TO BIDDERS

ARTICLE 1 – DEFINED TERMS

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

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents in the number and for the amount stated in the advertisement or invitation to bid may be obtained from the Engineer.

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

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder’s qualifications to perform the Work, within the timeframe stipulated in the Agreement, Bidder shall submit written evidence such as work previously completed by the Bidder and whether the Bidder (a) maintains a permanent place of business, (b) has adequate experience and equipment to do the Work properly and expeditiously, (c) has the financial resources to meet the all obligations incident to the Work, and (d) has appropriate technical experience.

A. Each bid must contain evidence of Bidder’s qualifications to do business in the State of Colorado, where the Project is located, or submit evidence of such qualifications prior to award of the contract.

B. Bidder must be prepared to submit within five days of Engineer’s request written evidence of Bidder’s qualifications to perform the Work. The Engineer may require the apparent low responsive bid and second low responsive bid General Contractors to submit a Statement of Qualifications, in accordance with Bid Form, Article 1.08.

C. Bidder shall be pre-qualified with the Colorado Department of Transportation (CDOT) in order to bid the project. Any bidders not pre-qualified with CDOT will be deemed non-responsive.

3.02 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.
ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 Underground Facilities

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

4.02 Hazardous Environmental Condition

A. No known Hazardous Environmental Condition have been identified at this Site.

4.03 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of Work, appear in Paragraph 4.06 of the General Conditions.

4.04 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utilities locates.

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

A. Examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;

B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

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

D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable “technical data”;

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

F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;

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

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

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

4.06 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

4.07 This contract is subject to, and bidders attention is called to, the Disadvantaged Business Enterprise Program (DBE), as described in Section I of the Construction Bidding Requirements for State Revolving Fund Loan Projects.

4.08 This contract is subject to, and bidders attention is called to, the Davis-Bacon prevailing wage requirement as outlined in Section III of the Construction Bidding Requirements for State Revolving Fund (SRF) Loan Projects.

ARTICLE 5 – PRE-BID CONFERENCE

5.01 A Non-mandatory Pre-Bid Conference will be held at the Lochbuie Town Hall, 703 Weld County Road 37, Lochbuie, CO 80603, at 9:00 am, M.D.T., on July 31, 2023. A non-mandatory tour of the project location will follow the Pre-Bid Conference.
5.02 Bidders are not required to attend and participate in the Pre-Bid Conference.

5.03 Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 6 – SITE AND OTHER AREAS

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to the engineer Colin Dinsmore, email: cdinsmore@martinmartin.com at Martin/Martin, Inc., in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed, emailed, or delivered to all parties recorded by Martin/Martin as having received the Bidding Documents. The last date for questions to be answered by the Engineer is 5:00 pm, M.D.T., August 11, 2023. Any addendum information will be issued via email by close of business on August 21, 2023. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of ten percent of Bidder’s maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner’s exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.
ARTICLE 9 – CONTRACT TIMES

9.01 The dates by which the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-accepted substitutions.” Whenever it is specified or described in the Bidding Documents that a substitute or “accepted substitution” of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 The Bid Form requires the identity of Subcontractors, Suppliers, individuals, or entities to be submitted with the Bid Documents. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

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

ARTICLE 13 – PREPARATION OF BID

13.01 The Bid Form is included with the Project Manual.

13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form.
13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.

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

13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

13.06 A Bid by an individual shall show the Bidder’s name and official address.

13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

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

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

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

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

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 Unit Price

A. Bidders shall submit a Bid with a total of all unit prices as set forth in the Bid Form.

ARTICLE 15 – SUBMITTAL OF BID

15.01 With each copy of the Project Manual, an electronic copy of the Bid Form is included. The Bid Form shall be completed and, with the Bid security, shall be enclosed in an envelope as described below.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Invitation to Bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security. If a Bid is sent by mail or other
delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation “BID ENCLOSED.” A mailed Bid shall be addressed to place as stipulated in the Invitation to Bid.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

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

ARTICLE 17 – OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

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

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

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

19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider
the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 – SIGNING OF AGREEMENT

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

ARTICLE 22 – SALES AND USE TAXES

22.01 Owner is exempt from Colorado state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Bid. Refer to Paragraph 6.10 of the Supplementary Conditions for additional information.

ARTICLE 23 – RETAINAGE

23.01 Requirements for retainage are addressed in the Agreement.

ARTICLE 24 – CONTRACTS TO BE ASSIGNED

24.01 There are no contracts to be assigned to contractor as part of this project.
I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose or with the effect of restricting competition with any other firm or person who is a bidder or potential prime bidder.

2A. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential prime bidder on this project, and will not be so disclosed prior to bid opening.

2B. Neither the prices nor the amount of the bid of any other firm or person who is a bidder or potential prime bidder on this project have been disclosed to me or my firm.

3A. No attempt has been made to solicit, cause or induce any firm or person who is a bidder or potential prime bidder to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.

3B. No agreement has been promised or solicited for any other firm or person who is a bidder or potential prime bidder on this project to submit an intentionally high, noncompetitive or other form of complementary bid on this project.

4. The bid of my firm is made in good faith and not pursuant to any consultation, communication, agreement or discussion with, or inducement or solicitation by or from any firm or person to submit any intentionally high, noncompetitive or other form of complementary bid.

5. My firm has not offered or entered into a subcontract or agreement regarding the purchase or sale of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit any intentionally high, noncompetitive or other form of complementary bid or agreeing or promising to do so on this project.

6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting any intentionally high, noncompetitive or other form of complementary bid, or agreeing or promising to do so, on this project.

7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, or other conduct inconsistent with any of the statements and representations made in this affidavit.

8. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as a fraudulent concealment from the Colorado Department of Transportation, of the true facts relating to submission of bids for this contract.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor's firm or company name

By

Date

Title

2nd contractor's firm or company name. (If joint venture.)

By

Date

Title

Sworn to before me this day of, 20

Notary Public

My commission expires

NOTE: This document must be signed in ink.
**COLORADO DEPARTMENT OF TRANSPORTATION**

**BIDDERS LIST**

<table>
<thead>
<tr>
<th>Project Name/Description</th>
<th>Project Number</th>
<th>Project Code/ SubAccount</th>
<th>Proposal Date</th>
<th>Contractor</th>
<th>Region</th>
</tr>
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**Subcontractors/Suppliers/Vendors:** The bidder must list all firms seeking to participate on the contract. This information is used by the Colorado Department of Transportation (CDOT) to determine overall goals for the Disadvantaged Business Enterprise Program. Failure to submit this form may result in the proposal being rejected.

<table>
<thead>
<tr>
<th>Firm Name</th>
<th>Email</th>
<th>Work Proposed (Select all that apply)</th>
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**I certify that the information provided herein is true and correct to the best of my knowledge.**

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**Work Proposed Categories:**

1. Materials and Supplies
2. Flagging and Traffic Control
3. Trucking and Hauling
4. Precast Concrete, Foundations, and Footings
5. Concrete Paving, Flatwork and Repair
6. Lighting and Electrical
7. Signs, Signal Installation, and Guardrail
8. Fencing
10. Utility, Water and Sewer Lines
11. Structural Steel and Steel Reinforcement
12. Riprap and Anchored Retaining Walls
13. Landscape and Erosion Control
14. Bridge and Bridge Deck Construction
15. Asphalt Paving
16. Road and Parking Lot Marking
17. Chip Seal, Crack Seal, Joint Seal and Crack Fill
18. Bridge Painting and Coating
19. Stairway and Ornamental Metal
20. Parking Lots and Commercial Sidewalks
21. Clearing, Demolition, Excavation and Earthwork
22. Engineering and Surveying Services
23. Public Relations and Involvement
24. Piles and Deep Foundations
25. Waste Management and Recycling
26. Site Clean Up
27. Mechanical and HVAC
28. Tunnel Construction
29. Profiling and Gridding
30. Environmental Health and Safety

This form must be submitted by the proposal deadline. For CDOT projects, submit to cdot_hq_dbeforms@state.co.us.

CDOT Form #1413 12/16
COLORADO DEPARTMENT OF TRANSPORTATION

ANTICIPATED DBE PARTICIPATION PLAN

Bidder: | Project Name: |
---|---|
Bidder Contact: | Subaccount #: |
Bidder Phone: | Bid Submission Date: |
Bidder Email: | DBE Contract Goal: |
Preferred Contact Method: | Region: |

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BID FORM

Project: Town of Lochbuie – Greenway Trail

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

1.02 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

1.03 In submitting this Bid, Bidder represents that:

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

<table>
<thead>
<tr>
<th>Addendum No.</th>
<th>Bidders Signature</th>
<th>Date Acknowledged</th>
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B. Bidder is familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.

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

D. Bidder is familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.

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

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

1. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

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

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

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

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

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

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

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

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

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

1.06 Unit Pricing

A. Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

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

C. Description of measurement and payment procedures is provided in Standard Specifications and Revisions
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<td>207-00704</td>
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<td>SY</td>
<td>5386</td>
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<td>14</td>
<td>208-00012</td>
<td>Erosion Log Type 1 (9 inch)</td>
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<td>18</td>
<td>208-00106</td>
<td>Sweeping (Sediment Removal)</td>
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<td>DAY</td>
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<td>210-04010</td>
<td>Adjust Manhole</td>
<td>EA</td>
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<td>212-00700</td>
<td>Organic Fertilizer</td>
<td>LB</td>
<td>88</td>
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<td>212-00702</td>
<td>Biotic Soil Amendments (Hydraulically Applied)</td>
<td>LB</td>
<td>1050</td>
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<td>24</td>
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<td>Mulching (Weed Free Hay)</td>
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<td>29</td>
<td>304-06007</td>
<td>Aggregate Base Course (Class 6)</td>
<td>CY</td>
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<td>30</td>
<td>506-00206</td>
<td>Riprap (6 inch)</td>
<td>CY</td>
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<td>31</td>
<td>514-00000</td>
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<td>30</td>
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<td>32</td>
<td>608-00006</td>
<td>Concrete Sidewalk (6 inch)</td>
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<td>Concrete Cub Ramp</td>
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<td>Detectable Warnings</td>
<td>SF</td>
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<td>35</td>
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<td>Curb Type 2 (Section B)</td>
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<td>36</td>
<td>609-22021</td>
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<td>44</td>
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<td>37</td>
<td>614-24002</td>
<td>Gutter Type 2 (2 foot)</td>
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<td>Code</td>
<td>Quantity</td>
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<tr>
<td>38</td>
<td>Sign Panel (Class 1)</td>
<td>SF</td>
<td>106</td>
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<td>39</td>
<td>Steel Signpost (2x2 inch Tubing)</td>
<td>LF</td>
<td>144</td>
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<td>40</td>
<td>Steel Sign Support (2-1/2 inch round NP-40) (Slipbase)</td>
<td>EA</td>
<td>12</td>
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<tr>
<td>41</td>
<td>Construction Surveying</td>
<td>LS</td>
<td>1</td>
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<tr>
<td>42</td>
<td>Mobilization</td>
<td>LS</td>
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<tr>
<td>43</td>
<td>Preformed Thermoplastic Pavement Marking</td>
<td>SF</td>
<td>224</td>
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<tr>
<td>44</td>
<td>Traffic Control Inspection</td>
<td>DAY</td>
<td>12</td>
<td></td>
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<tr>
<td>45</td>
<td>Traffic Control Management</td>
<td>DAY</td>
<td>30</td>
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<td>46</td>
<td>Type 3 Barricade</td>
<td>EA</td>
<td>1</td>
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<td>47</td>
<td>Construction Traffic Sign (Panel Size A)</td>
<td>EA</td>
<td>15</td>
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<tr>
<td>48</td>
<td>Traffic Cone</td>
<td>EA</td>
<td>30</td>
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</tbody>
</table>
BIDDER acknowledges that the Owner has the right to delete items in the Bid or change quantities at his sole discretion without affecting the Agreement or prices of any item so long as the deletion or change does not exceed twenty-five percent (25%) of the total Contract Amount.

The undersigned Bidder agrees to furnish all required Bonds in the form required by the District and to enter into a contract within the time specified in the Instructions to Bidders and further agrees to complete all Work covered by the Bid, in accordance with specified requirements, within the time specified in the Agreement. Bidder accepts the provisions of the Agreement as to liquidated damages.

In submitting this Bid it is understood that the right is reserved by Owner to reject any and all bids, and it is understood that this Bid may not be withdrawn during a period of 60 days after the scheduled time for the receipt of bids.

PROJECT TOTAL  $_________________________
(IN WORDS) _________________________________________________________________________________________

1.07 Construction Schedule

A. Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

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

A. Required Bid security;

B. List of Proposed Subcontractors;

C. List of Proposed Suppliers;

D. List of Project References;

E. Evidence of authority to do business in the State of Colorado;

F. United States Environmental Protection Agency Certification Regarding Debarment, Suspension, and Other Responsibility Matters

G. CDOT Form 606 – Anti-Collusion Affidavit

H. CDOT Form 1413 – Bidders List

I. CDOT Form 1414 – Anticipated DBE Participation Plan

1.09 The following documents are submitted by the low responsible bidder by 4:30 PM on the fifth calendar day after bid opening:
A. CDOT Form 605 – Contractors Performance Capability Statement

B. CDOT Form 621 – Assignment of Anti-Trust Claims

C. CDOT Form 1415 – Commitment Confirmation (For each DBE listed in the Form 1414)

D. CDOT Form 1416 – Good Faith Effort Report (If the DBE goal has not been met)

1.10 The Engineer may require the apparent low responsive bid and second low responsive bid General Contractors to submit the following Statement of Qualifications after the bid opening:

A. General Information

1. Please provide official firm name, license, contact person for bidding, title, phone number, e-mail address, and mailing address. Provide a list of current projects under construction in detail, including Owner’s name and contact information, Engineer’s name and contact information, contract price, percent complete, and brief description of work.

B. Project Experience

1. Provide brief summaries of a minimum of three (3) comparable projects in which your firm served as General Contractor in last three (3) years. Include the following information with each project summary:
   a. Owner and Engineer contact information
   b. References and contact information
   c. Project contract price and final construction cost
   d. Construction dates

C. Experience of key personnel to be assigned to this project.

1. For each key person identified, list at least two comparable projects in which they have played a primary role. For other projects provide:
   a. Description of project
   b. Role of the person
   c. Project’s original contracted construction cost and final construction cost
   d. Construction dates
   e. Project Owner
f. Reference information (two names with telephone numbers for each project)

D. Safety Record

1. Provide the firm's OSHA reportable accident rate and current workman's compensation insurance multiplier for the last three (3) years. Address and describe the company's safety program and any additional information that would highlight the General Contractor's approach to creating and maintaining a safe project site.

E. Financial Statement

1. Provide a recent financial statement, including balance sheet and income statement showing:
   a. Current assets and other assets
   b. Current liabilities and other liabilities
   c. Fixed assets and equipment

F. References

1. Provide name, address, and phone number of the General Contractor's banking reference

2. Provide name, address, and phone number of the General Contractor's insurance agent(s)
SIGNATURE OF BIDDER:

Date: ____________________________________________

If an Individual: ____________________________________________.

Doing business as ____________________________________________

If a Partnership: ____________________________________________

By ____________________________________________, partner

If a Corporation: ____________________________________________ (a __________ Corporation)

By ____________________________________________

(SEAL & TITLE: ____________________________________________ ATTEST)

ADDRESS: ____________________________________________

TELEPHONE: ____________________________________________

EMAIL: ____________________________________________

END OF SECTION
BID BOND

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

BIDDER (Name and Address):

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

OWNER (Name and Address):
    Town of Lochbuie
    703 Weld County Rd 37
    Lochbuie, CO 80603

BID
    Bid Due
    Date:
    Description: Town of Lochbuie – Greenway Trail

BOND
    Bond
    Number:
    Date:
    Penal sum $ (Words) (Figures)

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

BIDDER

Bidder’s Name and Corporate Seal

By: ____________________________
    Signature
    Print Name
    Title

Attest: ____________________________
    Signature
    Title

SURETY

Surety’s Name and Corporate Seal

By: ____________________________
    Signature (Attach Power of Attorney)
    Print Name
    Title

Attest: ____________________________
    Signature
    Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.
1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder’s and Surety’s liability. Recovery of such penal sum under the terms of this Bond shall be Owner’s sole and exclusive remedy upon default of Bidder.

2. Bid Security is required, in the amount of 10% of the total Bid in the form of this Bid Bond.

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

4. This obligation shall be null and void if:
   
   4.1 Owner accepts Bidder’s Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
   
   4.2 All Bids are rejected by Owner, or
   
   4.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

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

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

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

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

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

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

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

12. The term “Bid” as used herein includes a Bid, offer, or proposal as applicable.
CONSTRUCTION AGREEMENT

THIS AGREEMENT, entered into as of the ___ day of ________, 2023, by and between Town of Lochbuie, hereinafter called “Town,” and _____________________________________, hereinafter called “Contractor.”

In consideration of the mutual covenants and obligations hereinafter set forth, it is agreed by and between the parties hereto as follows:

Article 1. Contract Documents. The contract documents consist of this Agreement, exhibits to this agreement, the conditions of the contract (general, supplementary, and other conditions), the drawings consisting of 122 sheets, specifications, Notice of Award, Notice to Proceed, Contractor’s Bid, and all addenda issued prior to, and all modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement.

Article 2. Contractor’s Representations. In order to induce the Town to enter into this Contract, Contractor makes the following representations:

A. Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

B. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to said Underground Facilities are or will be required by Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.03 of the General Conditions.

C. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

D. Contractor has given the Engineer, Martin/Martin, Inc., written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Martin/Martin, Inc., is acceptable to Contractor.

Article 3. Assignment. It is understood that the Town enters into this Agreement based on the special abilities and representations of the Contractor and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities, nor delegate any duties arising under this Agreement without the prior written consent of the Town.
Article 4. Scope of Work. All necessary labor, supervision, equipment, tools, and materials for: Greenway Multi-use Trail and related work at roadway crossings. Additionally, the work included, but is not limited to, concrete paving, curb, gutter, sidewalk, earthwork, traffic control, signage, striping, and stabilization.

Article 5. Time of Completion. Contractor shall begin work within ten (10) days after notice to proceed and agrees to substantially complete all work within sixty (60) calendar days. Final completion is required after thirty (30) additional calendar days from Substantial Completion. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.

Article 6. Liquidated Damages. It is specifically recognized by and between the parties hereto that the Town will suffer certain unspecified damages in the event the project is not completed within the time set forth above. In recognition of the difficulty of ascertaining the actual damages to be sustained by the Town, the parties agree that the assessment of liquidated damages shall be appropriate. In the event the project is not completed within the specified time, there shall be assessed against the Contractor, and the Contractor hereby authorizes the Town to retain from any monies due the Contractor an amount equal to the per calendar day rate listed in the Colorado Department of Transportation specification section 108 and every calendar day the project remains unfinished for Substantial Completion until the work is Substantially Complete.

Article 7. Contract Price

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

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

A. Total of Unit Price Work (subject to final Unit Price adjustment) $__________.

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

Article 8. Payment Procedures. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Town’s Engineer, Martin/Martin, Incorporated as provide in Article 14 of the General Conditions.

A. Progress Payments. All progress payments will be on the basis of the progress of the Work measured by the schedule of values as established in the Section 2.07 of the General Conditions.

B. Retainage. The Town shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

    (1) The Town shall authorize partial payments of the amount due at is next regularly scheduled meeting or as soon thereafter as practicable if the
Contractor is satisfactorily performing the Contract. The Town shall withhold five percent (5%) of the calculated value of the completed work. The Town shall retain the five percent (5%) until the Contract is completed satisfactorily and finally accepted by the Town.

(2) Upon completion and acceptance of the Work, all retained amounts will be released to Contractor under the terms and conditions governing final payment. Consent of the Surety shall be obtained before retainage is paid by Town. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent’s authority to act for the Surety.

(3) Retainage shall apply to materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing upon which Contractor requests progress payment.

(4) Retainage withheld by the Town shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship therefore.

**Article 9. Hazardous Materials.** The parties shall deal with hazardous materials and environmental conditions at the work site in accordance with Section 4.06 of the General Conditions.

**Article 10. Final Payment.** The Town shall make a final settlement in accordance with 24-91-03 C.R.S. within sixty (60) days after the Contract is completed satisfactorily and finally accepted by the Town.

**Article 11. Change Orders.** The Town may order changes within the scope of the Work without invalidating this Agreement. If such changes increase or decrease the amount due under the contract documents, or the time required for the performance of the Work, such alteration shall be approved by the parties in writing for the change order. The Contractor shall not proceed with any work covered by a proposed change order until he receives a properly executed change order form.

**Article 12. Indemnification and Release of Liability.**

A. General Liability. The Contractor will indemnify and hold harmless the State and the Town and all its officers, agents and employees against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of the contractor or sustained in connection with the performance of any contract related to the project or by conditions created thereby, or based upon any violation of any statute, ordinance, regulation, and the defense of any such claims or actions.

B. Governmental Immunities Act. The Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the Town, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.
Article 13. **Construction Completion.** The Town shall have the right, but shall have no obligation or duty, to perform or pay for the performance of any of the Contractor’s obligations hereunder, including, without limitation, payment of any subcontractor or supplier of labor or materials, anything herein to the contrary notwithstanding.

Article 14. **Independent Contractor.** The Contractor in performing the Work hereunder is an independent contractor and reserves the right to control Contractor’s employees and representatives, and the Town reserves only the right of inspection to ascertain that the completed Work conforms with the requirements of this Agreement. Contractor acknowledges that no governmental immunity is waived and that no specific relationship with, or duty of care to, the Contractor or third party is assumed by such review or approval.

Article 15. **Town Representative.** The Town’s project representative is Martin/Martin, who shall make, within the scope of their authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instructions shall be directed to the District representative.

Article 16. **Notice.** Any notice to be sent pursuant to this Agreement shall be deemed delivered if mailed to the other party at the following addresses. Any such notice shall be sent certified or registered mail, return receipt requested, postage prepaid.

CONTRACTOR:

ENGINEER: Colin Dinsmore  
Martin/Martin  
12499 W Colfax Ave  
Lakewood, CO 80215

TOWN: Chris Larmon  
Town of Lochbuie - Town Hall  
703 Weld County Rd 37  
Lochbuie, CO 80603

Article 17. **Public Employee Financial Interest.** The signatories hereto aver that to their knowledge, no employee of the State or municipality has any personal or beneficial interest whatsoever in this contract as prescribed by C.R.S. § 24-18-201 and C.R.S. §24-50-507.

Article 18. **Discrimination and Affirmative Action.** The Contractor agrees to comply with the letter and spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

Article 19. **Bribery and Corrupt Influences; Abuse of Public Office.** The signatories hereto aver that they are familiar with C.R.S. § 18-8-301, et. seq. (Bribery and Corrupt Influences) and C.R.S. § 18-8-401. et. seq. (Abuse of Public Office), and that no violation of such provisions is
present.

**Article 20. Workmen’s Compensation Coverage.** The Contractor is responsible for providing Workmen’s Compensation Coverage for all of its employees to the extent required by law, and for providing such coverage or requiring its subcontractors to provide such coverage for the subcontractor’s employees. In no case is the Owner responsible for providing Workmen’s Compensation Coverage for any employees or subcontractors of Contractor pursuant to this Agreement, and Contractor agrees to indemnify the Owner for any costs for which the Owner may be found liable in this regard.

**Article 21. Illegal Aliens.** The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract. The Contractor represents, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract through participation in the e-verify program or the department program. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101, et seq., the Town may terminate this contract for breach of contract, and the Contractor shall be liable for actual and consequential damages to the Town. The contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this public contract is being performed.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall:

A. Notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-paragraph (a) above, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

**Article 22. Archeological Artifacts.** In the event archaeological artifacts or historical sources are unearthed during construction excavation of the project, Contractor shall stop or cause to be stopped, construction activities and will notify the State Historical Conservation Office and the Town of such unearthing.

**Article 23. No Lobbying.** No portion of the payments received for the Work may be used for lobbying, or propaganda as prohibited by 18 U.S.C. §1913 or Section 607 (a) of Public Law 96-74.
**Article 24. Binding Arbitration.**

A. The parties agree that all disputes between them will be submitted to a mutually agreeable neutral mediator, as a condition precedent to Arbitration. The fee and costs of the mediator shall be apportioned equally between the parties at the time of mediation.

B. Neither party will be liable to the other for special, incidental, consequential or punitive losses or damages, including but not limited to damages resulting from delay, loss of use, loss of profits or revenue, or cost of capital.

C. As to any dispute not resolved by mediation between Town and Contractor it is agreed that binding arbitration shall be the sole remedy. The Town and Contractor waive any right either may have to submit any dispute between them arising out of this Agreement to try to a court or to a jury. Any party may demand arbitration by serving upon the other written demand for arbitration. Thereafter, within 30 days the parties shall agree upon the person to act as the single arbitrator. In the event the parties are unable to agree either party may request a court of competent jurisdiction to appoint an arbitrator and to enforce the terms of this arbitration provision. Said application to a court for appointment of arbitrator or enforcement of the arbitrations provision shall not constitute a waiver of the agreement that arbitration shall be the sole remedy for resolution of dispute and shall not confer upon the court jurisdiction to resolve any dispute except for the appointment of an arbitrator and to enforce the arbitration provision. The arbitration shall occur in the County of Prowers, State of Colorado. It is intended that this arbitration provision shall be interpreted in the broadest possible fashion to effect the intent of the parties that all disputes arising between them under this Agreement or as a result of this Agreement shall be submitted to binding arbitration as the sole remedy for the resolution of the dispute. Each side shall equally pay the initial cost of the arbitration. The arbitrator shall award as part of any arbitration award, attorney’s fees and costs to either party deemed by the arbitrator to be the prevailing party. The arbitrator shall not have authority to enter any award for punitive or exemplary damages. Any arbitration award may be filed with the Court and made an order of the court pursuant to applicable arbitration resolution statutes then in effect in the State of Colorado. Venue for filing the arbitration award in court shall be in the Town Court in and for the County of Weld, State of Colorado.

**Article 25. Binding on Successors.** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns in respect of all covenants, agreements and obligations contained in the Contract Documents.

**Article 26. Attorney Fees.** Should it be necessary for either party to institute arbitration proceedings to enforce the terms of this Agreement, the prevailing party shall recover, in addition to any damages proved, all attorney’s fees, costs and other expenses of the litigation.

**Article 27. Survival of Certain Contract Terms.** Notwithstanding anything herein to the
contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the Owner as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

**Article 28. Complete Agreement.** This Agreement constitutes the sole agreement between the parties concerning the subject matter hereunder and all prior negotiations, representations, understandings, or agreements concerning the subject matter hereunder are hereby canceled. No modification, change, or alteration of the Agreement shall be of any legal force or effect unless in writing, signed by all the parties hereto.

**Article 29. Compliance with Applicable Laws.** At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.

**Article 30. Governing Law.** This Agreement shall be governed by the laws of the State of Colorado.

**Article 31. Partial Invalidity.** If any provision of this agreement are in violation of any statute or rule of law of the State of Colorado, then such provision shall be deemed null and void to the extent that they may be violative of law, but without invalidating the remaining provisions hereof.

**Article 32. Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument. This Contract is to be executed in quadruplicate.

**Article 33. Appropriations.** Pursuant to C.R.S. §24-91-103.6, the following applies:

A. The amount of money appropriated by the Town is equal to or in excess of the contract amount.

B. No change order shall be permitted requiring additional compensable work to be performed which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under another provision for a remedy-granting provision in this contract; and

C. For any form of change order or directive by the Town requiring additional compensable work to be performed, the Town shall reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in this contract, for all additional directed work performed until a change order is finalized. In no instance shall this periodic reimbursement be required before the contractor has submitted an estimate of cost to the Town for the additional compensable work to be performed. This provision shall only apply when additional compensable work is required on an emergency basis and it is necessary that work begin without a change
order as required by Article 11 of this Construction Agreement.

**Article 34. Miscellaneous.**

A. Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

TOWN

By

CONTRACTOR

By

ATTEST:

ATTEST:

By

By

STATE OF COLORADO  )
                 ) ss.
COUNTY OF WELD   )

The foregoing instrument was acknowledged before me this ___day of______, 2023
by as Director of Purchasing.

My commission expires:

Witness my hand and official seal.

Notary Public
Notice of Award

Project: Town of Lochbuie – Greenway Trail

Owner: Town of Lochbuie

Contract: Town of Lochbuie – Greenway Trail

You are notified that your Bid dated for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for the Greenway Trail at the Town of Lochbuie. All necessary labor, supervision, equipment, tools, and materials to construct the multi-use trail. Additionally, the work included, but is not limited to, concrete paving, curb, gutter, sidewalk, earthwork, traffic control, signage, striping, and stabilization.

The Contract Price of your Contract is Dollars ($ ).

4 copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

4 sets of the Drawings will be delivered separately or otherwise made available to you immediately.

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

1. Deliver to the Owner 4 fully executed counterparts of the Contract Documents.

2. Deliver with the executed Contract Documents the Contract security Bonds as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).

3. Other conditions precedent:

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

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Town of Lochbuie

Owner

By: Authorized Signature

Title

Copy to Engineer
Copy to Owner

EJCDC C-510 Notice of Award
Prepared by the Engineers Joint Contract Documents Committee and endorsed by the Construction Specifications Institute.
Notice to Proceed

Date: ________________

Project: Town of Lochbuie – Greenway Trail
Owner: Town of Lochbuie
Owner's Contract No.: ________________

Contract: Town of Lochbuie – Greenway Trail
Engineer's Project No.: 19.0580.C.30

Contractor:
Contractor's Address: [send Certified Mail, Return Receipt Requested]

You are notified that the Contract Times under the above Contract will commence to run on ____________. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the number of days to achieve Substantial Completion is ________, and the number of days to achieve readiness for final payment is ____________

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

__________________________________________
Owner
Given by:

__________________________________________
Authorized Signature

__________________________________________
Title

__________________________________________
Date

Copy to Engineer
PAYMENT BOND

CONTRACTOR (name and address):  

SURETY (name and address of principal place of business):

OWNER (name and address): Town of Lochbuie  
703 Weld County Rd 37  
Lochbuie, CO 80603

CONSTRUCTION CONTRACT
  Effective Date of the Agreement:  
  Amount:  
  Description (name and location):

BOND
  Bond Number:  
  Date (not earlier than the Effective Date of the Agreement of the Construction Contract):  
  Amount:  
  Modifications to this Bond Form:  None  See Paragraph 18

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

CONTRACTOR AS PRINCIPAL

(seal)
  Contractor’s Name and Corporate Seal
By:  
  Signature
  Print Name
  Title
  Attest:  
  Signature
  Title

SURETY

(seal)
  Surety’s Name and Corporate Seal
By:  
  Signature (attach power of attorney)
  Print Name
  Title
  Attest:  
  Signature
  Title
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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

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

3. If there is no Owner Default under the Construction Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety’s expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

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

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

5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.

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

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

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

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

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

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

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

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

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

16. Definitions

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

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

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

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

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

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

18. Modifications to this Bond are as follows:
# Contractor's Application for Payment

## Change Order Summary

<table>
<thead>
<tr>
<th>Approved Change Orders</th>
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<tr>
<td>Number</td>
<td>Additions</td>
<td>Deductions</td>
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<tr>
<td>1. ORIGINAL CONTRACT PRICE</td>
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<td>2. Net change by Change Orders</td>
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<td>3. Current Contract Price (Line 1 ± 2)</td>
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<td>4. TOTAL COMPLETED AND STORED TO DATE</td>
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<td>(Column F on Progress Estimate)</td>
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<td>5. RETAINAGE:</td>
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<tr>
<td>a. 5%</td>
<td>Work Completed</td>
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<tr>
<td>b. 5%</td>
<td>Stored Material</td>
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<td>c. Total Retainage (Line 5a + Line 5b)</td>
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<td>6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)</td>
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<td>7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)</td>
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<td>8. AMOUNT DUE THIS APPLICATION</td>
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<td>9. BALANCE TO FINISH, PLUS RETAINAGE</td>
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<td>(Column G on Progress Estimate + Line 5 above)</td>
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</table>

## Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Payment of: $ (Line 8 or other - attach explanation of the other amount)

is recommended by:

(Engineer) (Date)

Payment of: $ (Line 8 or other - attach explanation of the other amount)

is approved by:

(Owner) (Date)

Approved by:

Funding Agency (if applicable) (Date)
## Progress Estimate - Unit Price Work

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<tr>
<th>Item</th>
<th>Bid Item No.</th>
<th>Description</th>
<th>Bid Item Quantity</th>
<th>Unit Price</th>
<th>Bid Item Value ($)</th>
<th>Estimated Quantity Installed</th>
<th>Value of Work Installed to Date</th>
<th>Materials Presently Stored (not in C)</th>
<th>Total Completed and Stored to Date (D + E)</th>
<th>% (F / B)</th>
<th>Balance to Finish (B - F)</th>
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### Contractor's Application

- **For (Contract):**
- **Application Number:**
- **Application Period:**
- **Application Date:**
- **Bid Item No.**
- **Description**
- **Bid Item Quantity**
- **Unit Price**
- **Bid Item Value ($)**
- **Estimated Quantity Installed**
- **Value of Work Installed to Date**
- **Materials Presently Stored (not in C)**
- **Total Completed and Stored to Date (D + E)**
- **% (F / B)**
- **Balance to Finish (B - F)**
<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
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<tr>
<td>Bid Item No.</td>
<td>Supplier Invoice No.</td>
<td>Submittal No. (with Specification Section No.)</td>
<td>Storage Location</td>
<td>Description of Materials or Equipment Stored</td>
<td>Stored Previously</td>
<td>Subtotal Amount Completed and Stored to Date (D + E)</td>
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EJCDC C-620 Contractor's Application for Payment
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Certificate of Substantial Completion

Project: Town of Lochbuie – Greenway Trail

Owner: Town of Lochbuie

Contract: Town of Lochbuie – Greenway Trail

Owner's Contract No.: 

Engineer's Project No.: 19.0580.C.30

This Certificate of Substantial Completion applies to:

☐ All Work under the Contract Documents: ☐ The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [definitive] list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

☐ Amended Responsibilities ☐ Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:
The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor’s obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer

Date

Accepted by Contractor

Date

Accepted by Owner

Date
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<td>1.02</td>
<td>Terminology</td>
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<td>2.02</td>
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<td>Before Starting Construction</td>
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

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

2. Agreement—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

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

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

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

6. Bidder—The individual or entity who submits a Bid directly to Owner.


8. Bidding Requirements—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

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

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

11. Contract—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. **Contract Documents**—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.

13. **Contract Price**—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. **Contract Times**—The number of days or the dates stated in the Agreement to: (i) achieve 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.

15. **Contractor**—The individual or entity with whom Owner has entered into the Agreement.

16. **Cost of the Work**—See Paragraph 11.01 for definition.

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

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

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

20. **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.

21. **General Requirements**—Sections of Division 1 of the Specifications.

22. **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.

23. **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.

24. **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.

25. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. **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.
27. **Notice of Award**—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. **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.

29. **Owner**—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. **PCBs**—Polychlorinated biphenyls.

31. **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.

32. **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.

33. **Project**—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

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

35. **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.

36. **Resident Project Representative**—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. **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.

38. **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.

39. **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.
40. *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.

41. *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.

42. *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.

43. *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.

44. *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 “sufficiently complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

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

47. *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.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any enclosures 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.

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

50. *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.

51. *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 Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

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

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

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

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

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

A. 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 therefore.

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 at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. 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 had actual knowledge thereof.

B. **Resolving Discrepancies:**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents 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. Unless otherwise stated in the Supplementary Conditions, 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:** The Supplementary Conditions identify:

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

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

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. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner 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.

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 the submission of a Bid or becoming bound under an negotiated contract; or

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

   c. Contractor failed to give the written notice 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. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data 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: The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified 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. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

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

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.

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

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.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.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered 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.
F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, 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.

H. 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.

I. 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.

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. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

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

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

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.

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 and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, 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 the Supplementary 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 identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
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 insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner’s Liability Insurance

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

5.06 Property Insurance

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

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, 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 Supplementary Conditions.

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

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

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

6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, 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.

C. 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.

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

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions 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, and all other individuals or entities identified in the Supplementary Conditions 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 objectioning 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.
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.
Concerning Subcontractors, Suppliers, and Others

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

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

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Contract Documents:

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.

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

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

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

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract.
Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as 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, and all other individuals or entities identified in the Supplementary Conditions 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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.
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 at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work 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.

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
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 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.
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. Contractor shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor’s safety program with which Owner’s and Engineer’s employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 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). 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 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;

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;

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.
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 Supplementary Conditions:

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

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

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

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

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 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. Supplemental costs including the following:

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

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

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

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

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 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, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 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 15 percent;

   b. for costs incurred under Paragraph 11.01.A.3, the Contractor’s fee shall be five percent;

   c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of 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 five percent of such net decrease; and
f. when both additions and credits are involved in any one change, the adjustment in Contractor’s fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times 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.
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.

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.

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.

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


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 the Supplementary 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.
##SECTION 00800

###SUPPLEMENTARY CONDITIONS

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SECTION 00800
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

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

The address system used in these Supplementary conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 1 – DEFINITIONS

SC-1.01A.19 Add the following sentence at the end of Paragraph 1.01.A.19:

The title of Architect as used in the Contract Documents also refers to the Engineer.

SC-1.01.A.29 Add the following sentence at the end of paragraph 1.01.A.29:

The terms “Owner” or “Town” as used in all of the Contract Documents shall refer to the Town of Lochbuie.

SC-1.01A.34 Add the following sentence at the end of Paragraph 1.01.A.34:

The Project Manual also includes the bidding requirements, Contract Forms, Conditions of the Contract and Specifications.

SC-1.01A.50 Add the following sentence at the end of Paragraph 1.01.A.50:

Work shall also include the materials and equipment provided by Contractor or equipment as provided by Owner for installation by Contractor.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02A. Delete Paragraph 2.02A in its entirety and insert the following in its place:

Owner shall furnish to Contractor four (4) complete sets of the Contract Documents for use in the execution of the Work. Additional copies will be furnished, upon request, at the cost of the reproduction.
ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

SC-4.02 Add the following new subparagraph immediately after subparagraph 4.02.A.2:


SC-4.06 Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

B. Not Used.

ARTICLE 5 – BONDS AND INSURANCE

SC-5.01 Add the following new paragraph immediately after Paragraph 5.01.C:

D. In addition to the performance bond specified in the General Conditions, Contractor shall furnish Labor and Material Payment Bonds and Insurance Certificates. Town and Engineer reserve the right to reject surety providing performance and payment bonds or other bonds as specified in the Contract Documents. Contract Agreement will not be executed until surety is acceptable to Town and Engineer.

SC-5.02.A Delete Paragraph 5.02. A in its entirety and insert the following:

A. All bonds and insurance required by the Contact Documents to be purchased and maintained by the Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Colorado and must be countersigned by an agent who is a resident of the State of Colorado and must be accompanied by a certified copy of the authority to act for the surety and authority to transact business in the State of Colorado.

SC-5.04 Add the following new paragraphs immediately after Paragraph 5.04.B:

C. 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. Workers' Compensation and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:

   a. State of Colorado: Statutory
b. Applicable Federal: Statutory

c. Employer's Liability: 
- $100,000 each accident
- $500,000 disease, policy limit $100,000 disease, each employee

2. Contractor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

   a. General Aggregate: $1,000,000
   
   b. Products Completed Operations Aggregate $1,000,000
   
   c. Personal and Advertising Injury $500,000
   
   d. Each Occurrence (Bodily Injury and Property Damage) $500,000
   
   e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
   
   f. Excess or Umbrella Liability Bodily Injury and Property Damage $2,000,000
      Retention $10,000

3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:

   a. Combined Single Limit of $2,000,000

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 property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention. This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or loss payee;

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

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

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

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

6. include testing and startup;

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued; and

8. comply with the requirements of Paragraph 5.06.C of the General Conditions.

SC-5.06.B Delete Paragraph 5.06.B and replace with the following:

B. Contractor shall purchase and maintain equipment breakdown insurance and any other additional property insurance required by Laws and Regulations, which insurance will include the interest of Owner, Contractor, Subcontractors, and Engineer, and the officers, directors,
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.

SC-5.07.B.1 Delete subparagraph 5.07.B.1 in its entirety and insert the following in its place:

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, but the foregoing shall not apply to liquidated damages Owner may claim as provided in the Agreement; and

SC-5.09.A Delete Paragraph 5.09.A in its entirety and insert the following in its place:

A. If the Owner has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the Owner shall so notify the Contractor in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.01.B. Contractor shall provide to the Owner such additional information in respect of insurance. If Contractor does not purchase or maintain all of the Bonds and insurance required of Contractor by the Contract Documents, Contractor shall notify the Owner 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 Owner may elect to obtain equivalent Bonds or insurance to protect the Owner's interests at the expense of the Contractor and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

SC-6.06 Add the following new paragraph immediately after Paragraph 6.06.G:

H. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor of Supplier.

SC-6.10.A Delete Paragraph 6.10.A in its entirety and insert the following in its place:

A. Owner is exempt from Colorado State Sales and Use Taxes on materials and equipment to be incorporated in the Work (said taxes shall not be included in the Contract Price or modifications to the Contract Price). Prior to purchase of any materials to be incorporated in the Work, the Contractor and any Subcontractor shall apply to the Colorado Department
of Revenue for an exemption to be used for all materials and work done under this Contract (Form DR-0172 (09/21/06)). All purchases for the Work shall use the exemption from Sales and Use Taxes.

SC-6.10 Add the following new paragraph immediately after Paragraph 6.10.A:

B. 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.

SC-6.17 Delete paragraphs 6.17.A, B, C, D, and E in their entirety and replace with the following:

A. Contractor shall furnish required submittals with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing subsequent submittals of Shop Drawings, Samples, or other items requiring approval and Contractor shall reimburse Owner for Engineer's charges for such time.

B. In the event that Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

SC-6.20.A Delete Paragraph 6.20.A in its entirety and replace with the following:

A. The Contractor agrees to indemnify and hold harmless Owner, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor, any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor of the Contractor, or which arise out of any workmen's compensation claim of any employee of the Contractor or of any employee of any subcontractor of the Contractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Contractor. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.
SC-6.20 Add the following new paragraph immediately after Paragraph 6.20.C:

D. Governmental Immunities Act. The Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the Town, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

SC-10.03.A.4. Add the following new paragraph immediately after Paragraph 10.03.A.3:

4. At the time of execution of a Change Order or Written Agreement, Owner and Contractor expressly acknowledge that said Change Order or Written Agreement provides for a fair and equitable adjustment in Contract Price and/or Contract Time for the additions, deletions, or revisions in the Work as authorized by said Change Order or Written Agreement. Owner and Contractor further expressly acknowledge that later claims for adjustments to the Contract Price and/or Contract Time associated with said Change Order or Written Agreement are not valid.

SC-10.05.G Add the following new paragraphs immediately after Paragraph 10.05.F:

G. Should Contractor cause damage to the Work or property of any separate contractor or subcontractor 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 the Contractor, Owner, or Engineer, the Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration.

Contractor shall to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner or Engineer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner or Engineer.

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

SC-12.01.A Add the following language at the end of the last sentence of Paragraph 12.01A:
Changes in the Contract Price or Contract Time, which are agreed to by the parties by an appropriate, duly executed Change Order or Written Amendment shall constitute a full and final change or amendment to the Contract for any and all changes of which the Contractor is, or should have been, aware as of the date of the executed Change Order.

Accordingly, execution of a Change Order or Written Amendment by the Contractor shall constitute a waiver on the part of the Contractor of any further claims for changes in the Contract Price or Contract Time, which occurred or may have occurred up through the date of any executed Change Order, whether such changes were expressly set forth in the executed change Order or not.

SC-12.03 Add the following new paragraph immediately after Paragraph 12.03.E:

F. Any and all claims for delay damages pursuant to this Article shall be made based on written notice submitted by party making the claim to the Engineer and the other party to the Contract in accordance with provisions of Article 10. Such claims shall be made as such delays are affecting Work and shall not be deemed "cumulative." Failure to raise any such claims on a timely basis shall be construed as a waiver of such claims, individually.

SC-12.03 Add the following new paragraph immediately after Paragraph 12.03.G:

H. The Owner and Contractor are both aware that a portion of the construction may be conducted during winter weather conditions, and that extremely variable and severe weather conditions are typical for the site of the Work. The Contractor expressly agrees that the Contract Price is based on completion of the Work within the times specified in the Agreement and under weather conditions typically encountered during the contemplated construction period at the site of the Work. For purposes of evaluating requests for extensions of time due to unusually severe weather conditions, the following conditions, and no others, will be considered unusually severe:

1. Precipitation exceeding the historical mean for the months of the construction period by more than one standard deviation;

2. For winter construction, average temperature less than the historical mean for the months of the construction period by more than one standard deviation;
3. For winter construction, number of days below freezing exceeding the historical mean for the months of the construction period by more than one standard deviation;

4. Isolated abnormal weather occurrences of a severely destructive nature, which in fact, cause such destruction at the site of the Work.

5. For the purpose of determining mean conditions, all available data contained in the records of the National Weather Service for reporting from, as well as data available from the State Climatologist for the same areas. The Contractor further agrees that should a request for time extension due to unusually severe weather conditions be made, the Contractor shall submit all necessary historical and detailed daily data during the construction period to support the claim.

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

SC-13.07 Add the following new paragraph immediately after Paragraph 13.07.E:

F. Nothing in the General Conditions concerning the correction period shall establish a period of limitation with respect to any other obligation, which Contractor has under the Contract Documents. The establishment of a time period relates only to the specific obligations of the Contractor to correct the Work, and has no relationship to the time within which his obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish his liability with respect to his obligations other than to specifically correct the Work.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02.A.1 Add the following as the last sentence of subparagraph 14.02.A.1:

1. Payment for materials and equipment not incorporated in the Work, but delivered and suitably stored, shall be based only upon the actual cost of such materials to Contractor, and shall not include any overhead or profit to Contractor.

SC-14.02.C.1 Delete Paragraph 14.02.C.1 in its entirety and replace with the following:

1. Thirty (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-14.02.D.3 Delete subparagraph 14.02.D.3 in its entirety and replace with the following:

3. Upon a subsequent determination that the 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, as amended, and subject to interest as provided in the Agreement from the date of said determination, to the date of payment.


SC-14.09 Delete paragraph 14.09 in its entirety.

ARTICLE 16 – DISPUTE RESOLUTION

SC-16.01 Delete Paragraph 16.01 A, B and C in their entirety.

ARTICLE 17 – MISCELLANEOUS

SC-17.07 Add the following new paragraphs immediately after Paragraph 17.06:

A. Owner is Town of Lochbuie and their duly authorized agents. All notices, letters and communication directed to Owner shall be addressed and delivered to Martin/Martin, Incorporated, who is designated representative (below).

    Martin/Martin
    Attn: Colin Dinsmore, P.E.,
    12499 W Colfax Ave
    Lakewood, CO 80215

B. All duties and responsibilities assigned to Engineer in the Contract Documents, with the corresponding rights and authority will be assumed by Martin/Martin and their duly authorized agents. All notices, letters and communication directed to Engineer shall be addressed and delivered to Martin/Martin, 12499 W Colfax Ave, Lakewood, CO 80215, Attention: Colin Dinsmore, P.E., with a copy to Owner.

C The business addresses of Contractor given in contract for the work and Contractor's office at the site of the Work are hereby designated as the places to which all notices, letters, and other communication to Contractor will be delivered

D. Either Owner, Engineer, or Contractor may change his address at any time by an instrument in writing delivered to the other parties.
Add the following new paragraph immediately after Paragraph 17.07:

The cross-referencing or specification sections under the heading "Related Sections" and elsewhere within each specification section is intended as an aid to the Contractor and shall not relieve the Contractor from his responsibility to coordinate the Work under the Contract Documents. Listings of cross-references are not intended to be comprehensive. The omission of a cross-reference to an additional or related requirement shall not relieve the Contractor of his obligation to provide a complete Project.

END OF SECTION
### CONTRACT MODIFICATION ORDER

- **Project No.**
- **Project code**
- **Location**
- **Date**
- **Contractor**
- **Estimated cost to project**
  - Increase
  - Decrease
  - $:
- **Complete address**
- **Total additional days allowed to complete work**
- **FHWA PoDI**
  - yes
  - no
- **Modification title**

---

**I accept this order, for work to be performed and prices on which payment is to be based.**

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<th>REQUIRED IN ACCORDANCE WITH INSTRUCTIONS IN CDOT’S CONSTRUCTION MANUAL</th>
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<td><strong>Approved by Region Transportation Director:</strong></td>
<td>Date</td>
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**OPTIONAL**

| Approved by Resident Engineer: | Date |

- Participating
- Non-participating
- Participation as noted
- Approved funding by Region Program Engineer: Date

---

*Previous editions are obsolete and may not be used*

CDOT Form #90 06/19
TECHNICAL SPECIFICATIONS

INDEX OF PROJECT SPECIAL TECHNICAL SPECIFICATIONS

The specifications for this project shall be the Town of Lochbuie standards and specifications and the Colorado Department of Transportation (CDOT) Standard Specifications for Road and Bridge Construction (SSRBC), 2022 Edition.

The (SSRBC), 2022 Edition, and shall consist of the applicable sections, numbered Sections 200 through Section 700. References to "Division", "Department", or "CDOT" in the SSRBC shall be considered to mean the project Owner, the Town of Lochbuie. In the event of conflicts between the Town specifications and CDOT specifications, the CDOT specification shall govern.

References to "Engineer," "Project Engineer" or "Inspector" shall be considered to mean the Owner's field representative, a Town of Lochbuie Construction Coordinator. References to Sections 100 through 109 of the SSRBC in Sections 200 through 700 shall be deleted in instances where such references are not otherwise addressed, as determined by the Owner, in the Special Condition and General Condition sections of the Contract. Where directed by the Town Engineer or designated representative, references to the completion of State or Federal forms may be deleted and replaced with a Town equivalent.

The Contractor must have a copy of all applicable specifications, as identified in this section and titled "Project Technical Specifications", available on the job site at all times.

The following Project Technical Specifications supplement or modify and take precedence over Town of Lochbuie Design Standards and Specification, CDOT's 2022 Standard Specifications for Road and Bridge Construction and project plans. When specifications or Special Provisions contain both English and SI units, the English units apply and are the specification requirement.

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<td>CDOT Project Special Provisions</td>
<td>July 14, 2023</td>
<td>128-152</td>
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<tr>
<td>Commonly used project special provisions that modify CDOT's 2022 Standard Specifications for Road and Bridge Construction. The project special provisions found herein are applicable to construction projects controlled by the 2022 CDOT Specification Book.</td>
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<tr>
<td>CDOT Standard Special Provisions</td>
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<td>153</td>
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COLORADO DEPARTMENT OF TRANSPORTATION
PROJECT SPECIAL PROVISIONS

The 2022 CDOT Standard Specifications for Road and Bridge Construction controls construction of this project. The following special provisions supplement or modify the Standard Specifications and take precedence over the Standard Specifications and plans.

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<td>Revision of Section 240: Protection of Migratory Birds: Biological Work Performed by the Contractor's Biologist</td>
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<td>Revision of Section 240: Prairie Dog Management</td>
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<tr>
<td>Revision of Section 240: Recommended Survey Protocol and Actions to Protect Nesting Burrowing Owls</td>
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<td>Revision of Section 240: Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors</td>
<td>(May 3, 2023)</td>
<td>142-152</td>
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</table>
REVISION OF SECTION 210
RESET STRUCTURES

Section 210 of the CDOT Standard Specifications is hereby revised for this project as follows:

Subsection 210.10 shall include the following:

The irrigation channel manhole located at Station 25+52.47 Offset 6.37’ RT has been designated to be reduced in height.

Adjust Manhole includes all work and materials necessary to adjust the height of the existing manhole such that the manhole cover is flush with the adjacent concrete trail grades. The work includes the removal of the middle barrel section of the flat top manhole, resetting of the flat top lid onto the manhole base, replacement of the existing frame with a lower profile frame and re-installation of the manhole cover. Work shall also include providing a concrete collar around the frame of the manhole in all directions that the manhole frame is not immediately adjacent to the concrete trail pavement section.

Work shall also include any necessary structure excavation, structure backfill, and appurtenances necessary for completion of the work per plans. Any component of work associated with the adjustment of the manhole, and not specifically identified within these plans and specifications, will not be measured and paid for separately but included in the cost of the bid item, Adjust Manhole.

BASIS OF PAYMENT

Subsection 210.13 shall include the following:

Payment will be made under:

<table>
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<tr>
<th>Pay Item</th>
<th>Pay Unit</th>
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</thead>
<tbody>
<tr>
<td>Adjust Manhole</td>
<td>EA</td>
</tr>
</tbody>
</table>
**REVISION OF SECTION 217**

**HERBICIDE TREATMENT**

Section 217 of the Standard Specifications is hereby revised for the project as follows:

**DESCRIPTION**

Delete Subsection 217.01 and replace with the following:

All areas to be disturbed within the project area, regardless of final disposition, shall be treated with herbicide before disturbance. After seeding and near the end of the project, if noxious weed species persist, seeded areas shall receive an additional application of herbicide. All applications shall target noxious weeds designated by the Colorado Department of Agriculture including List A, B, and C species. Recommended treatments for noxious weeds identified in the project area are summarized in the following table. Additional recommended treatments for noxious weeds including those not listed in the table below, can be found on the Colorado Department of Agriculture’s website at [https://www.colorado.gov/pacific/agconservation/noxious-weed-species](https://www.colorado.gov/pacific/agconservation/noxious-weed-species).

<table>
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<tr>
<th>Noxious Weed</th>
<th>Plant Growth Characteristics</th>
<th>State List</th>
<th>Recommended Treatments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada thistle ((Cirsium arvense))</td>
<td>Aggressive rhizomatous perennial of moist/wet sites; seeds and plant parts easily transported by construction equipment.</td>
<td>B</td>
<td><strong>Mechanical Control:</strong> Due to the species' extensive root system, hand-pulling and tilling stimulate the growth of new plants and are not recommended. Mowing every 10 to 21 days during the growing season can be effective. <strong>Herbicide Control:</strong> Aminopyralid (Milestone), Clopyralid + Triclopyr, Amiocyclopyraclo + chlorosulfur, or Picloram applied in spring before flowering and/or during fall regrowth. <strong>Cultural Control:</strong> Reseed with native seed mix and prevent bare ground.</td>
</tr>
<tr>
<td>Field bindweed ((Convolvulus arvensis))</td>
<td>Long-lived perennial; Construction could increase the plants abundance due to its ability to spread rapidly on disturbed sites and to grow from root fragments.</td>
<td>C</td>
<td><strong>Mechanical Control:</strong> Cutting, mowing, or pulling is generally not effective. <strong>Herbicide Control:</strong> Clarity + 2,4-D Amine or Roundup Ultra applied at full-bloom and/or fall. <strong>Cultural Control:</strong> Reseed with native seed mix.</td>
</tr>
<tr>
<td>Quackgrass ((Elymus repens))</td>
<td>Perennial grass that grows from underground rhizomes to a height of 1 to 4 feet.</td>
<td>C</td>
<td><strong>Mechanical Control:</strong> Tilling can be effective but can result in spread of rhizomes. Not recommended <strong>Herbicide Control:</strong> Glyphosate (Roundup) or Clethodim (Select 2EC) in the spring, when plants are young. <strong>Cultural Control:</strong> Reseed with native seed mix and prevent establishment.</td>
</tr>
</tbody>
</table>
| Salt Cedar  
(Tamarix spp.) | Non-native deciduous evergreen shrub or small tree that grows from 5 to 20 feet tall. Reproduces by seeds as well as vegetatively. | B | **Mechanical Control:** Chainsaws, or loppers for smaller plants, are effective for cut-stump treatments for smaller infestations.  
**Herbicide Control:**  
Triclopyr (Garlon 4, Remedy): cut-stump treatment or basal bark treatment (summer to fall).  
Glyphosate (Rodeo – approved aquatic label): cut-stump treatment (summer to fall).  
Tricloypr (Garlon 4, Remedy) + Aminopyralid (Milestone): broadcast foliar treatment – apply when plants are growing rapidly (May to September).  
**Cultural Control:** Reseed with native seed mix or revegetate with willow stakes or other shrubs. |

1. **List A** Species in Colorado that are designated by the Commissioner for eradication.  
2. **List B** Species are species for which the Commissioner, in consultation with the state noxious weed advisory committee, local governments, and other interested parties, develops and implements state noxious weed management plans designed to stop the continued spread of these species.  
3. **List C** Species are species for which the Commissioner, in consultation with the state noxious weed advisory committee, local governments, and other interested parties, will develop and implement state noxious weed management plans designed to support the efforts of local governing bodies to facilitate more effective integrated weed management on private and public lands.

*Dicamba may injure woody plants.  
Glyphosate may be used in riparian areas  
2,4-D and Transline should not be used in riparian areas or near water. Picloram is persistent in the soil and should not be used in areas to be re-seeded.*

### CONSTRUCTION REQUIREMENTS

Section 217.03 shall include the following:

The Contractor shall comply with the following best management practices in all construction areas to prevent the spread of noxious weeds and minimize potential effects from treatment:

- Minimization of soil disturbance to the greatest extent possible
- Clean all construction-related equipment thoroughly before off-loading at the project site and after working with weed-contaminated soils
- Coordination of weed management efforts with adjacent landowners to the extent possible
- Avoidance of non-target injury to passing pedestrians and motorists, adjacent native plant communities, landscaping, sensitive wildlife habitat (prairie dogs), and nearby beekeeping operations (if present)
- Herbicides can be used immediately adjacent to wetlands, riparian areas, and/or water bodies only if the label indicates its use is appropriate for such areas
- Application of herbicides immediately adjacent to active prairie dog colonies will not be permitted
- Noxious weeds observed in and near the construction area will be treated with herbicides or mechanically removed prior to the start of construction to minimize spread
• Monitor all areas treated for noxious weeds during construction and re-treat, if necessary, to prevent re-establishment of noxious weeds

Delete the last paragraph in Subsection 217.03, “Herbicides shall not be…”

METHOD OF MEASUREMENT

Delete Subsection 217.04 and replace with the following:

Herbicide Treatment shall be measured by the number of person-hours required to apply herbicide, as approved by the Engineer.

Mechanical control shall be included in the cost of Clearing and Grubbing.

Seeding shall be included in the cost of 212 Seeding (Native).

BASIS OF PAYMENT

Section 217.05 shall include the following:

Payment shall be made under:

<table>
<thead>
<tr>
<th>Pay Item</th>
<th>Pay Unit</th>
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</thead>
<tbody>
<tr>
<td>Herbicide Treatment</td>
<td>Hour</td>
</tr>
</tbody>
</table>
Section 240 is hereby added to the Standard Specifications for this project as follows:

**DESCRIPTION**

240.01 This work consists of protecting migratory birds during construction work on structures.

**MATERIALS AND CONSTRUCTION REQUIREMENTS**

240.02 The Contractor shall schedule construction activity, including clearing and grubbing operations and work on structures, to avoid taking (pursue, hunt, take, capture, or kill; attempt to take, capture, kill or possess) migratory birds or their nests protected by the Migratory Bird Treaty Act (MBTA). If construction activity is to occur between February 15 and August 31, then the following specifications must be followed, and the Contractor shall retain a qualified wildlife biologist to determine where nest removal may occur or will be required during construction. The wildlife biologist shall have a minimum of three years’ experience conducting migratory bird surveys and implementing the requirements of the MBTA. The Contractor shall submit documentation of the biologists’ education and experience to the Engineer for acceptance. A biologist with less experience may be used by the Contractor subject to the approval of the Engineer based on review of the biologist’s qualifications. If all construction activities occur after August 31 and before February 15, then the requirements set forth in this specification are not required. In Colorado, most nesting and rearing activities occur between April 1 and August 31, but raptors may nest as early as February 15.

The wildlife biologist shall record the location of each protected nest, bird species, the protection method used, and the date installed. A copy of these records will be submitted to the Engineer.

(A) *Raptor Nest Survey.* A wildlife biologist shall conduct raptor nest surveys within 0.5 mile of the construction site prior to the start of construction and prior to each construction phase. This survey can be done with binoculars or other optics. If construction activities are located within Colorado Parks and Wildlife (CPW) recommended buffer zone for specific raptors, "NO WORK” zones shall be established around active sites during construction according to the CPW standards or as recommended by the wildlife biologist in consultation with CPW. The “NO WORK” zone shall be marked with either fencing or signing. Work shall not proceed within a “NO WORK” zone until the wildlife biologist has determined that the young have fledged or the nest is unoccupied.

(B) *Vegetation Removal.* When possible, vegetation shall be cleared prior to the time when active nests are present. Vegetation removal activities shall be timed to avoid the migratory bird breeding season which begins on April 1 and runs to August 31 (raptors may nest as early as February 15). All areas scheduled for clearing and grubbing between February 15 and August 31 shall first be surveyed by the wildlife biologist within 50 feet of the work limits for active migratory bird nests, including raptors. Contractor personnel shall enter areas to perform surveys only if a written, signed document granting permission to enter the property has been obtained from the property owner. The Contractor shall document all denials of permission to enter property. The Contractor shall avoid all migratory bird nests. The Contractor shall avoid the area within 50 feet of the active nests or the area within the distance recommended by the biologist until all nests within that area have become inactive. Inactive nest removal and other necessary measures shall be incorporated into the work as follows.

1. *Tree and Shrub Removal or Trimming.* Tree and shrub removal or trimming shall occur before February 15 or after August 31 if possible. If tree and shrub removal or trimming will occur between February 15 and August 31, a survey for active nests shall be conducted by the wildlife biologist within the seven days immediately prior to the beginning of work in each area of tree and shrub removal or
trimming. The survey shall be conducted for each phase of any tree or shrub removal or trimming.

If an active nest containing eggs or young birds is found, the tree or shrub containing the active nest shall remain undisturbed and protected until the nest becomes inactive. The nest shall be protected by placing fence (plastic) a minimum distance of 50 feet from each nest to be undisturbed. This buffer dimension may be changed if determined appropriate by the wildlife biologist and approved by the Engineer. Work shall not proceed within the fenced buffer area until the young have fledged, or the nests have become inactive. If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor’s expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges but will be charged as contract time.

2. **Grasses and Other Vegetation Management.** Due to the potential for encountering ground nesting birds’ habitat, if work occurs between April 1 and August 31, the area shall be surveyed by a wildlife biologist within the seven days immediately prior to ground disturbing activities.

The undisturbed ground cover to 50 feet beyond the planned disturbance, or to the right-of-way line, whichever is less, shall be maintained at a height of 6 inches or less beginning April 1 and continuing until August 31 or until the end of ground disturbance work, whichever comes first.

If birds establish a nest within the survey area, an appropriate buffer of 50 feet will be established around the nest by the wildlife biologist. This buffer dimension may be changed if determined appropriate by the wildlife biologist and approved by the Engineer. The Contractor shall install fence (plastic) at the perimeter of the buffer. Work shall not proceed within the buffer until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor’s expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges but will be charged as contract time.

(C) **Work on Structures.** The Contractor shall conduct work on structures in a manner that does not result in a taking of migratory birds protected by the Migratory Bird Treaty Act (MBTA). The Contractor shall not conduct the work on structures during the primary birding season, April 1 through August 31, unless the Contractor takes the following actions:

1. The Contractor shall remove existing inactive nests prior to April 1.
2. During the time that the birds are trying to build or occupy their nests, between April 1 and August 31, the Contractor shall monitor the structures at least once every three days for any nesting activity.
3. If the birds have started to build any nests, the nests shall be removed before they are completed. Water shall not be used to remove the nests if nests are located within 50 feet of any surface waters.
4. Installation of netting may be used to prevent nest building. The netting shall be monitored and repaired or replaced as needed. Netting shall consist of a mesh with openings that are ¾ inch by ¾ inch or less.

If an active nest becomes established, i.e., there are eggs or young in the nest, all work that could result in abandonment or destruction of the nest shall be avoided until the young have fledged or the nest is unoccupied as determined by the Contractor’s biologist and approved by the Engineer. The Contractor shall prevent construction activity from displacing birds after they have laid their eggs and before the young have fledged. If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, the Contractor shall remove and properly dispose of netting used on the structure. The taking of a migratory bird shall be reported to the Engineer. The Contractor shall be responsible for all penalties levied by the U. S. Fish and Wildlife Service (USFWS) for the taking of a migratory bird.
METHOD OF MEASUREMENT

240.03 Wildlife Biologist will be full compensation for all work and materials required to complete the item, including wildlife biologist, wildlife survey, and documentation (record of nest location and protection method).

Clearing and grubbing will be measured and paid for in accordance with Section 201. Mowing will not be measured and paid for separately but shall be included in the work. Removal and trimming of trees will be measured and paid for in accordance with Section 202.

Fence needed to protect migratory birds and nests will be measured and paid for in accordance with Section 607.

Netting will be measured by the square yard of material placed to keep birds from nesting on the structure. Square yards will be calculated using the length of netting measured where it is attached to the ground and the average height of the netting where it is attached to the structure.

BASIS OF PAYMENT

240.04 The accepted quantities measured as provided above will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

<table>
<thead>
<tr>
<th>Pay Item</th>
<th>Pay Unit</th>
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</thead>
<tbody>
<tr>
<td>Wildlife Biologist</td>
<td>Hour</td>
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</tbody>
</table>
**REVISION OF SECTION 240**

**PRAIRIE DOG MANAGEMENT**

Section 240 of the Standard Specification is hereby added for this project as follows:

**DESCRIPTION**

240.01 This work may require the passive relocation, active trapping, transporting, donating, and/or euthanizing Black Tailed Prairie Dogs (BTPD). If BTPD trapping and euthanasia is required, then the Contractor shall comply with the CDOT BTPD policy at all times. This policy can be accessed at: http://www.coloradodot.info/programs/environmental/wildlife/guidelines/pdpolicy0109.pdf/view

**MATERIALS**

240.02 The Contractor shall furnish all material and equipment of sufficient type and size to complete the BTPD management.

**CONSTRUCTION REQUIREMENTS**

240.03 The Contractor shall be responsible for ensuring that construction activity is conducted consistent with the 2009 CDOT Impacted Black Tailed Prairie Dog Policy. The Contractor shall have two options available for compliance with that policy (a) passive relocation and (b) live trapping and euthanasia, each of which is described below.

A biological clearance was prepared for the project. The clearance indicates that passive relocation is feasible to mitigate potential impacts to black-tailed prairie dogs. Non-lethal control is the preferred management approach. In the event that Passive Relocation is selected:

(a) **Passive Relocation**

1. This method of Passive Relocation can be used between July 1 and March 15 after the affected area has been determined to be devoid of other state and federally listed species. Employing this technique between August 15 and November 30 is preferred. If these dates conflict with other environmental constraints applied within the prairie dog colony, the other constraints will take precedence, otherwise, CDOT’s prairie dog policy shall be followed:
   
a) No more than 7 days prior to construction, black silt fencing will be installed delineating the construction zone near active prairie dog burrows. All active prairie dog burrows outside this zone shall be avoided. The silt fence will be opaque and a minimum height of 24 inches above ground to create a visual barrier for prairie dogs. The silt fence will be buried a minimum of 12 inches into the soil, or the bottom 12 inches buried within a clean soil berm or anchored with aggregate bags to preclude prairie dogs from going under the fence per M-208-1. Prairie dogs respond to holes where light can pass through the visual barrier by clawing and chewing at the fabric. Therefore, no light passage can be allowed along the bottom edge, along the seams, or as a result of holes in the fabric. Proper installation and subsequent maintenance shall prevent this.

   b) Within the passive relocation zone, blading, disking, manual collapsing with shovel or a similar approach will be used to disturb burrow entrances at a depth of no greater than 6 inches, but not bury any animals within burrows. During burrow filling activities, a 2’-3’ gap in the silt fence will be left open at a seam and facing away from pavement to allow the animals to leave the construction area. Note: If the construction zone abuts the right-of-way,
the gap should then face the asphalt to avoid moving prairie dogs onto adjacent landowner’s property.

c) Biodegradable, nontoxic, organic rodent deterrents can be applied to encourage borrow abandonment, although such application is not required.

d) Twenty-four to forty-eight hours after the soil has been disturbed within the passive relocation zone the area will be monitored once by a qualified biologist (Subject to the approval of the Regional Biologist based on review of the Contractor’s biologist’s qualifications. A resume of the biologist will be submitted to the Engineer at least 10 days prior to the work for approval by the Engineer) for active burrows to ensure the area has been vacated. If any burrows are discovered to have been re-opened they will be filled with enough soil to close the burrow opening by repeating Step B or by hand/shovel, yet still allow any prairie dogs within the burrow to dig their way out. Placing a wad of newspaper in the burrow entrance acts as a temporary plug and holds the fill dirt in place. Active burrows will be determined by a visual inspection of all burrows. Fresh scat, diggings, or burrow repairs indicate active burrows. Any burrows not clearly inactive will be treated as active. Approximately two gallons of dirt is sufficient to close the opening. Dirt in the holes shall remain loose and shall not be tamped or compacted.

e) Repeat this inspection for a minimum of three rounds, or until no burrows within the passive relocation zone shows sign of activity. At which time the gap in the silt fence shall be closed so no light will penetrate the barrier at the seams or at the bottom of the fence.

f) If there are no active burrows within the passive relocation zone, monitoring shall continue daily until construction activities destroy all inactive burrows.

g) If burrows within the passive relocation zone remain, or become, active after the initial three rounds of monitoring, efforts shall be made as soon as practicable to trap the animals and remove them from the passive relocation zone (active relocation).

i. Prior to trapping, the proper permits from city, state, and county agencies shall be obtained.

ii. Trapping shall utilize live traps baited with sweetened rolled oats and placed next to active burrows within the enclosure.

iii. Traps shall be opened from 0600 to 1400 hours.

iv. Traps shall be checked every 4 hours if the temperature is between 32\degree\ and 75\degree\ F. If the temperature is below 32\degree\ or above 75\degree, the traps shall be checked every 2 hours.

v. Upon capture, the prairie dogs shall be immediately released outside of the construction work zone but within suitable habitat.

vi. Trapping shall continue for 2 consecutive days.

h) After 2 consecutive days of trapping humane, lethal control may be used to exterminate the remaining prairie dogs within the enclosure. Only those lethal techniques and methods approved by Colorado Parks and Wildlife shall be utilized.

i) (Optional) Biodegradable, non-toxic, organic rodent deterrents can be applied within the passive relocation zone to encourage burrow abandonment, although such application is not required.

2. If this passive relocation technique has begun prior to March 15, it may continue until completion.

3. Active relocation techniques, per CDOT’s prairie dog policy, shall be followed if construction is scheduled between March 16 and June 30.
4. Variations on the above technique must be approved by the Regional Biologist and the Engineer prior to implementation. The Contractor and BTPD removal specialist shall provide a “BTPD Management Plan” for review to the Engineer at least 7 days prior to passive relocation activities.

In the event that Live Trapping and Euthanasia is selected:

(b) Live Trapping and Euthanizing
1. The Contractor shall hire a state licensed BTPD Removal Specialist to remove the BTPD from the locations disturbed by transportation construction activities.
2. The Contractor and BTPD removal specialist shall provide a “BTPD Management Plan” for review at least 7 days prior to relocation or trapping activities. The plan should include the credentials of the removal specialist, copies of all permits required to complete the work, an outline for how the multiple steps in the CDOT Prairie Dog Policy have been and will be followed, and a detailed plan for the methods and processes to be used in implementing the appropriate management activity.
3. Prior to trapping, the Contractor shall perform all activities required by Colorado Parks and Wildlife (CPW), Colorado Department of Public Health and Environment (CDPHE), US Fish and Wildlife Service (USFWS), and any entity with legal authority.
   a. No more than ten days of consecutive trapping will be permitted.
   b. The Contractor shall obtain and submit all respective permits from Colorado Parks and Wildlife and any other entity with jurisdiction over prairie dog relocation and/or removal.
   c. The Contractor shall contact the following programs one month prior to trapping to determine final acceptance of the BTPD:
      i. USFWS Black Footed Ferret (BFF) Recovery Program in Wellington, Colorado
      ii. Birds of Prey Foundation in Broomfield, Colorado
      iii. Rocky Mountain Raptor Program in Fort Collins, Colorado
4. If possible, trapping shall not occur between April 1 and June 15 to allow newborn BTPD pups time to wean from their mothers.
5. Trapping shall be limited to construction limits within silt fence.
6. If trapping cannot occur between June 16 and March 31, euthanasia of the remaining colony should occur immediately following the trapping efforts (10 day maximum) to minimize undue suffering of unweaned pups.
7. The Contractor shall trap and remove as many BTPD as possible during the 10 day period.
8. Following the 10 day trapping effort, the remaining BTPD will be euthanized onsite prior to ground disturbance by a licensed operator.

Burrowing Owls

(a) A Burrowing Owl (Athene cunicularia) survey will be conducted by a qualified wildlife biologist at all black-tailed prairie dog colonies if construction or prairie dog management activities begins between March 1 and October 31. Surveys shall follow the recommended survey protocol by Colorado Parks and Wildlife (CPW 2020).
(b) If Burrowing Owls are confirmed to be present in the colony one of two options may utilized after coordination with CPW:
   1. No disturbance will be allowed until it can be confirmed that owls have left the area, or
   2. The owl activities within the colony will be carefully monitored and holes/burrows utilized by owls will be marked. When all burrowing owl holes/burrows have been marked, no disturbance will be allowed within 220 yards (660 feet) of the holes/burrows.
METHOD OF MEASUREMENT

240.04 Measurement and Payment
Applying for and obtaining permits, hiring licensed specialists, trapping, transporting, euthanizing, parasite and disease management (including pesticides and other chemicals), surveying and monitoring of burrowing owls, and all other activities necessary to properly passively relocate or remove the BTPD in accordance with all of the requirements of the CDOT BTPD policy will not be measured and paid for separately, but shall be included in the work.

Partial payments for BTPD management will be made according to the following schedule:

- 50% of the bid amount will be paid on the first pay request that work associated with BTPD management is required for construction;
- After 50% of the original contract amount is earned, 75 percent of the bid amount will be paid;
- 100% of the bid amount will be paid on the final pay request upon completion of the management effort.

Payment will be made under:

<table>
<thead>
<tr>
<th>Pay Item</th>
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<tr>
<td>Prairie Dog Management</td>
<td>Lump Sum</td>
</tr>
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</table>
RECOMMENDED SURVEY PROTOCOL AND ACTIONS TO PROTECT NESTING BURROWING OWLS

Western Burrowing Owls (Athene cunicularia hypugaea) are commonly found in prairie dog towns throughout Colorado. Burrowing owls require prairie dog or other suitable burrows (e.g. badger, Wyoming ground squirrel) for nesting and roosting. Western burrowing owls breed throughout the western United States, southern Canada, and northern Mexico and winter in the southern United States and throughout Mexico. Colorado’s burrowing owls are mostly migratory but overwintering owls have been documented.

Federal and state laws prohibit the harming or killing of burrowing owls and the destruction of active nests. It is quite possible to inadvertently kill burrowing owls during prairie dog poisoning projects, removal of prairie dogs, destruction of burrows and prairie dogs using a concussive device, or during earth moving for construction. Because burrowing owls often hide in burrows when alarmed, it is not practical to haze the birds away from prairie dog towns prior to prairie dog poisoning/removal, burrow destruction, or construction activity. Because of this, Colorado Parks and Wildlife (CPW) recommends surveying prairie dog towns for burrowing owl presence before potentially harmful activities are initiated.

The following guidelines are intended as advice on how to determine if burrowing owls are present in a prairie dog town, and what to do if burrowing owls are detected. These guidelines do not guarantee that burrowing owls will be detected if they are present. However, adherence to these guidelines will greatly increase the likelihood of detection.

**Seasonal Timing**

Burrowing owls typically arrive on breeding grounds in Colorado in late March or early April, with nesting beginning a few weeks later. Active nesting has been recorded and may be expected from late March through early August. Adults and young may remain at prairie dog towns until migrating to wintering grounds in late summer or early autumn.

Surveys should be conducted during times when burrowing owls may be present on prairie dog towns. Although nesting most commonly occurs March 15th through August 31st, burrowing owls may be present at burrows several months after young have fledged. Therefore, CPW recommends that targeted surveys should be conducted for any activities resulting in ground disturbing destruction or poisoning of burrows between March 15th and October 31st. Note, there is a small chance to encounter burrowing owls in Colorado during the winter. Although CPW does not necessarily recommend surveys between November 1 and March 14, if burrowing owls are known to be present in an area in the winter, CPW’s recommendations apply.

**Daily Timing**

Burrowing owls may be active throughout the day and night; however, peaks in activity in the morning and evening make these the best times for conducting surveys (Conway and Simon 2003). Surveys should be conducted in the early morning (1/2 hour before sunrise until 10:00 am or until the temperature reaches 80 degrees F, whichever is earlier) and early evening (2 hours before sunset until 1/2 hour after sunset).
**Number and locations of survey points**

Burrowing owls are most frequently located visually; thus, obtaining a clear view of the entire prairie dog town is necessary. For small prairie dog towns that can be adequately viewed in their entirety from a single location, only one survey point is necessary. The survey point should be selected to provide unobstructed views (with binoculars if necessary) of the entire prairie dog town (burrow mounds and open areas between) and all nearby structures that may provide perches (e.g., fences, utility poles, etc.). For prairie dog towns that cannot be entirely viewed from a single location because of terrain or size, enough survey points should be established to provide unobstructed views of the entire prairie dog town and nearby structures that may provide perches. Survey locations should be separated by approximately 800 meters (1/2 mile), or as necessary to provide adequate visual coverage of the entire prairie dog town.

**Number of surveys to conduct**

Detection of burrowing owls can be highly variable and multiple visits to each site should be conducted to maximize the likelihood of detecting owls if they are present. At least three surveys should be conducted at each survey point. Surveys should be separated by approximately one week.

**Conducting the survey**

- **Avoid flushing owls prior to initiating survey:** Burrowing owls are very likely to either flush or hide in a burrow if approached at distances closer than 200 m, especially if observers are on foot or ATVs (versus within a vehicle). Therefore, the first survey point should be located outside the prairie dog colony, with observers surveying ahead of their route if it is necessary to enter the colony. If observers must exit their vehicle, they should keep a low profile and recognize that flush distance may increase for observers on foot.

- **Weather Considerations:** Because poor weather conditions may impact the ability to detect burrowing owls, surveys should only be conducted on days with little or no wind (less than 12 mph) and no precipitation or fog.

- **Passive surveys:** Most burrowing owls are detected visually. At each survey location, the observer should visually scan the area with binoculars and then spotting scope, if possible, to detect any owls that are present. Some burrowing owls may be detected by their call, so observers should also listen for burrowing owls while conducting the survey.

Burrowing owls are frequently detected soon after initiating a survey (Conway and Simon 2003). However, some burrowing owls may not be detected immediately because they are inconspicuous, are inside of burrows, or are not present on the site when the survey is initiated. We recommend that surveys be conducted for at least 10 minutes at each survey location.

- **Call-broadcast surveys:** To increase the likelihood of detecting burrowing owls, if present, we recommend incorporating call-broadcast methods into burrowing owl surveys. Conway and Simon (2003) detected 22% more burrowing owls at point-count locations by broadcasting the primary male (coo-coo) and alarm (quick-quick-quick) calls during surveys. Although call-broadcast may increase the probability of detecting burrowing owls, most owls will still be detected visually.
We recommend the following 10-minute timeline for incorporating call-broadcast methods (Conway and Simon 2003, C. Conway pers. comm.). The observer should scan the area for burrowing owls during the entire survey period. If the intent is to document which burrows are used for nesting, the initial silent period may need to be lengthened so that observers have the opportunity to note as many owl spatial locations as possible before playing calls (owls may move in response to calls).

- 3 minutes of silence
- 30 seconds call-broadcast of primary call (*coo-coo*)
- 30 seconds silence
- 30 seconds call-broadcast of primary call (*coo-coo*)
- 30 seconds silence
- 30 seconds call-broadcast of alarm call (*quick-quick-quick*)
- 30 seconds silence
- 4 minutes of silence

Calls can be broadcast from cell phone or mp3 player attached to amplified speakers. Calls should be broadcast loudly, but without distortion. Recordings of this survey sequence (mp3) are available for download at: [https://cpw.state.co.us/conservation/Pages/CON-Energy-Land.aspx](https://cpw.state.co.us/conservation/Pages/CON-Energy-Land.aspx)

Note: The mp3 download includes a 6-minute survey sequence (3 passive (silent) minutes followed by 3 minutes of calls) and should then be followed by 4 additional minutes of passive survey.

- **Burrow Searches**: If owls are detected in the area, surveyors should search areas that the owls are using to document the nest burrows as well as other actively used burrows. Nest burrows generally have dung lining the entrance of the burrow, with prey remains and collected materials outside the entrance. Nest burrows may have whitewash and regurgitated pellets visible, or they may be visible at a more prominent perch location nearby. Also, note that if owls flush from the nest burrow, they may return to the general area, but often will not return to the specific nest burrow when an observer is present. Example photos of nest burrows are available at: [https://cpw.state.co.us/conservation/Pages/CON-Energy-Land.aspx](https://cpw.state.co.us/conservation/Pages/CON-Energy-Land.aspx)

**Identification**

Adult burrowing owls are small, approximately 9-11 inches. They are brown with white spotting and white barring on the chest. They have long legs in comparison to other owls and are frequently seen perching on prairie dog mounds or other suitable perches (e.g., fence posts, utility poles) near prairie dog towns. Juvenile burrowing owls are similar to adults but have a white/buff colored chest that lacks barring.

General information about burrowing owls is available from the Colorado Parks and Wildlife website:

[https://cpw.state.co.us/learn/Pages/SpeciesProfiles.aspx](https://cpw.state.co.us/learn/Pages/SpeciesProfiles.aspx)

Additional identification tips and information are available from the Cornell Lab of Ornithology and the U.S. Geological Survey Patuxent Wildlife Research Center websites below:

[https://www.allaboutbirds.org/guide/Burrowing_Owl/overview](https://www.allaboutbirds.org/guide/Burrowing_Owl/overview)
What To Do If Burrowing Owls Are Present

If burrowing owls are confirmed to be nesting in a prairie dog town (or other suitable burrow), there are two options before proceeding with planned activities:

1. Wait to initiate activities until after October 31st or until it can be confirmed that the owls have left the prairie dog town. Although burrowing owls may not be actively nesting during this entire period, they may be present at burrows several months after young have fledged.

2. If burrowing owls are nesting at the site and waiting to initiate activities is not possible, carefully monitor the activities of the owls, noting and marking which burrows they are using in order to document the nesting burrow. This is not easy to accomplish and will require considerable time, as the owls may use several burrows in a prairie dog town, and their activity footprint spreads as juvenile owls age and begin to use areas farther from the nest. When all active burrowing owl burrows have been located and marked, surface activity can proceed in areas greater than 660 feet (200 meters) from the nest burrow. Activity closer than 660 feet may endanger the owls. If possible, avoid the satellite use burrows as well. If the actual nest burrow cannot be determined, then buffer the entire group of burrows in use. **NOTE: For large industrial disturbances (e.g. drilling rigs, residential construction, etc.), CPW recommends a larger buffer of ¼ mile (1320 feet, 400 meters) from the nest burrow.** CPW recommends no surface disturbance within nesting buffers from March 15th through August 31st.

3. If the planned activity includes active poisoning or killing of prairie dogs (or ground squirrels) or ground-disturbing destruction of burrows, CPW recommends delaying activities until after it can be confirmed that the owls have left the prairie dog colony. CPW recommends surveys of prairie dog towns March 15th through October 31st to confirm absence of burrowing owls.

**Reference**


*revised 04/06/2021*
RECOMMENDED BUFFER ZONES AND SEASONAL RESTRICTIONS FOR COLORADO RAPTORS (2020)

OVERVIEW

Colorado Parks and Wildlife (CPW) is routinely asked for recommendations on ways to avoid and minimize disturbance to nesting, wintering, and resident raptors in Colorado. These guidelines were originally developed by Colorado Division of Wildlife in 2002 and updated in 2008. We recently (2020) undertook a periodic review of our guidelines to ensure that they are the most up to date based on the best available science and professional judgement. Further revisions of this document may become necessary as additional information is published or becomes available.

Background on Disturbance

The term "disturbance" is ambiguous and experts disagree on what actually constitutes a disturbance. Reactions may be as subtle as elevated pulse rate or as obvious as vigorous defense or abandonment of a nest site. Impacts of disturbance may not be immediately evident. A pair of raptors may respond to human intrusion by defending the nest, but well after the disturbance has passed, the male may remain in the vicinity for protection rather than forage to feed the nestlings. Golden eagles rarely defend their nests, but merely fly a half mile or more away and perch and watch. Chilling and overheating of eggs or chicks and starvation of nestlings can result from human activities that appeared not to have caused an immediate response.

Tolerance limits to disturbance vary among as well as within raptor species. As a general rule, Ferruginous Hawks and Golden Eagles respond to human activities at greater distances than do Ospreys and American Kestrels. Some individuals within a species also habituate and tolerate human activity at a proximity that would cause the majority of the group to abandon their nests. Other individuals can become sensitized to repeated encroachment and react at greater distances. The tolerance of a particular pair may change when a mate is replaced with a less tolerant individual and this may cause the pair to react to activities that were previously ignored. Responses will also vary depending upon the reproductive stage. Although the level of stress is the same, the pair may be more secretive during egg laying and incubation and more demonstrative when the chicks hatch. Recognizing that there is individual variability, the buffer areas and seasonal restrictions suggested here reflect an informed opinion that if implemented, should assure that the majority of individuals within a species will continue to occupy the area. Also, in order to allow for individual variability and renesting pairs, CPW recommends seasonal restrictions continue to be implemented until the chicks have fledged. Other factors such as intervening terrain, vegetation screens, and the existing cumulative impacts of activities should also be considered.

A ‘holistic’ approach is recommended when protecting raptor habitats. While it is important for land managers to focus on protecting nest sites, attention should also focus on defining important foraging areas that support the pair's nesting effort. Hunting habitats of many raptor species are extensive and may necessitate interagency cooperation to assure continued nest occupancy. Unfortunately, basic knowledge of habitat use for individual nesting pairs is often lacking.
RECOMMENDED BUFFER ZONES AND SEASONAL RESTRICTIONS

CPW recommends consultation with local CPW staff early in the planning phase of project proposals in order to assess and develop site-specific recommendations based on pre-existing conditions (e.g., existing development, topography, vegetation, and line-of-sight to nest). CPW maintains a leadership role with respect to raptor management in Colorado; however, it is important to keep in mind that the primary authority for the regulation of take and the ultimate jurisdiction for most of these species rests with the U.S. Fish and Wildlife Service (USFWS) under the Migratory Bird Treaty Act (16 U.S.C. 703-712) and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668e). Therefore, CPW also recommends early consultation with the U.S. Fish and Wildlife Service to comply with the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and the 2016 U.S. Fish and Wildlife Service Eagle Permits Rules as applicable (USFWS 2016).

BALD EAGLE

Nest Site: No Surface Occupancy (NSO) beyond that which historically occurred, within ¼ mile (1320 feet, 400 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nest sites from December 1 through July 31. The majority of bald eagle chicks in Colorado have fledged by July 31; however, for late-nesting or potential re-nesting bald eagles, CPW recommends seasonal restrictions beyond July 31 if chicks are still present in the nest. CPW’s recommended buffer is more extensive than the National Bald Eagle Management Guidelines (USFWS 2007) due to the generally open habitat used by Colorado’s nesting bald eagles.

If surface occupancy cannot be avoided within ¼ mile of the nest AND the nest is located within a Highly Developed Area, then the recommended NSO extends ⅛ mile (660 feet, 200 meters) from the nest site. No permitted, authorized, or human encroachment activities within ¼ mile radius of active nests from December 1 through July 31. This buffer recommendation matches the USFWS 2007 Guidelines in the instances where eagles have demonstrated the ability to tolerate previous levels of human encroachment and surface occupancy.

Winter Night Roost and/or Communal Roost: No permitted, authorized, or human encroachment activities within ¼ mile (1320 feet, 400 meters) radius of an active night and/or communal roost from November 15 through March 15 if there is no direct line of sight between the roost and the activity. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of an active night or communal roost from November 15 through March 15 if there is a direct line of sight between the roost and the activity. Note: Communal roosts are relatively rare in Colorado and have disproportionately high biological value. Therefore, a reduced buffer within a Highly Developed Area does not apply to communal roosts.

If periodic visits (such as oil well maintenance work) to preexisting facilities are required within the buffer zones described above, activity should be restricted to the period between 1000 and 1400 hours from November 15 to March 15.
GOLDEN EAGLE

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ¼ mile (1320 feet, 400 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nests from December 15 through July 15.

FERRUGINOUS HAWK

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ½ mile (2640 feet, 800 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nests from February 1 through July 15. This species is especially prone to nest abandonment during incubation if disturbed.

RED-TAILED HAWK

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ⅓ mile radius of active nests. No permitted, authorized, or human encroachment activities within ⅓ mile radius of active nests from February 15 through July 15. Some individuals of this species have adapted to urbanization and may exhibit a high tolerance to human habitation and activities within 100 yards of their nest. Development that encroaches on rural nest sites is more likely to cause abandonment.

SWAINSON'S HAWK

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ¼ mile (1320 feet, 400 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ¼ mile (1320 feet, 400 meters) radius of active nests from April 1 through July 31. Some members of this species have adapted to urbanization and may tolerate human habitation to within 100 yards of their nest.

PEREGRINE FALCON

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ½ mile (2640 feet, 800 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) mile of the nest cliff(s) from March 15 to July 31. Due to propensity to relocate nest sites, sometimes up to ½ mile (2640 feet, 800 meters) along cliff faces, it is more appropriate to designate 'Nesting Areas' that encompass the cliff system and a ½ mile (2640 feet, 800 meters) buffer around the cliff complex.

PRAIRIE FALCON

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ½ mile (2640 feet, 800 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nests from March 15 through July 15.

NORTHERN GOSHAWK

**Nest Site:** No surface occupancy (beyond that which historically occurred in the area) within ½ mile (2640 feet, 800 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800 meters) radius of active nests from March 1 through September 15.
OSPREY

Nest Site: No surface occupancy (beyond that which historically occurred in the area) within ¼ mile (1320 feet, 400 meters) radius of active nests. No permitted, authorized, or human encroachment activities within ¼ mile (1320 feet, 400 meters) radius of active nests from March 15 through August 15. Some osprey populations have habituated and are tolerant to human activity in the immediate vicinity of their nests.

MEXICAN SPOTTED OWL

No surface occupancy (beyond that which historically occurred in the area) within USFWS designated Critical Habitat and within Protected Activity Center (PAC). No permitted, authorized, or human encroachment activities within ½ mile (2640 feet, 800m) buffer of Protected Activity Center from March 1 through August 31.

BURROWING OWL

Nest Site: No permitted, authorized, or human encroachment activities within ⅛ mile (660 feet, 200 meters) of the nest site during the nesting season March 15 through August 31. For large industrial disturbances (drilling rig, residential construction, etc.), no permitted, authorized, or human encroachment activities within ¼ mile (1320 feet, 400 meters) of the nest site during the nesting season March 15 through August 31. Although Burrowing Owls may not be actively nesting during this entire period, they may be present at burrows up to a month before egg laying and several months after young have fledged. Therefore, it is recommended that efforts to eradicate prairie dogs or destroy abandoned towns not occur between March 15 and October 31 when owls may be present. Because nesting Burrowing Owls may not be easily visible, it is recommended that targeted surveys be implemented to determine if burrows are occupied. More detailed recommendations are available in a document entitled “Recommended Survey Protocol and Actions to Protect Nesting Burrowing Owls,” which is available from the CPW.

DEFINITIONS

Active nest – Any nest that is frequented or occupied by a raptor during the breeding season, or which has been occupied in any of the five previous breeding seasons. Many raptors use alternate nests in various years. Thus, a nest site may be active even if a particular structure is not occupied in a given year.

Winter night roost and/or communal roost – Areas where bald eagles and sometimes golden eagles perch overnight or gather to perch or forage. Individuals, pairs, and groups of eagles demonstrate site fidelity to winter night roosts and communal roosts throughout the winter season and year after year. Communal roost sites have more than 15 eagles for the majority of the roosting season and are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. Winter night roost and communal roosts may also serve a social purpose for pair bond formation and communication among eagles.

Permitted, authorized, or human encroachment activities- Any activity that brings humans in the area. Examples include construction activities, oil and gas development and production, driving, facilities maintenance, boating, trail access (e.g., hiking, biking), etc.

Surface Occupancy – Any physical object that is intended to remain on the landscape permanently or for a significant amount of time. Examples include houses, oil and gas wells, tanks, wind turbines, solar developments, roads, tracks, trails, etc.
Highly Developed Area – An area where existing density from the cumulative development of oil and gas facilities, home sites, subdivisions, commercial buildings, malls, apartment complexes, gravel pit operations, etc. exceed 10 or more daily occupied facilities within a ¼ mile (1320 feet, 400 meters) radius of the nest. Determination of whether or not a nest site is within a highly developed area will be done in consultation with CPW.

Mexican Spotted Owl Critical Habitat – Critical habitat is defined as areas of land and water with physical and biological features that are essential to the conservation of a threatened or endangered species, and that may require special management considerations or protection. Defined by U.S. FWS Final Rule 2004.

Mexican Spotted Owl Protected Activity Center (PAC) – An area established around an owl nest (or sometimes roost) site, for the purpose of protecting that area. Management of these areas is largely restricted to managing for forest-health objectives.

CONTACT

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Email: liza.rossi@state.co.us

REFERENCES


### Recommended Buffer Zones and Seasonal Restrictions Around Raptor Use Sites

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151
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= time period for which seasonal restrictions are in place.
COLORADO
DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS

STANDARD SPECIAL PROVISIONS

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Town of Lochbuie, Weld County