



Request for Proposals

Old Town Parking Structure
Elevator Modernization
(215 E. Mountain Ave., Fort Collins, CO)

LB Project No. R0100065338-001

Issue date:
June 17, 2026

Owner:

Fort Collins, Colorado, Downtown Development Authority
19 Old Town Square, Suite 230
Fort Collins, CO 80524

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I. Introduction

The Fort Collins Downtown Development Authority (DDA) is an economic development organization formed to focus redevelopment efforts into the Fort Collins downtown central business district through the use of tax increment financing. The DDA also sponsors projects that improve the downtown experience adding to the vitality, excitement, activity, vibrancy, diversity and attractiveness of our entire community.

Reinvestment in Downtown Fort Collins has reinforced it as the historic, specialty commercial, cultural and governmental center of the city and Larimer County. Fort Collins is vibrant and successful as a major community center. One of the DDA's earliest investment, in pursuit of this vibrant community, was constructing Old Town Square and the Old Town Parking Structure. The DDA views parking as critical infrastructure and prioritizes keeping these assets maintained.

II. Background & Purpose

The Old Town Parking Structure, located at 215 E. Mountain Avenue, Fort Collins, Colorado, was originally constructed in 1984. It is a precast, prestressed structure that bears on caisson foundation systems. It contains four levels of parking, approximately 326 parking spaces. The headquarters for Poudre Fire Authority (PFA) is adjacent to the garage on the west side of Levels 1 through 3. The floor support system for each parking level is comprised of precast double tees with a three-inch thick cast-in-place concrete topping slab. The precast double tees are supported on precast inverted tee beams and walls at the interior, and precast spandrel beams and walls at the exterior. Stairs are located at the northwest corner and near the southwest corner of the structure. Stairs are comprised of concrete filled metal pan treads and landings supported by steel framing. The elevator that serves the facility is located adjacent to the northwest stair tower. By intergovernmental agreement between the DDA and the City of Fort Collins, the city manages and maintains the Old Town Parking Structure.

This project is a major elevator modernization in an existing building which is open for public business 24/7 and will continue to operate throughout all phases of modernization work. To help manage this project, the Fort Collins Downtown Development Authority entered into a Professional Service Agreement with Lerch Bates, Inc. ("Lerch Bates"), to provide elevator consulting services. The documents prepared for this Request for Proposal have been primarily prepared by Lerch Bates and the firm will be assisting throughout the modernization project. Lerch Bates may be referred to in this RFP and attached documents as the "Engineer" or the "Consultant". The City of Fort Collins Operation Services Project Manager will also be assisting in the oversight management of the modernization project.

Project Priorities and Goals:

The following conditions have been identified as priorities for the elevator modernization and listed below:

1. Minimize the impact to the users of the parking structure by completing the modernization work during lower volume months (January-March)
2. Develop a construction plan that allows the stairs, within the elevator tower, to remain open during the modernization project.
3. Complete the project on time and within budget.
4. Work cooperatively with Poudre Fire Authority, the sole commercial tenant of the building.
5. Work cooperatively with the City of Fort Collins who manages and maintains the Old Town Parking Structure facility.

III. Scope of Work

Refer to the attached Project Specifications prepared by Lerch Bates dated May 8, 2026, and other Contract Documents attached to this RFP

IV. RFP Schedule

- Release of Request for Proposal: June 17, 2026
- Pre-Bid Meeting (**Mandatory**): June 24, 2026

- Meeting Location and time:
 - Location: 215 E. Mountain Ave., Fort Collins, CO 80524
 - Time: 9:30 a.m.

- Final Day for Questions: (RFI): July 1, 2026 (5:00pm, MST)
- Final Addendum Issued: July 2nd
- **Proposals/Bids Due:** **July 16, 2026 (5:00 p.m., MST)**
- Interviews: Week of July 27 - July 31
- *Notice of recommended award:* *By August 6th*
- Staff Recommendation to DDA Board: August 13, 2026
- Notice to Proceed: August 20, 2026

After the selection process is complete, the DDA anticipates construction to begin on January 4, 2027, and continue through March 26, 2027, with substantial completion achieved by March 12, 2026.

V. Instructions to Bidders

A. Bid Form

1. The DDA and Lerch Bates request your firm to submit a bid for the modernization of:
 - i. One (1) hydraulic passenger elevator, Car 1.
2. Bids shall include:
 - i. All engineering, labor, materials, transportation, services, and equipment necessary and reasonably incidental to perform work required by the Contract Documents.
 - ii. Warranty preventive maintenance.
 - iii. Alternates identified in the Bid Form.
3. Bids must be submitted on form attached to this RFP, entitled "Bid Form/Quotation Form - Section 00 31 00" ("Bid Form"). Bids shall be subject to all requirements of the site conditions, the Project Specifications, and other attached Contract Documents. All blank spaces and questions on the Bid Form must be completed and/or responded to.
4. If bidder desires to furnish items different from specified, bidder shall submit substitution as

an alternate quotation. Bidder shall supply Lerch Bates with information in regard to proposed substitution of components or materials. Lerch Bates shall decide whether the bidder's proposed substitution is equivalent to that specified. Deviation from requirements of Contract Documents shall be stated, in writing, in bidder's transmittal letter submitted with the Bid Form.

5. No oral explanation will be made, and no oral instructions will be given before the bid due date. Bidder shall act promptly and allow sufficient time for Lerch Bates to reply before submission of a bid. Any required interpretation or supplemental instructions will be issued in the form of an addendum to the specifications and forwarded to all bidders.
6. Bids must cover everything necessary for and incidental to the satisfactory completion of work required by Contract Documents. All required preparations, hoisting and movement of new equipment, reused equipment, or removal of existing equipment shall be the responsibility of bidder.
7. All bids shall be firm. Escalation will not be permitted if contract is awarded within sixty (60) days from bid due date.
8. If award is deferred beyond sixty (60) days, bidder's bid shall be subject to adjustment to reflect changes in the cost of labor and material.
9. Note that the DDA has elected to transfer modernized unit to an existing maintenance provider after 12-month warranty expires.

B. Transmittal Letter

Bidders must submit the following information in addition to the Bid Form. The information listed below is in no specific order of importance or organization.

1. Provide an original, signed cover letter from the firm's owner/president identifying your interest and desire to work on this project.
2. Qualifications of your firm and proposed staff, as well as key subcontractors identified to perform work on this project.
3. A list of similar renovation projects your firm has completed in the last 24 months. Please provide at least three (3) complete references with full contact information. The DDA will contact one or more of your references as part of the selection process.
4. Provide a list and value of the firm's current projects under construction and pending backlog of projects. Describe how the Old Town Parking Structure Elevator Modernization project fits within your backlog.
5. Discuss your project approach including how you would maintain public stair access to the garage while performing the work. The stairs are expected to remain open 24/7 except for momentary closures for necessary safety precautions.
6. Provide your company's Experience Modification Rate (EMR) safety rating score.

7. Discuss your willingness to enter into the attached Agreement and list any exceptions your firm may have to the Agreement, the General Conditions, Supplementary Conditions, or other of the attached Contract Documents.

C. Submittal Details

Submittals must be in PDF form and will be received until 5:00 p.m. MST on July 16, 2026, identified as follows:

Email to:

Derek Getto
Project Manager for Policy and Programs
DGetto@fcdda.com

CC:

Randy Booher
Consultant
Randy.Booher@LerchBates.com

Matthew Perlinger
Project Manager
Matthew.Perlinger@LerchBates.com

Email Subject Line:

Old Town Parking Structure ELEVATOR MODERNIZATION

Attached Document File Names Must

Include:

Old Town Parking Structure -
R01000065338

All Document Cover Pages Must Include:

ELEVATOR MODERNIZATION
Old Town Parking Structure
215 E. Mountain Avenue, Fort Collins, Colorado

Attention:

Derek Getto
Project Manager for Policy and Programs
Downtown Development Authority

D. Examination

1. To discover and resolve conflicts or lack of definition which might create problems, bidder must review the Project Specifications and other Contract Documents, the existing site conditions, and existing equipment specified to be retained for compatibility with its product

prior to submitting a bid. Site review shall include, but not be limited to:

- i. Adequacy of access along the entire path of required material movement and at equipment installation locations.
 - ii. Retained equipment.
 - iii. Elevator hoistways.
 - iv. Pits.
 - v. Machine rooms and spaces.
 - vi. Controller rooms and spaces.
 - vii. Overhead clearances.
 - viii. Electrical power characteristics.
 - ix. Structural supports.
2. Investigation and structural calculations required to determine compliance of existing elevator components, including machine support beams, with ASME A17.1, Rule 8.7.2.15.2 are the responsibility of bidder.
 3. If bidder is in doubt as to the meaning of any requirement included in the Contract Documents, they shall contact Lerch Bates in writing for clarification at least five working days prior to bid due date.
 4. Compliance with all provisions of Contract Documents is assumed and required in absence of written exception.
 - i. The DDA will not pay for change to building structure, structural supports, mechanical, electrical, or other systems required to accommodate bidder's equipment.
 - ii. Provide notification of exceptions no less than ten (10) days prior to submittal of a bid.
 5. Submission of a bid is considered evidence that bidder:
 - i. Has visited the site facilities and was allowed adequate time and access to comply with D.1 and D.2 above.
 - ii. Is conversant with the site facilities, site conditions, requirements of the Contract Documents, pertinent state and local codes, state of labor and material markets, and has made due allowance in their bid for all contingencies.
 - iii. Bidder shall contact Lerch Bates for clarification at least ten working days prior to the bid due date if bidder's investigation of site conditions or local code reveals:
 - Code requirements contrary to Contract Documents; or
 - Any discrepancies or omissions from Contract Documents.

VI. Selection Criteria and Method

Attached to this RFP is the Selection Criteria to be used during bid evaluation. The DDA reserves the right to accept or reject any proposal and waive any irregularities or informalities presented in the proposals received.

VII. Terms and Conditions

1. Contract Price. The payment for scope of work provided shall be a **stipulated sum, not-to-exceed amount**. Any changes in scope to the original contract will be treated as a negotiated change order to the contract.
2. Contract Security. Payment and performance bonds will be required, per the General Conditions contained within the Contract Documents.
3. Liquidated Damages. In the amounts set forth in the Agreement contained within the Contract Documents.
4. Retainage. 5%, as set forth in the Agreement contained within the Contract Documents.
5. DDA - Tax Exempt Status. The DDA is exempt from Colorado sales and use taxes on materials and equipment to be incorporated into the work. Such taxes shall not be included in the contract price.
6. Collusive or Sham Bids. Any bid deemed by the DDA, in its sole discretion, to be a collusive or sham bid will be rejected and report to the authorities as such. Your authorized signature of a bid assures that such bid is genuine and is not a collusive or sham bid.
7. Colorado Open Records Act. The DDA is a governmental entity subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 et seq. ("CORA"), which generally permits the public to access most records and documents held by the DDA. Any proposals submitted hereunder may be subject to public disclosure pursuant to CORA. All executed Contract Documents resulting from this RFP will be public information.

BID FORM

PROJECT: Old Town Parking Structure Elevator Modernization, LB Project No. R0100065338-001

BID OPENING: 19 Old Town Square, Suite 230, Fort Collins, CO 80524

1. In compliance with the Request for Proposals, released on June 17, 2026, and subject to all conditions thereof, the undersigned Contractor proposes to furnish and do everything required by the Contract Documents to which this refers for the construction of all items listed on the following Quotation Form – Section 00 31 00 (the “Bid”).
2. The undersigned Contractor does hereby declare and stipulate that this Bid is made in good faith, without collusion or connection with any other person or persons bidding for the same Work, and that it is made in pursuance of and subject to all the terms and conditions of the Request for Proposals and Instructions to Bidders, the Project Specifications, Agreement, General Conditions, Supplementary Conditions, and other Contract Documents, pertaining to the Work to be done, all of which have been examined by the undersigned.
3. All the various phases of Work enumerated in the Contract Documents with their individual jobs and overhead, whether specifically mentioned, included by implication or appurtenant thereto, are to be performed by the Contractor under one of the items listed in the Bid, irrespective of whether it is named in said list.
4. Payment for Work performed will be in accordance with the Bid, subject to changes as provided in the Contract Documents.
5. The undersigned Contractor hereby acknowledges receipt of Addenda No. _____ through _____.

SECTION 00 31 00 – QUOTATION FORM

DATE: _____

PROJECT: Old Town Parking Structure Elevator Modernization, LB Project No. R0100065338-001

SUBMITTED BY: _____

Name of CONTRACTOR

CONTRACTOR'S Representative Telephone Number

Street Address

City State Zip Code

1.1. CONTRACTOR'S BASE QUOTATION

1. Having examined the Project Specifications prepared by Lerch Bates, Inc., dated May 8, 2026, and the other Contract Documents, and having reviewed site conditions, applicable codes and all conditions affecting and governing the work, the undersigned Contractor hereby offers to provide all engineering, labor, materials, transportation, services, and equipment necessary and incidental to properly execute required work of the Contract Documents:

ITEM #	SCOPE AND SECTION #	UNIT ID'S	AMOUNT IN DOLLARS
1	Hydraulic Passenger Elevator 14 24 01	1	\$
2	Related Work		\$

Total of Items 1-2 Above: \$ _____

In Words: _____

2. Maintenance:

- i. Twelve-Month Warranty Preventive Maintenance: Amount included in base quotation Item A. above.

WARRANTY MAINTENANCE			
Unit Type	Unit ID's	\$/Unit/Month	Total \$/Month
Hydraulic Elevators	1	\$	\$

Total Monthly Warranty Maintenance: \$ _____ Per Month

NOTE: Owner reserves the right to pay warranty maintenance cost in a lump sum or on a monthly basis during period maintenance is actually performed.

- 3. Labor Rates for Modernization Work Not Included in Contract Scope: Provide hourly labor rates below for work not included in the Contract scope, and for overtime labor not in the Contract scope, requested by Owner. Provide the total hourly billing rate in each column.

HOURLY BILLING RATES				
Labor Rate Level	1.0	1.5	1.7	2.0
Mechanic	\$	\$	\$	\$
Apprentice	\$	\$	\$	\$
Team	\$	\$	\$	\$

- 4. Enter a cost figure for all pricing requested. Failure to comply may result in quotation disqualification.
- 5. Undersigned affirms that quotations provided represent entire cost including site conditions, code requirements, drawings, specifications, addenda, and any other Contract Documents, and no claim will be made due to any increase in wage scales, material prices, taxes, insurance, cost indexes or any other factors affecting the construction industry or this project except as expressly allowed in Owner's maintenance contract

1.2. PROPOSED MODERNIZATION INSTALLATION SCHEDULE

- 1. Undersigned Contractor submits the following completion schedule for project. Bidders are instructed to add additional rows to the following schedule grid to accommodate job specific phasing.

PHASE	DESCRIPTION	DURATION IN WEEKS
1	On Site Surveys	
2	Engineering and Submittal Preparation	
3	Lerch Bates and Owner Submittal Review	
4	Equipment Fabrication and Shipping	
5	Mod Installation Duration	
6	Final Testing and Adjusting	
7	Final Acceptance Inspections (AHJ)	
8	Total Project Duration	

1.3. CONTRACTOR PROPOSED MODERNIZATION COMPONENTS AND TECHNOLOGY

1. Undersigned Contractor will utilize the following modernization technology for the projects and submits these systems for approval. Upon acceptance of these systems by Owner/Engineer, no substitutions shall be made without written approval of Engineer.

Modernization Systems and Components	Proposed Model Description/Vendor
Hydraulic Power Unit	
Controls	
Door Operator	
Infrared Door Edge	
Fixtures	
Cab Interior	
Door Panels/Entrances	

1.4. CONTRACTOR'S LIST OF SUBCONTRACTORS

1. The undersigned Contractor will utilize the following subcontractors for major components of work and submits these firms for approval. Upon acceptance of these subcontractors by Owner/Engineer, no substitutions shall be made without written approval of Engineer.

Subcontractor Name	Scope of Work/Estimate Percentage of Project

1.5. SUBMISSION AND ACCEPTANCE OF QUOTATIONS

1. Undersigned Contractor agrees to Owner’s right to reject any and all quotations without explanation.
2. Undersigned Contractor declares that preparation and submission of quotations herein contained do not obligate Owner or Engineer in any way.
3. Undersigned Contractor agrees and understands that Owner assumes no obligation to enter into a Contract.

1.6. ALTERNATES

1. State net sum to be added to or deducted from Stipulated Sum (Base Quotation) in event any Alternate Quotation is accepted.
2. Submit Alternate Quotations by filling in blank spaces provided herein.
3. Owner reserves right to accept or reject any or all Alternates.
4. Provide lump sum price for all alternates as described below and in Section 01 03 00, Alternates and Allowances.

ALTERNATES			
Alternate Number	Alternate Description	Cost Impact Use () for deduct	Schedule Impact in Weeks Use () for duration reduction
1	Replace hydraulic jack assembly	\$	

ALTERNATES			
Alternate Number	Alternate Description	Cost Impact Use () for deduct	Schedule Impact in Weeks Use () for duration reduction
2	Provide pricing to provide HVAC on the cab, if required by AHJ. (Car heating and air conditioning unit and evaporator.)	\$	

1.7. CONTRACTOR SIGNATURE

DATE: _____

SIGNED: _____

PRINT NAME: _____

TITLE: _____

NAME OF FIRM: _____

STATE LICENSE No.: _____

LEGAL ADDRESS: _____

- ORGANIZED AS (MARK ONE): INDIVIDUAL
 PARTNERSHIP UNDER STATE LAW OF [STATE]
 LIMITED LIABILITY COMPANY UNDER STATE LAW OF [STATE]
 CORPORATION UNDER STATE LAW OF [STATE]

TELEPHONE: _____

EMAIL: _____

Selection Criteria

Contractors will be evaluated on the following criteria.

The rating scale shall be from 1 to 5, with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating.

SCORE	WEIGHTING FACTOR	QUALIFICATION	STANDARD
	2.5	Qualifications of Firm and Personnel	Has the Contractor performed similar modernization projects in open, public spaces? Are their subcontractors qualified to perform the same? Is their assigned personnel qualified for the project?
	2.0	Project Approach	Does the Contractor understand the project goals and outcomes for this project? Does their written approach and schedule match these outcomes?
	1.0	Safety	Does the Contractor have a good safety record? Is it reasonable for this industry and type of work?
	2.5	Availability	Does this project fit well into the Contractor's and subcontractor's backlog? Can the Contractor perform the work in the prescribed timeframe?
40			Total Score Possible

Scores shall be summed and averaged based on the total number of evaluators used in the selection. The summed, average score will then be used in the overall selection to calculate a final score. Qualifications are ranked as 40% of the total selection while cost is 60%.

Final qualifications score example:

$$\text{Final Score} = \frac{\text{Highest Ranked Firm Average Score}}{\text{Highest Ranked Firm Average Score}} \times 40 \text{ points available}$$

$$\text{Final Score} = \frac{\text{Second Ranked Firm Average Score}}{\text{Highest Ranked Firm Average Score}} \times 40 \text{ points available}$$

$$\text{Final Score} = \frac{\text{Third Ranked Firm Average Score}}{\text{Highest Ranked Firm Average Score}} \times 40 \text{ points available}$$

and so on.

Bids will be evaluated according to the following scoring system. Basis of evaluation of the final price score is the base bid exclusive of additive or deductive alternates.

Final cost score example:

$$Final\ Score = \frac{Lowest\ Price\ Proposal}{Lowest\ Price\ Proposal} \times 60\ points\ available$$

$$Final\ Score = \frac{Second\ Lowest\ Price\ Proposal}{Lowest\ Price\ Proposal} \times 60\ points\ available$$

$$Final\ Score = \frac{Third\ Lowest\ Price\ Proposal}{Lowest\ Price\ Proposal} \times 60\ points\ available$$

and so on.

Evaluation Matrix:

Firm	Quals Score			Avg. Quals Score	Final Quals Score	Final Price Score	Total Score	Rank
	Evaluator #1	Evaluator #2	Evaluator #3					

The basis of award is the total score as calculated above and summarized in the evaluation matrix.

PROJECT SPECIFICATIONS – OLD TOWN PARKING STRUCTURE ELEVATOR MODERNIZATION

The Project Specifications for the above-referenced project consist of the following sections:

- 01 01 00 DEFINITIONS
- 01 02 00 SUMMARY OF WORK
- 01 03 00 ALTERNATES AND ALLOWANCES
- 01 04 00 PROJECT PROCEDURES
- 01 30 00 SUBMITTALS
- 01 60 00 MATERIAL AND HANDLING
- 01 70 00 FINAL CONTRACT COMPLIANCE REVIEW
- 01 80 00 MAINTENANCE
- 01 90 00 RELATED WORK
- 14 24 01 HYDRAULIC PASSENGER ELEVATOR MODERNIZATION

PREPARED FOR:

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LB Project No. R0100065338-001

ALL DOCUMENTS FURNISHED SHALL REMAIN THE SOLE PROPERTY OF LERCH BATES. LERCH BATES SHALL RETAIN ALL COMMON LAW, STATUTORY, AND OTHER RESERVED RIGHTS, INCLUDING THE COPYRIGHT THERETO. THEY ARE TO BE USED ONLY FOR THIS PROJECT AND ARE NOT TO BE MODIFIED, DISTRIBUTED, OR USED FOR ANY OTHER PROJECT, IN WHOLE OR IN PART, EXCEPT WITH THE WRITTEN AUTHORIZATION OF LERCH BATES. LERCH BATES ACCEPTS NO LIABILITY FOR ANY UNAUTHORIZED USE OR MODIFICATION OF THESE DOCUMENTS.

SECTION 01 01 00 – DEFINITIONS

PART 1 - GENERAL

1.1. DEFINITION OF TERMS

As used in these Project Specifications, the following terms have the following meaning:

- A. ENGINEER refers to Lerch Bates, Inc.
- B. OWNER refers to the Fort Collins, Colorado, Downtown Development Authority.
- C. CONTRACT or CONTRACT DOCUMENTS consists of the Agreement, the Project Specifications, General Conditions, Supplementary Conditions, and other documents identified in Article 9 of the Agreement.
- D. CONTRACTOR refers to the party having a contract with Owner to furnish labor and materials under the Contract Documents.
- E. SUBCONTRACTOR refers to any persons, partners, firm, or corporation having a contract with Contractor to furnish labor and materials for the execution of work required.
- F. MANUFACTURER means either the Original Equipment Manufacturer (OEM) or the principal manufacturer of a component or system. PRINCIPAL MANUFACTURER means the entity who performs, or has had performed on its behalf, the last process of manufacturing a component or system before it is shipped to the Contractor.
- G. RETAIN means, unless otherwise specified, the existing equipment is to be left in place with no alterations and no change in the original manufacturer's designed performance or functionality. Items that are "retained" shall be thoroughly cleaned in place and adjusted to achieve originally designed function.
- H. REFURBISH means, unless otherwise specified, the existing equipment is to be cleaned, repainted, repaired, and parts replaced to put the equipment into a condition to provide the same appearance, performance, and functionality as the equipment provided when it was originally installed. Unless otherwise specified, the scope of replacement of components is limited to those items currently available for purchase as replacement parts from the manufacturer or after-market suppliers approved by the manufacturer.
- I. REUSE means that the Contractor shall carefully remove equipment from the existing installation, avoiding any damage or additional wear. Store in a safe location to maintain equipment in its pre-removal condition. Reinstall and incorporate into the modernized elevator installation using the same procedures and recommendations provided by the manufacturer of the equipment.
- J. INCLUDES or INCLUDING means including the items specified but not limited solely to those items if additional work or components are required to achieve the specified outcome.
- K. Words in the singular shall include the plural whenever applicable or context so indicates.
- L. All technical terms in these Project Specifications are used as defined in the latest edition of American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks ASME A17.1.

END OF SECTION

Section 01 02 00 – Summary of Work

PART 1 - GENERAL

1.1. WORK COVERED BY CONTRACT DOCUMENTS

- A. Modernization of one (1) elevator referenced in the Request for Proposals, including, but not limited to, the following new systems and components:
 - 1. Hydraulic Power Unit.
 - 2. Hydraulic Jack Assembly.
 - 3. Operational Controls.
 - 4. Door Operating Equipment.
 - 5. Signal Fixtures.
 - 6. Car Interior Finishes.
- B. Provide all labor, engineering, tools, transportation, services, supervision, materials, and equipment necessary for and incidental to satisfactory completion of required work as indicated in Contract Documents.
- C. Provide all required staging, hoisting and movement of new equipment, reused equipment, or removal of existing equipment.
- D. Warranty maintenance service.
- E. Prime contracts are defined below, and each is recognized to be a major part of required work to be performed concurrently in close coordination with work of other contractors or Subcontractors:
 - 1. This Contract: Elevator Modernization including associated work included in Section 01 90 00.
- F. Scope of Contract includes, but is not limited to, the following:
 - 1. Coordination, scheduling, and management of work of component suppliers and Subcontractors.
 - 2. Furnish and install equipment as specified, utilizing existing and/or modified hoistways and machine rooms
 - 3. Specific item of required work which cannot be determined to be included in another contract is thereby determined to be included in prime contract.
 - 4. Removal and disposal of any used hydraulic oil or other contaminated lubricants. Comply with all applicable federal, state, and local government requirements for disposal and documentation.

1.2. CONTRACTOR'S DUTIES

- A. Contractor's duties include the following:
 - 1. Provide and pay for labor, materials and equipment, tools, construction equipment and machinery, and other facilities and services necessary for proper execution and completion of required work.
 - 2. Pay for legally required sales, consumer, and state remodel taxes.
 - 3. Secure and pay for required permits, fees, and licenses necessary for proper execution and completion of required work, as applicable at time of quotation due date.

4. Give required notices.
 5. Comply with codes, ordinances, rules, regulations, orders, and other legal requirements of public authorities applicable to performance of required work.
 6. Promptly submit written notice to Engineer of observed variance of Contract Documents from legal requirements.
 7. Enforce strict discipline and good order among employees. Do not employ persons unskilled in assigned task.
- 1.3. WORK SEQUENCE
- A. Construct work in stages.
 1. Description and proposed sequence dates are as listed on Quotation Form Section 00 31 00.
- 1.4. WORKING HOURS
- A. Unless otherwise stated below or elsewhere in the Contract Documents, Contractor shall have access to the building for work activities during the following regular building operating hours:
 1. Monday-Friday 6:00AM-4:30PM
 - B. Contractor shall perform all work that has the potential to result in any of the following conditions outside of regular building operating hours, which hours shall be at the reasonable discretion of the Owner, at no additional cost to the Owner (the Contractor shall anticipate and schedule excessive noise generating procedures and include allowance for same in its quotation and schedule):
 1. Interruptions or changes in normal group automatic operation.
 2. Activation of Firefighter's Emergency Operation Phase I.
 3. Activation of Standby Power Operation.
 4. Noise levels more than eighty (80) dBA measured in any occupied or public space.
 5. Transport of large equipment through public or tenant spaces.
 6. Work which would be disruptive during normal business hours, or would be dangerous to building occupant. Examples of such work include, without limitation, saw cutting of concrete, jack hammering, welding, metal cutting, pouring concrete, erecting steel, or hoisting equipment over occupied portions of the building.
- 1.5. CONTRACTOR USE OF PREMISES
- A. Confine operations at site to areas permitted by law, ordinances, permits, Contract Documents, and Owner's specific instructions.
 - B. Do not unreasonably encumber site with materials or equipment. Staging area will be located as directed by Owner.
 - C. Do not load structure with weight that will endanger structure. Coordinate with Owner.
 - D. Assume full responsibility for protection and safekeeping of tools and products stored on or off premises.
 - E. Move stored products which interfere with operations of building or the operations of other trades.

F. Obtain and pay for use of additional storage or work areas needed for operations.

1.6. CONCURRENT MODERNIZATION WORK AND BUILDING OPERATION

- A. This project is a major elevator modernization in an existing building which is open for public business and will continue to operate throughout all phases of required work. It is essential that Contractor give special attention and priority to all matters concerning project safety, protection from dust and loose materials, reduction of noise level, protection from water and air infiltration into building, and maintenance of neat, sightly conditions in and around work areas inside and outside of building. Packaging, scrap materials, and demolition debris shall be promptly removed from building and site on a daily basis.
- B. At all times Contractor shall provide clearly visible warning and directions signs, full height barricades, and hazard-free walking surfaces throughout public area. At all times give special attention to building entrances, exits, and proper safe exiting through work areas as required by law.
1. Barricade design must be approved by client prior to start of modernization work.
 2. Standard folding maintenance barricades are not acceptable.
- C. Contractor shall consult Owner and other contractors of Owner to establish and maintain safe temporary routes, including, but not limited to proper barricades, walking surfaces, lighting, fire protection, exiting, warning, and directional signs, and general protection of persons from all hazards in accordance with OSHA Standards due wholly or partially to its operations.

END OF SECTION

SECTION 01 03 00 – ALTERNATES AND ALLOWANCES

PART 1 - GENERAL

1.1. ALTERNATES

- A. Provide material and labor required for complete execution of accepted Alternates. Include allowance amounts indicated in Contractor’s Base Quotation Section 00 31 00. Comply with all provisions of the Contract Documents.
 - 1. Alternates:
 - a) Alternate 1: Replace hydraulic jack assembly.
 - b) Alternate 2: Provide pricing to provide HVAC on the cab, if required by AHJ. (Car heating and air conditioning unit and evaporator.)

1.2. ALLOWANCES

- A. Elevator Cab Allowances: Include the following allowance amounts in Contractor’s Base Quotation to cover labor and materials (up to the allowance amounts) for the following finished passenger elevators under the elevator car allowance specified herein. Allowance includes furnishing and installing the following:
 - 1. Car wall finishes including trim.
 - 2. Car floor finishes including subfloor and fastening.
 - 3. Car ceiling finishes including lighting, wiring, and coordination of battery-operated emergency lighting.
 - 4. Handrails.
 - 5. Cutouts and other provisions for installing elevator signal equipment in cars.
- B. Hoistway Entrance Allowances: Include the following allowance amounts in Contractor’s Base Quotation to cover labor and materials (up to the allowance amounts) for the following finished passenger elevators under the elevator car allowance specified herein. Allowance includes furnishing and installing the following:
 - 1. Hoistway door finishes including trim.
 - 2. Hoistway frames.
- C. Allowances:

ELEVATOR GROUP AND UNIT IDENTIFICATION	QTY OF UNITS	CAB INTERIOR ALLOWANCE PER UNIT	HOISTWAY ENTRANCE ALLOWANCE PER UNIT	TOTAL ALLOWANCE PER UNIT
Only	1	\$ 30,000	\$ 15,000	\$ 45,000

END OF SECTION

SECTION 01 04 00 – PROJECT PROCEDURES

PART 1 - GENERAL

1.1. APPLICABLE CODES

- A. Compliance with Regulatory Agencies: Comply with most stringent applicable provisions of following Codes, laws, and/or Authorities, including revisions and changes in effect including those referenced herein.

1.2. STAGING AREA

- A. An equipment staging area will be available for use by Contractor. Contractor shall restrict usage to area designated and shall notify Owner/Property Management prior to storing of any large equipment which will impose heavy concentrated loading on floor area. Do not store such equipment until approval is received.

1.3. WORK PHASE

- A. See Section 00 31 00, Quotation Form.

1.4. OCCUPANCY AND WORK BY OTHERS

- A. Contractor expressly affirms Owner's rights to let other contracts and employ other contractors in connection with required work. Contractor will afford other such contractors and their workmen reasonable opportunity for introduction and storage of materials and equipment, for execution of their work, and will properly connect and coordinate its work with theirs. Contractor will also incorporate comparable provisions in all its subcontracts.
- B. Contractor declares that other contractors employed by Owner on basis of separate contracts may proceed at such times as necessary to install items of work required by Owner.
- C. Contractor declares that it will cooperate with other contractors employed by Owner and, in addition to other coordination and expediting efforts, will coordinate their work by written notices regarding necessity of such work to be done on or before certain dates.
- D. Contractor declares that it is responsible for review, stamped, and signed approval of all shop drawings for required work.
- E. Contractor hereby declares that content of foregoing paragraphs and influence they may have on project:
 - 1. Shall not cause a change in stipulated Contract Sum.
 - 2. Shall not cause a change in Construction Time Schedule.

END OF SECTION

SECTION 01 30 00 – SUBMITTALS

PART 1 - GENERAL

1.1. ACTION SUBMITTALS

- A. Within sixty (60) calendar days after award of contract and before beginning equipment fabrication submit field verified existing installation information for review.
- B. Existing Hydraulic Car Information:
 - 1. Existing Total Car Weight:
 - a) Documented on crosshead data tag, all cars.
 - b) Field Verified: weigh single cars and one car per group of each identical duty type.
 - 2. Estimated Gross Load on Jack
- C. Existing Power Confirmation Information: Field verified existing conditions at each main disconnect:
 - 1. Actual maximum available voltage and current.
 - 2. Verify true earth ground value.
- D. Hydraulic Elevator Information: Within forty-five (45) calendar days after award of contract and before beginning equipment fabrication submit planned modernization design information, shop drawings, and required material samples for review. Allow thirty (30) calendar days for response to initial submittal.
- E. Elevator Shop Drawings:
 - 1. Fully Dimensioned Fixture Drawings:
 - a) Car operating panels
 - b) Car floor indicators.
 - c) Hall stations.
 - d) Destination/landing input stations.
 - e) Position indicators.
 - f) Hall lanterns.
 - g) Access key switch.
- F. Cybersecurity:
 - 1. Provide documentation of compliance with ASME A17.1 Item 8.14 CYBERSECURITY.
- G. Written Maintenance Control Program (MCP) specifically designed for the equipment included under this contract.
 - 1. Include any unique or product specific procedures or methods required to inspect or test the equipment.
 - 2. Identify weekly, bi-weekly, monthly, quarterly, and annual maintenance procedures, including statutory and other required equipment tests.

- H. Submittal review shall not be construed as an indication that submittal is correct or suitable or that the work represented by submittal complies with the Contract Documents. Compliance with Contract Documents, Code requirements, dimensions, fit, and interface with other work is Contractor's responsibility.
 - I. Acknowledge and/or respond to review comments within fourteen calendar days of return.
 - 1. Promptly incorporate required changes due to inaccurate data or incomplete definition so that delivery and installation schedules are not affected.
 - 2. Identify and cloud drawing revisions including Contractor elective revisions on each re-submittal.
 - J. Contractor's revision response time is not justification for equipment delivery or installation delay.
- 1.2. FINAL CONTRACT DOCUMENTS
- A. See Section 01 70 00, Final Contract Compliance Review.

END OF SECTION

SECTION 01 60 00 – MATERIAL AND HANDLING

PART 1 - GENERAL

1.1. SITE CONDITION INSPECTION

- A. Prior to beginning installation of equipment, examine hoistway and machine room areas. Verify no irregularities exist which affect execution of work specified.
- B. Do not proceed with installation until work in place conforms to project requirements.

1.2. PRODUCT DELIVERY, STORAGE, AND HANDLING

A. General:

- 1. The protection of all equipment and exposed finishes shall be the responsibility of the Contractor during delivery, handling, and installation until completion of project.
- 2. The Contractor shall replace damaged materials with new at no additional cost for material and labor to Owner.

B. Delivery and Storage:

- 1. Manufacturers' original packing must adequately protect materials during delivery.
- 2. Deliver materials to the site ready for use in the accepted manufacturer's original and unopened containers and packaging, bearing labels as to type of material, brand name, and manufacturer's name. Delivered materials shall be identical to accepted samples.
- 3. Store materials in original protective packaging under cover in a dry and clean location off the ground. Remove delivered materials that are damaged or otherwise not suitable for installation from the job site and replace with acceptable materials.
- 4. It is the responsibility of the Contractor to properly store and protect all materials in space provided or designated by the Owner against damage, stains, scratches, corrosion, weather, construction debris, and environmental conditions.

1.3. INSTALLATION REQUIREMENTS

- A. Install all equipment in accordance with Manufacturer's instructions, referenced codes, specifications, and approved submittals.
- B. Install machine room equipment with clearances in accordance with referenced codes and specification.
- C. Install all equipment so it may be easily removed for maintenance and repair.
- D. Install all equipment for ease of maintenance.
- E. Install all equipment to afford maximum accessibility, safety, and continuity of operation.
- F. Remove oil, grease, scale, and other foreign matter from the following equipment and apply one coat of field-applied machinery enamel:
 - 1. All exposed equipment and metal work installed as part of this work which does not have architectural finish.
 - 2. Machine room equipment.

3. Pit equipment.
 4. Neatly touch up damaged factory-painted surfaces with original paint color.
 5. Protect machine-finish surfaces against corrosion.
- 1.4. MANUFACTURER'S NAMEPLATES
- A. Manufacturer's name plates and other identifying markings shall not be affixed on surfaces exposed to public view. This requirement does not apply to Underwriter's Laboratories and code required labels.
 - B. Each major component of mechanical and electrical equipment shall have identification plate with the Manufacturer's name, address, model number rating, and any other information required by governing codes.
- 1.5. COLORS OF FACTORY-FINISHED EQUIPMENT
- A. All colors will be selected from the Manufacturer's standard range unless custom colors are specified herein.
 - B. Submit samples of all standard colors available and/or specified custom colors for review and approval. See Section 01 30 00, Submittals.
 - C. Submit samples of all specified architectural metals specified for review and approval. See Section 01 30 00, Submittals.
- 1.6. MATERIALS AND FINISHES
- A. Steel:
 1. Sheet Steel (Furniture Steel for Exposed Work): Stretcher-leveled, cold-rolled, commercial quality carbon steel, complying with ASTM A366, matte finish.
 2. Sheet Steel (for Unexposed Work): Hot-rolled, commercial quality carbon steel, pickled and oiled, complying with ASTM A568/A568M-03.
 3. Structural Steel Shapes and Plates: ASTM A36.
 - B. Stainless Steel: Type 304 complying with ASTM A240, with standard tempers and hardness required for fabrication, strength, and durability. Apply mechanical finish on fabricated work in the locations shown or specified, Federal Standard and NAAMM nomenclature, with texture and reflectivity required to match Architect's sample. Protect with adhesive paper covering.
 1. No. 4 Satin: Directional polish finish. Graining directions as shown or, if not shown, in vertical dimension.
 2. No. 8 Mirror: Reflective polish finish with no visible graining.
 3. Textured: Windor pattern as manufactured by Rigidized Metals or Windor pattern as manufactured by Rimex Metals or approved equal with .050" mean pattern depth with bright directional polish (satin finish).
 4. Burnished: Non-directional, random abrasion pattern.

- C. Bronze: Stretcher-leveled, re-squared sheets composed of 60% copper and 40% zinc similar to Muntz Metal, Alloy Group 2, with standard temper and hardness required for fabrication, strength, and durability. Clean and treat bronze surfaces before mechanical finish. After completion of the final mechanical finish on the fabricated work, use a chemical cleaner to produce finish, Federal Standard, and NAAMM nomenclature, matching Architect's sample:
 - 1. No. 4 Satin: Directional polish finish, fine-satin, clear-coated with clear-organic coating recommended by Fabricator. Provide graining direction as shown or, if not shown, in vertical dimension.
 - 2. No. 8 Mirror: Reflective polish finish with no visible graining, bright-polished, clear-coated finish with clear-organic lacquer coating recommended by Fabricator.
 - 3. Acid-Etched Pattern: Provide a No. 8 mirror reflective-polished background with selectively acid-etched, matte-textured, custom pattern as shown. Acid selection and dilution, if required, as recommended by Fabricator. After final finishing, coat bronze with clear-organic lacquer coating recommended by Fabricator.
- D. Aluminum: Extrusions per ASTM B221; sheet and plate per ASTM B209.
- E. Plastic Laminate: ASTM E84 Class A and NEMA LD3.1, Fire-Rated Grade (GP-50), Type 7, 0.050" ±.005" thick, color and texture as follows:
 - 1. Exposed Surfaces: Color and texture selected by Architect.
 - 2. Concealed Surfaces: Contractor's standard color and finish.
- F. Fire-Retardant Treated Particle Board Panels: Minimum 3/4" thick backup for natural finished wood and plastic laminate veneered panels, edged and faced as shown, provided with suitable anti-warp backing; meet ASTM E84 Class "I" rating with a flame-spread rating of 25 or less, registered with Local Authorities for elevator finish materials.
- G. Natural Finish Wood Veneer: Standard thickness, 1/40" thoroughly dried conforming to ASME/HPMA HP-1983, Premium Grade. Place veneer, tapeless spliced with grain running in direction shown, belt and polish sanded, book matched. Species and finish designated and approved by Architect.
- H. Paint: Clean exposed metal parts and assemblies of oil, grease, scale, and other foreign matter and factory paint one shop coat of standard rust-resistant primer. After erection, provide one finish coat of industrial enamel paint. Galvanized metal need not be painted.
- I. Prime Finish: Clean all metal surfaces receiving a baked enamel paint finish of oil, grease, and scale. Apply one coat of rust-resistant primer followed by a filler coat over uneven surface. Sand smooth and apply final coat of primer.
- J. Baked Enamel Finish: Prime finish per above. Unless specified "prime finish" only, apply and bake three additional coats of enamel in the selected solid color.
- K. Entrance Field Paint:
 - 1. Clean all surfaces to remove dirt and grease.
 - 2. Sand and finish surfaces as necessary to remove pits and scratches and prepare surface for painting.
 - 3. Apply filler to ensure smooth surface; sand and apply one coat of electrostatic enamel in the selected solid color.

- L. Refinishing of natural metals: Remove existing protective finish. Buff as necessary to remove scratches. Re-grain or finish as specified and protect as indicated for particular metal type.
- M. Glass: Laminated safety glass, minimum 9/16" thick, conforming to ANSI Z97.1 and CPSC 16 CFR Part 1201.

END OF SECTION

SECTION 01 70 00 – FINAL CONTRACT COMPLIANCE REVIEW

PART 1 - GENERAL

1.1. FINAL CLEANING

- A. In addition, and supplemental to, all requirements in the General Conditions concerning site cleaning and condition, Contractor shall:
 - 1. Elevator hoistways and all equipment therein shall be cleaned and left free of rust, filings, welding slag, rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt, and dust, including walls, building beams, sill ledges, and hoistway divider beams.
 - 2. Care shall be to not to mark, soil, or otherwise deface existing or new surfaces. Clean and restore such surfaces to their original condition.
 - 3. Clean down surfaces and areas which require final painting and finishing work. Cleaning includes removal of rubbish, broom cleaning of floors, removal of any loose plaster or mortar, dust, and other extraneous materials from finish surfaces, and surfaces which will remain visible after the work is complete.
 - 4. Paint machine room and pit floors.

1.2. ENGINEER'S FINAL OBSERVATION AND REVIEW REQUIREMENT

- A. Review procedure shall apply for individual elevators, portions of groups of elevators, and completed groups of elevators accepted on an interim basis, or elevators and groups of elevators completed, accepted, and placed in operation.
- B. Contractor shall perform review and evaluation of all aspects of its work prior to requesting Engineer's final review. Work shall be considered ready for Engineer's final contract compliance review when all Contractor's tests are complete, all deficiencies noted by the AHJ have been rectified, and all elements of work or a designated portion thereof are in place and elevator, or group of elevators are deemed ready for service as intended.
- C. Contractor shall perform review and evaluation of all aspects of its work prior to requesting Engineer's review
- D. Furnish labor, materials, and equipment necessary for Engineer's review. Notify Engineer five working days in advance when ready for final review of elevator or group of elevators.
- E. Engineer's written list of observed deficiencies of materials, equipment, and operating systems will be submitted to Contractor for corrective action. Engineer's review shall include as a minimum:
 - 1. Workmanship and equipment compliance with Contract Documents.
 - 2. Elevator performance compliance with Contact Documents:
 - a) Contract speed.
 - b) Capacity.
 - c) Floor to floor times.
 - d) Starting, accelerating, running.
 - e) Decelerating, stopping accuracy.
 - f) Door operation and closing force.

- g) Equipment noise levels.
- h) Signal fixture utility.
- i) Overall ride quality.
- j) Performance of door control devices.
- k) Operation of emergency two-way communication device.
- l) Operations of firefighters' service.
- m) Operations of special security features and floor lock-off provisions.
- n) Operations of remote monitoring devices.

F. Testing and Test Results:

- 1. In all elevator test conditions, obtain specified contract speed, performance times, stopping accuracy without re-leveling, and ride quality to satisfaction of Owner and Engineer. Tests will be conducted under both no load and full load condition.

G. Performance Guarantee: Should Engineer's review identify defects, poor workmanship, variance, or noncompliance with requirements of specified codes and/or ordinances, or variance or noncompliance with the requirements of Contract Documents, Contractor shall complete corrective work in an expedient manner to satisfaction of Owner and Engineer at no cost as follows:

- 1. Replace equipment which does not meet code or Contract Document requirements.
- 2. Perform work and furnish labor, materials, and equipment necessary to meet specified operation and performance.
- 3. Perform retesting required by governing code authority, Owner, and Engineer.

H. A follow-up final contract compliance review shall be performed by Engineer after notification by Contractor that all deficiencies have been corrected. Provide Engineer with copies of the initial deficiency report marked to indicate items which Contractor considers complete.

1.3. CONTRACTOR WARRANTY

- A. The Contractor guarantees that the all work performed by the Contractor and any Subcontractor, and all materials installed by Contractor and any Subcontractor, under the Contract Documents, are first class in every respect.
- B. For one (1) year from the date of Completion of Work under the Contract Documents, Contractor warrants that all work performed under Contract Documents shall be free of defects in materials, design, and workmanship.
- C. "Materials" shall include, by way of example and without limitation, all installed equipment, products, and devices.
- D. "Defective" shall include, by way of example and without limitation, operation or control system failures; car performance below required minimum excessive wear; unusual or premature deterioration or aging of materials or finishes; unsafe conditions; the need for excessive maintenance, abnormal noise or vibration, and similar unsatisfactory conditions; and nonconformance with any specification identified in the Project Specifications.

1.4. OWNER'S INFORMATION

- A. Provide electronic copies (flash drive or Engineer-approved equivalent) of written information necessary for proper maintenance and adjustment of equipment within 30 days following final acceptance. Final retention will be withheld until data is received by Owner and reviewed by Engineer. Include the following as minimums:
1. Straight-line wiring diagrams of "as-installed" elevator circuits with index of location and function of components. Provide one set reproducible master. Mount one set wiring diagrams on panels, racked, or similarly protected, in elevator machine room. Provide remaining set rolled and in a protective drawing tube. Maintain all drawing sets with addition of all subsequent changes. These diagrams are Owner's property.
 2. Written Maintenance Control Program (MCP) specifically designed for the equipment included under this contract. Include any unique or product-specific procedures or methods required to inspect or test the equipment. In addition, identify weekly, bi-weekly, monthly, quarterly, and annual maintenance procedures, including statutory and other required equipment tests.
 3. Lubrication instructions, including recommended grade of lubricants.
 4. Parts catalogs for all replaceable parts, including ordering forms and instructions.
 5. Instructions explaining all operating features, including all apparatus in the car and lobby control panels.
 6. Maintenance Control Program documentation for all equipment.
- B. Provide Owner with the following:
1. Any interface cards required for equipment maintenance, code mandated testing, and troubleshooting.
 2. Four sets of keys for all switches and control features properly tagged and marked.
 3. Diagnostic equipment complete with access codes, adjusters' manuals, and set-up manuals for adjustment, diagnosis, and troubleshooting of elevator system, and performance of routine safety tests.
- C. Acceptance of such records by Owner/Engineer shall not be a waiver of any Contractor deviation from Contract Documents or shop drawings or in any way relieve Contractor from its responsibility to perform work in accordance with Contract Documents.

END OF SECTION

SECTION 01 80 00 – MAINTENANCE

PART 1 - GENERAL

1.1. WARRANTY MAINTENANCE

- A. Provide preventive maintenance and 24-hour emergency callback service for one year commencing on date of Completion of Work under the Contract Document of all modernized elevators. Warranty maintenance should expire for concurrently for all elevators. Systematically examine, adjust, clean, and lubricate all equipment. Repair or replace defective parts using parts produced by the Contractor of installed equipment. Maintain elevator machine room, hoistway, and pit in clean condition.
- B. Use competent personnel, acceptable to the Owner, supervised and employed by Contractor.
- C. Owner retains the option to delete cost of warranty maintenance from modernization equipment contract and remit twelve equal installments directly to Contractor during period in which maintenance is being performed.
- D. Warranty maintenance to be performed on the same terms (and using the same specifications) as the existing maintenance agreement for Owner's elevator.

END OF SECTION

SECTION 01 90 00 – RELATED WORK

PART 1 - GENERAL

1.1. ELEVATOR RELATED BUILDING WORK BY CONTRACTOR.

- A. Architectural and Structural, Hoistway and Elevator Entrances:
 - 1. Patch any cracks or penetrations in the hoistway to provide smoke and fire rating required by the AHJ. Provide product and installation process documentation as requested.
 - 2. Remove abandoned conduit and wiring in the elevator hoistways.
 - 3. Patch penetrations and gaps in finished elevator lobbies after installation of new signal fixtures. Match existing wall finishes.
 - 4. Protect open hoistways and entrances during construction per OSHA Regulations.
 - 5. Protect car enclosure, hoistway entrance assemblies, and special metal finishes from damage.
 - 6. Seal fireproofing in machine room to prevent flaking.
 - 7. Professionally scrape and paint cast iron landing sills with commercial grade black epoxy paint. Apply with primer according to manufacturer's directions.
 - 8. Remove existing finished cab flooring. Install new flooring. Coordinate weight of flooring and sill height with Subcontractors, or, if applicable, other contractors of owner.
- B. Architectural and Structural, Machine Room:
 - 1. Patch any cracks or penetrations in the machine room walls or ceiling to provide smoke and fire rating required by the AHJ. Provide product and installation process documentation as requested.
 - 2. Self-closing and locking rated access door. Include Signage: "ELEVATOR MACHINE ROOM" and "AUTHORIZED PERSONNEL ONLY."
 - 3. Seal fireproofing in machine room to prevent flaking.
- C. Plumbing and Fire Protection:
 - 1. Install and/or program smoke sensors in elevator lobbies and machine room as required for Phase I firefighters recall operation.
 - 2. Provide heat detector in machine room to activate shunt trip contacts in elevator disconnects.
- D. Mechanical:
 - 1. Machine and Controller Rooms/Spaces: Ventilation and heating. Provide heating and air conditioning to maintain temperature range of 55°-90° F, and maximum 80% relative humidity, non-condensing. Provide HVAC systems or system modification components with minimum one (1) year manufacturer warranty.
- E. Electrical Service, Conductors, and Devices:
 - 1. Machine Room or Control Space Lighting: Guarded LED fixtures to provide minimum 19 footcandles average illumination. Provide toggle switch adjacent to strike side of machine room door. Occupancy sensor is not allowed.

2. Machine Room or Control Space Night Light: Provide always-on 3-5-watt LED luminaire inside entrance to machine room.
3. Machine Space Lighting: Guarded LED fixtures to provide minimum 19 footcandles average illumination.
4. Pit Lighting: Guarded LED fixtures to provide minimum 10 footcandles average illumination.
5. Hallway Lighting: LED fixtures to provide 10 footcandles average illumination measured at the threshold with doors closed. Lighting shall be always-on, un-switched and no occupancy sensor.
6. Hoistway Lighting: Two 4'-0" lamps, LED, guarded luminaires. Locate at every other floor. For groups, one fixture may be provided between each two cars. Provide three-way and four-way switches at top floor adjacent to each entrance and in each pit adjacent to each entrance or pit door as required by AHJ
7. GFCI convenience outlets in pit.
8. GFCI convenience outlets in machine room or control space.
9. GFCI convenience outlets in machine space.
10. Auxiliary contacts to disable emergency battery lowering.
11. Single-phase copper power feeder to each elevator with individual protected lockable "open" disconnecting means located in machine room for utilization equipment:
 - a) Car lighting and blower.
 - b) In-car video display.
 - c) Car heating and air conditioning unit-If required by AHJ
 - d) Car heating and air conditioning evaporator-If required by AHJ
12. Automatic Fire Recall System:
 - a) Fire alarm initiating devices in each elevator lobby, for each group of elevators or single elevator.
 - b) Fire alarm initiating devices in each elevator machine room.
 - c) Fire alarm initiating devices at top of hoistway if sprinklered.
 - d) Three Relay Activation Modules for each group of elevators or single elevator. Locate modules within three feet of controller designated by the Contractor to minimize un-supervised wiring. Program Modules as follows:
 - 1) PRIMARY: Activate when any hallway device, except primary floor, activates.
 - 2) ALTERNATE: Activate when hallway device at primary floor activates.
 - 3) FIRE HAT: Activate when machine room device activates.
 - e) Device in machine room and at top of hoistway (if provided) to provide signal for general alarm.
 - f) Provide technician from fire alarm contractor for pre-test of system during normal working hours.

- g) Provide technician from fire alarm contractor for acceptance test of system with AHJ during normal and overtime working hours.
 - h) Remove fire alarm devices from pit where not required.
 - i) Remove fire alarm devices from hoistway overhead where not required.
13. Power for Mechanical Equipment: Provide power for HVAC and/or ventilation equipment where applicable.
14. Remove abandoned electrical equipment from machine room and hoistway as follows:
- a) Lighting controller and irrigation control/timer if present at time of RFP.
15. Contractor Related Work:
16. Pit access stationary ladder for each elevator. Retractable ladder if provided shall comply with applicable version of ASME A17.1, Section 2.2.4.

END OF SECTION

SECTION 14 24 01 - HYDRAULIC PASSENGER ELEVATOR MODERNIZATION

PART 1 - GENERAL

1.1. SUMMARY

- A. Section includes modernization of hydraulic elevators as follows:
 - 1. One (1) passenger elevator, Cars 1.
- B. Products Installed but Not Furnished Under This Section:
 - 1. Emergency Voice/Alarm Communication System Provisions.
 - 2. Car interior finishes. (Allowance)
 - 3. Car flooring. (Allowance)
 - 4. Definitions
- C. Technical terms used are defined in the latest edition of the Safety Code for Elevators and Escalators, ASME A17.1. or in this section.

1.2. WORK INCLUDED

- A. Provide all labor, engineering, tools, transportation, services, supervision, materials, and equipment necessary for and incidental to satisfactory completion of required work as indicated in Contract Documents.
- B. Provide all required staging, hoisting and movement of new equipment, reused equipment, or removal of existing equipment.
- C. Applicable conditions of Owner's General, Special, and Supplemental Conditions.
- D. Scope of work includes, but is not limited to, the following:
 - 1. Coordination, scheduling, and management of work of component suppliers and Subcontractors.
 - 2. Furnish and install equipment as specified, utilizing existing and/or modified hoistways and machine rooms.
 - 3. Containment, storage, transport, and disposal of all used hydraulic oil and jack hole clean out spoils and debris removed from the existing jack hole at no extra cost to the Owner.

1.3. ALLOWANCES

- A. See SECTION 01 03 00 – ALTERNATES AND ALLOWANCES

1.4. ALTERNATES

- A. See SECTION 01 03 00 – ALTERNATES AND ALLOWANCES

1.5. RELATED WORK COORDINATION

- A. See SECTION 01 04 00 – PROJECT PROCEDURES and SECTION 01 90 00 – RELATED WORK.

1.6. ACTION AND INFORMATIONAL SUBMITTALS

- A. See SECTION 01 30 00 – SUBMITTALS

1.7. PERMITS, TESTS, AND CERTIFICATES

A. Permits:

1. Secure and pay for all permits required for Work to be performed, including but not limited to:
 - a) Municipal and State permits.
 - b) Device or equipment removal permits.
 - c) Hot works permits.
 2. Post, maintain, and renew all permits in compliance with local governmental requirements.
 3. Obtain final close-out of all required permits.
 4. Tests and Inspections: Schedule with the AHJ and perform tests required by Governing Authority in accordance with procedure described in ASME A17.2 Guide for Inspection of Elevators, Escalators, and Moving Walks in the presence of Authorized Representative of the AHJ.
- B. Certificates: Obtain, pay for, and deliver to purchaser with all temporary and final inspection certificates provided by proper governing authorities.
- C. Violations: Resolve any outstanding violations on record with the AHJ on devices being removed prior to final acceptance by the purchaser.

1.8. QUALITY ASSURANCE

- A. Compliance with Regulatory Agencies: Comply with most stringent applicable provisions of currently enforced codes, laws, and/or authorities, including revisions and changes in effect including, but not limited to:
1. American Society of Mechanical Engineers:
 - a) ASME A17.1, Safety Code for Elevators, Escalators, and Moving Walks.
 - b) ASME A17.2, Guide for Inspection of Elevators, Escalators, and Moving Walks.
 - c) ASME A17.5, Elevator and Escalator Electrical Equipment.
 - d) ASME A17.6, Standard for Elevator Suspension, Compensation, and Governor Systems.
 - e) ASME A17.7, Performance Based Safety Code for Elevators, Escalators, and Moving Walks.
 2. National Fire Protection Association (NFPA):
 - a) NFPA 70, National Electric Code.
 - b) NFPA 80, Fire Doors and Windows.
 - c) NFPA 101, Life Safety Code.
 3. International Building Code (IBC).
 4. Accessibility:
 - a) American National Standard Institute (ANSI): A117.1, Accessible and Usable Buildings and Facilities.
 - b) Uniform Federal Accessibility Standards (UFAS).
 - c) ADAAG, Americans with Disabilities Act Accessibility Guidelines.

- 5. Local Codes:
 - B. Inspections: Provide access to areas where work is being performed for the Engineer at any time throughout the project.
- 1.9. DELIVERY, STORAGE, AND HOISTING
 - A. See SECTION 01 60 00 – MATERIAL AND HANDLING

PART 2 - PRODUCTS

2.1. MANUFACTURERS AND PRODUCTS

A. Approved Elevator Systems:

1. Approved subject to compliance with the requirements of the contract, provide products by one or more of the following Principal Manufacturers. Where specific product models are referenced below only those specific product models or types are approved.

- a) Otis.
- b) Schindler.
- c) TK Elevator.
- d) Canton Elevator.
- e) MEI – Total Elevator Solutions.
- f) Or equal approved in accordance with Section 7.04 of the General Conditions.

B. Approved Elevator Components In addition to products manufactured by the Principal Manufacturers specified above, the following Manufacturers are approved for the specific components listed below, subject to the requirements of the contract:

1. Controllers:

- a) GAL (Vantage).
- b) MCE (Nidec).
- c) Smart Rise.
- d) Alpha (Lykos Controller).
- e) Or equal approved in accordance with Section 7.04 of the General Conditions.

2. Hydraulic Machines (Power Units):

- a) EECO.
- b) Maxton.
- c) IMO.
- d) Bore-Max (Vantage)
- e) Or equal approved in accordance with Section 7.04 of the General Conditions.

3. Hydraulic Jack Assemblies:

- a) EECO.
- b) D.L. Martin.
- c) Nidec (Canton).
- d) Or equal approved in accordance with Section 7.04 of the General Conditions.

4. Passenger Elevator Door Equipment (Operators, Tracks, Hangers, and Closers):
 - a) GAL.
 - b) Wittur.
 - c) Or equal approved in accordance with Section 7.04 of the General Conditions.
5. Cab Interior Finishes (Standard/Pre-Engineered/Cab Systems):
 - a) FabACab.
 - b) Eklunds.
 - c) Cab Works.
 - d) SnapCab.
 - e) Or equal approved in accordance with Section 7.04 of the General Conditions.
6. Car and Hall Signal Fixtures:
 - a) EPCO.
 - b) Innovation.
 - c) MAD Fixtures.
 - d) Or equal approved in accordance with Section 7.04 of the General Conditions.
7. Two-Way Audio Communication Device:
 - a) Janus/Rath.
 - b) Wurtec.
 - c) Or equal approved in accordance with Section 7.04 of the General Conditions.
8. Two-Way Video/Non-Verbal Communication Devices:
 - a) Janus/Rath.
 - b) Wurtec.
 - c) Or equal approved in accordance with Section 7.04 of the General Conditions.
9. Door Edge Detector with Approaching Object Detection:
 - a) CEDES.
 - b) Janus.
 - c) Or equal approved in accordance with Section 7.04 of the General Conditions.

2.2. MATERIAL

- A. See SECTION 01 60 00-MATERIAL AND HANDLING

PART 3 - PERFORMANCE AND OPERATION

3.1. PERFORMANCE REQUIREMENTS

- A. Car Speed: Allowable variance from contract speed of no more than +/- 10% in the up direction and +10%/-20% in the down direction.
- B. Car Capacity: Safely lower, stop, and hold rated load.
- C. Car Stopping Zone: $\pm 3/8$ " under any loading condition.
- D. Door Times: Seconds from start to fully open or fully closed:
 - 1. Car 1: Door Open: 2.2 seconds. Door Close: 3.4 seconds.
- E. Car Floor-to-Floor Performance Time: Seconds from start of doors closing until doors are 3/4 open for center-opening doors or 1/2 open for side-opening doors, and car is level and stopped at next successive floor under any loading condition or travel direction:
 - 1. Car 1: 14.5 seconds at a typical floor height of 12'.
- F. Noise and Vibration Control:
 - 1. Airborne Noise:
 - a) Measured noise level of elevator equipment and its operation shall not exceed 60 dBA inside car under any condition including door operation and car ventilation exhaust blower on its highest speed.
 - b) Limit noise level in the machine room and control space relating to elevator equipment and its operation to no more than 80 dBA.
 - c) All dBA readings to be taken 3'-0" off the floor and 3'-0" from the equipment using the "A" weighted scale.
 - 2. Vibration Control: Mechanically isolate all new elevator equipment from the building structure and other components. Minimize objectionable noise and transmission of vibrations to occupied areas of the building.

3.2. ELEVATOR OPERATION REQUIREMENTS

- A. General:
 - 1. Cars automatically slow down and stop level at floors in response to car and landing calls with stops made in sequence in the established direction of travel, regardless of order in which buttons are pressed.
 - 2. Landing calls are canceled when the assigned car arrives at the landing.
 - 3. Automatic Dispatch Failure: Provide auxiliary dispatch system to automatically dispatch elevators in the event of failure of the primary control system.
 - 4. Hall Call Button Failure: Should failure of hall call button system occur, initiate operation providing predetermined service to all landings; elevators respond normally to car calls.
 - 5. Automatic Leveling:
 - a) When arriving at a floor cars level to within 1/8" above or below the landing sill prior to opening doors, without travelling past the landing during leveling

- b) Maintain leveling accuracy regardless of carload, direction of travel, rope slippage or stretch.
- B. Door Operation:
- 1. Passenger Elevators:
 - a) Automatically open doors when car arrives at a floor.
 - b) Stop and reopen doors or hold doors in open position upon activation of “door open” button.
 - c) At expiration of normal dwell time, or upon activation of “door close” button, close doors:
 - 1) Prevent doors from closing and reverse doors at normal opening speed if door reopening device beams are obstructed while doors are closing, except during nudging operation.
 - 2) In event of door reopening device failure, provide for automatic shutdown of car at floor level with doors open
 - 3) Close cycle does not begin upon activation of “door close” button until normal door dwell time for a car or hall call has expired, except firefighters’ operation.
 - d) Nudging Operation:
 - 1) After beams of door reopening device are obstructed for a predetermined time interval (minimum 20.0-25.0 seconds), sound warning signal, and attempt to close doors with maximum of 2.5 foot-pounds kinetic energy.
 - 2) Activation of the door open button overrides nudging operation and reopens doors.
 - e) Interrupted Beam Time:
 - 1) When beams are interrupted during initial door opening, hold door open a minimum of 3.0 seconds.
 - 2) When beams are interrupted after the initial 3.0 second hold open time, reduce time doors remain open to an adjustable time of approximately 1.0 1.5 seconds after beams are reestablished.
 - f) Differential Door Time:
 - 1) Field adjustable time that doors remain open after stopping in response to calls.
 - 2) Car Call: Hold open time adjustable between 3.0 and 5.0 seconds.
 - 3) Hall Call: Hold open time adjustable between 5.0 and 8.0 seconds.
 - g) Use hall call time when car responds to coincidental calls.
 - h) Reopen doors when car is designated for loading.
 - i) Car 1: Provide front or rear selective door operation.
- C. Independent Service.
- 1. When feature is activated from within the car allow control of car only from buttons and controls inside the car.
 - 2. Close doors by constant pressure on desired destination floor button or door close button.

- D. Single Automatic Operation, Car 1:
1. Operate car without attendant from pushbuttons in car and at each landing. When car is idle, automatically start car, and dispatch it to appropriate floor when call is registered by pressing car or hall pushbutton.
 2. Illuminate, "in use" lights in each hall pushbutton station when car is responding to registered car or hall call. Prevent registration of another call until trip is complete including time for passenger transfer and registration of car call if car is responding to a hall call. Extinguish "in use" light to indicate system is available to respond to next call.
- E. Battery Rescue Operation:
1. Upon loss of normal power automatically lower the car to the nearest landing depending on the load in the car.
 2. Upon arrival at the landing, the elevator doors shall open automatically and remain open until regular door time has expired; the elevator shall then be removed from service.
 3. Upon restoration of normal power, the elevator shall automatically resume normal operation.
- F. Firefighters' Emergency Operation: Provide equipment and operation in accordance with applicable code requirements. Replace all Firefighters Emergency Operation key switches that control non-modernized elevators in this building to match modernized elevators when first car in group is returned to service.
- G. Battery Backup Operation for Emergency Lighting, Communication, and Alarm:
1. Car mounted battery unit with solid-state charger to operate alarm bell, car emergency lighting, and voice communication system.
 2. Car lighting and communication shall be provided with a minimum of 4 hours of operation on back-up power during a loss of normal power, and a minimum of 1 hour of operation for car-mounted alarm, and any remote alarm mounted at the designated floor level.
 3. Battery to be rechargeable with minimum five-year life expectancy.
 4. Provide constant pressure test button in service compartment of car operating panel.
 5. Provide lighting integral with portion of normal car lighting system.
- H. Emergency Car Communication System Operation:
1. Comply with all requirements of ASME A17.1 2019, or later editions if adopted by the AHJ. ASME A17.1 2022
 2. Hands-Free Communication System: This is to be a Third Party System. OEM communication systems not authorized.
 - a) In Car System:
 - 1) Hands-free two-way audio communication system in each elevator car.
 - 2) Automatic dialer to include automatic rollover capability if call is not answered with minimum two numbers.
 - 3) Intercom type systems shall be capable of auto dialing out of the building to any active telephone number selected by Owner if intercom call is not answered.

- 4) Means to identify building and car for Authorized Personnel and Emergency Personnel on demand.
 - 5) Activated by button in car identified with "PHONE" symbol or by external telephone call.
 - 6) Adjacent light jewel illuminates and flashes when call is acknowledged.
3. Authorized Personnel Communication:
- a) Communication system allows authorized personnel, via phone or intercom system, inside the building or at an outside location, to establish verbal communications with each elevator individually.
 - B) Provide car interior display video capability for entrapment assessment.
4. Communication for Deaf, Hard of Hearing and Speech Impaired:
- a) Means for non-verbal communication between passengers inside the elevator car and Authorized Personnel and Emergency Personnel inside or outside of the building.
 - b) System allows for in car video display of custom or preselected text messages generated by Authorized Personnel or Emergency Personnel.
 - c) Passengers inside the elevator car respond to text messages via "Yes" and "No" buttons that generate a visible indication at the location monitored by the Authorized/Emergency Personnel.

PART 4 - ELEVATOR ALTERATIONS

4.1. HYDRAULIC PASSENGER ELEVATOR:

ALTERATION SUMMARY		
CAR 1:	EXISTING INSTALLATION	MODERNIZED INSTALLATION
Capacity:	2,500 lbs.	2500 lbs.
Class of Loading:	Class A	No Change
Duty Type:	Passenger	No Change
Contract Speed:	125 fpm	No Change fpm
Hydraulic Jack Type:	In Ground	No Change
Machine Type:	Submersible Power Unit	No Change
Operation Control:	Single Automatic	No Change
Total Entrances:	Four (4) Front	No Change
Car Entrance Type:	Single Speed Side Opening (SSSO) Front	No Change
Hoistway Entrance Type:	Single Speed Side Opening (SSSO) Front	No Change
Entrance Size:	42" Wide x 84" High	No Change

4.2. MACHINE ROOM EQUIPMENT

- A. Provide and arrange equipment in existing machine room spaces.
- B. Identification: Permanently identify (painted on or securely attached) machine room equipment with minimum 3" characters corresponding to elevator identification.
 - 1. Driving machine (Power Unit).
 - 2. Transformer, choke/filter.
 - 3. Controller.
 - 4. Main line disconnect switch.
 - 5. Elevator hoistway pit equipment.
- C. Hydraulic Machine (Power Unit):
 - 1. New:
 - a) Assembled unit mounted on isolating pads consisting of:
 - 1) Dry or submersible type positive displacement pump and induction motor.
 - 2) Dry type only with motors exceeding 50 hp.
 - 3) Master-type control valves combining:

- 4) Safety features.
 - 5) Holding, direction, bypass, stopping, manual lowering functions.
 - 6) Shut off valve.
 - 7) Oil reservoir with protected vent opening.
 - 8) Oil level gauge.
 - 9) Outlet strainer.
 - 10) Drip pan.
 - 11) Muffler.
 - b) Oil Cooler:
 - 1) Retain existing
- D. Motor Starter:
1. Soft start type unit including:
 - a) Integral electronic overload protection.
 - b) Integral bypass.
- E. Muffler:
1. In discharge oil line near pump unit.
 2. Design shall dampen and absorb pulsation and noise in the flow of hydraulic fluid.
- F. Piping and Oil:
1. All piping, connections and oil required for the elevator system.
 2. Buried piping shall be secondarily contained with watertight Schedule 80 PVC sleeves between elevator machine room and pit.
 3. A minimum of two sound isolation couplings shall be provided between the pump unit and oil line and the oil line and jack unit.
 4. Provide 2-90° joints to reduce vibration and create wave diffraction.
 5. Provide isolated pipe stands or hangers.
- G. Shut-Off Valve:
1. Oil line shut off valve in the machine room or accessible from outside the hoistway.
 2. Second valve in pit adjacent to jack unit.
- H. Battery Rescue System:
1. Auxiliary power source shall be provided via 12-volt D.C. battery units installed in machine room or controller space.
 2. Include solid-state charger and testing means mounted in a common metal container.
 3. Battery to be rechargeable lead acid or nickel cadmium with a ten-year life expectancy.

- I. Controller: UL/CSA labeled:
 1. Compartment:
 - a) Securely mount all assemblies, power supplies, chassis switches, relays, etc., on a substantial, self-supporting steel frame.
 - b) Completely enclose equipment with covers. Provide means to prevent overheating.
 2. Relay Design:
 - a) Magnet operated with contacts of design and material to insure maximum conductivity, long life, and reliable operation without overheating or excessive wear.
 - b) Provide wiping action and means to prevent sticking due to fusion.
 - c) Contacts carrying high inductive currents shall be provided with arc deflectors or suppressors.
 3. Microprocessor-Related Hardware:
 - a) Provide built-in noise suppression devices providing a high level of noise immunity on all solid-state hardware and devices.
 - b) Provide power supplies with noise suppression devices.
 - c) Isolate inputs from external devices (such as pushbuttons) with opto-isolation modules.
 - d) Design control circuits with one leg of power supply grounded.
 - e) Safety circuits are not to be affected by accidental grounding of any part of the system.
 - f) System automatically restarts when power is restored.
 - g) System memory is retained in the event of power failure or disturbance.
 - h) Equipment is provided with Electro Magnetic Interference (EMI) shielding within FCC guidelines.
 4. Wiring:
 - a) CSA labeled copper for factory wiring.
 - b) Neatly route all wiring interconnections and securely attach wiring connections to studs or terminals.
 5. Permanently mark components (relays, fuses, PC boards, etc.) with symbols shown on wiring diagrams.
 - J. Auxiliary disconnect: Provide controller or power unit mounted auxiliary, lockable "open," disconnect if mainline disconnect is not in sight of controller and/or machine.
- 4.3. HOISTWAY AND PIT EQUIPMENT
- A. Provide and arrange equipment in existing hoistway and pit spaces.
 - B. Hydraulic Jack Assembly: (Alternate)
 1. Retain.
 - C. Jack Support:
 1. Retain.

- D. Pit Shut-Off Valves:
 - 1. Retain.
- E. Guide Rails:
 - 1. Retain:
 - a) Clean rails and brackets.
 - b) Remove rust.
 - c) Repaint non-machined surfaces.
 - d) Check and tighten all rail and bracket fastenings.
- F. Buffers, Car:
 - 1. Retain:
 - a) Remove rust and repaint non-machined surfaces.
- G. Access Ladders and Platforms: Provide permanent pit access required to comply with Code requirements.
- H. Terminal Stopping Devices:
 - 1. New:
 - a) Normal and final devices.
- I. Electrical Wiring and Wiring Connections:
 - 1. Conductors and Connections:
 - a) Copper throughout with individual wires coded and connections on identified studs or terminal blocks.
 - b) Use no splices or similar connections in wiring except at terminal blocks, control compartments, or junction boxes.
 - 2. Conduit:
 - a) Galvanized steel conduit, EMT, or duct.
 - b) Flexible conduit length not to exceed 3'-0".
 - 3. Traveling Cables:
 - a) Provide multiple traveling cables per elevator if necessary to meet conductor and data transmission requirements. Include the following:
 - b) Include all conductors needed for specified elevator operation and code required spares.
 - c) Provide the following additional data transmission conductors. (Draka Type ETT round travelling cable or approved equal with lifetime product warranty)
 - 1) eight (8) 20 AWG copper twisted shielded pairs; elevator 1.
 - d) Tag spares in machine room.
 - e) Provide cables from controller to car top.

4.4. HOISTWAY DOOR OPERATING EQUIPMENT

A. Horizontal Sliding Passenger Entrances:

1. Door Hangers, Hoistway:
 - a) Retain:
 - 1) Modify hangars as required to include door retainer mechanism to address failure of primary upper door panel guidance.
 - 2) Replace hanger rollers.
 2. Door Tracks, Hoistway:
 - a) Retain:
 - 1) Clean and sand for quiet operation.
 - 2) Replace track liners.
 3. Hoistway Door Interlocks and Pick-up Roller Assemblies:
 - a) New:
 4. Hoistway Door Closers:
 - a) New:
 - 1) Spring activated spirator type.
 5. Hoistway Door Unlocking Devices:
 - a) New:
 - 1) Include all drilling and ACM containment on existing door panels.
 - 2) Unlocking device including new escutcheon at all floors.
 6. Hoistway Access Switches:
 - a) New:
 - 1) Top and bottom floors.
 - 2) Mount in entrance frame in same location as existing switch.
 - 3) Provide switch with faceplate.
 7. Door Closed Detection:
 - a) Electrical contacts or a SIL rated device to detect closed position of hoistway doors.
 - b) Design and operation to comply with ASME A17.1 2019 or later edition.
- B. Floor Numbers: Stencil paint 4" high floor designations in contrasting color on inside face of hoistway doors or hoistway fascia in location visible from within car.

4.5. HOISTWAY ENTRANCE FRAMES AND DOOR PANELS

- A. Provide and arrange equipment in same location as existing entrances.
- B. Passenger Elevator Entrance Frames:

1. Retain:
 - a) Arabic floor designation/tactile marking plates:
 - 1) Centered at 60" above finished floor.
 - 2) Located on both side jambs of all entrances.
 - 3) Minimum 4" high.
 - 4) Tactile marking indications shall be below Arabic floor designation.
 - 5) Permanently fastened.
 - 6) Provide plates at main egress landing with "Star" designation.
 - b) Car identification plate with Braille:
 - 1) Mounted directly below floor designation/tactile marking plates.
 - 2) Located on both side jambs at Designated and Alternate levels.
 - 3) Finish and design to match floor designation/tactile marking plates.
 - c) Background of indication painted selected color in epoxy paint.
 - C. Horizontal Sliding Hoistway Door Panels:
 1. Retain:
 - a) RECLAD #4 BRUSHED STAINLESS STEEL
 - b) Provide new door gibs with fire tabs at all floors.
 - 1) Minimum two gibs per panel, one at leading edge, and one at trailing edge of each panel.
 - 2) Provide code required door panel retainer mechanism on lower edge of door panel.
 - D. Sight Guards:
 1. Retain.
 - E. Frame and Door Panel Finishes:
 1. Entrance Frames:
 - a) stainless steel satin finish.
 2. Hoistway Door Panels:
 - a) stainless steel satin finish.
- 4.6. HOISTWAY ENTRANCE SILLS AND SUPPORT
- A. Sill Supports, Hoistway Entrance:
 1. Retain:
 - a) Check and tighten all fastenings.
 - B. Fascia, Toe Guards, and Hanger Covers:
 1. Retain Hanger Covers:

- a) Replace damaged or missing sections.
 - b) Check and tighten all fastenings.
 - c) Paint/Stencil floor number on fascia or hoistway wall all floors visible where car doors are initially opened.
2. New Fascia and Toe Guard:
- a) Hoistway width fascia, platform guards, and hanger covers for Car 1.
- C. Struts and Headers:
- 1. Retain:
 - a) Check and tighten all fasteners.
- 4.7. CAR EQUIPMENT
- A. Frame:
- 1. Retain:
 - a) Check and tighten all fastenings.
 - b) Adjust as required for plumb and square alignment.
- B. Platform:
- 1. Retain:
 - a) Adjust as necessary for plumb and level alignment.
 - b) Reinforce if required.
 - c) Check and tighten all fastenings.
- C. Platform Guard:
- 1. New:
 - a) Extended platform guard with Contractor's standard finish to meet Code requirements.
 - b) Minimum 0.059" (1.5 mm) thick steel, or material of equivalent strength and stiffness.
 - c) Reinforced and braced to front of car platform.
- D. Car Rail Guide Roller or Shoe Assemblies:
- 1. Retain:
 - a) Check and tighten all fastenings.
 - b) Replace all rollers or inserts.
- E. Top of Car Guardrail:
- 1. New:
 - a) Provide car top railings where fall hazard exceeds 12".
 - b) Install guardrails, necessary hardware, and toe board to meet code requirements.

- F. Car Top Control Station:
 - 1. Mount to provide safe access and utilization while standing on car top.
 - 2. Operating device with Up and Down direction buttons, a Run button, an Inspection/Automatic switch and Emergency Stop switch.
 - 3. Operating device provides an audible and visible indicator that fire recall has been initiated.
 - 4. Fix station to the car crosshead or provide portable station provided the extension cord and housing is permanently attached to the car crosshead.
 - 5. The car will be operated by constant pressure on the appropriate directional button and the Run button simultaneously.
 - 6. Normal operating devices will be inoperative while this device is in use.
- G. Work Light and Duplex Plug Receptacle:
 - 1. Work light on top of car.
 - 2. Car top light mounted to provide illumination of all car top equipment.
 - 3. GFCI protected duplex outlet. one (1) at top of car.
 - 4. Include on/off switch and lamp guard.
- H. Car Sills – Passenger Duty:
 - 1. Retain:
 - a) Clean full width.
 - b) Check and tighten all fastenings.
- I. Car Door Panels – Passenger:
 - 1. New:
 - a) Fully enclosed 16-gauge steel, sandwich construction without binder angles
 - b) Constructed with interlocking, stiffening ribs.
 - c) Minimum of two gibs per panel, one at leading and one at trailing edge with gibs in the sill groove entire length of door travel.
 - d) stainless steel satin finish.
- J. Car Door Hangers – Passenger Duty:
 - 1. New:
 - a) Two-point hanger roller with
 - b) Neoprene roller surface
 - c) Suspension with eccentric upthrust roller adjustment.
- K. Car Door Track – Passenger Duty:
 - 1. Retain:
 - a) Clean and sand for smooth, quiet operation.

- b) Check and tighten all fastenings.
- c) Retrofit means to prevent hangers from overrunning ends of track.
- L. Car Door Header – Passenger Duty:
 - 1. Retain:
 - a) Check and tighten all fastenings.
- M. Car Door Closed Detection:
 - 1. SIL rated device to detect closed position of car doors.
 - 2. Design and operation to comply with ASME A17.1 2019 or later edition.
- N. Car Door Interlock:
 - 1. Mechanical door interlock device to prevent:
 - a) Machine operation or power door opening outside of door zone.
 - b) Manual door opening from inside car outside of door zone.
 - 2. Design and operation to comply with ASME A17.1 2019 or later edition.
- O. Car Door Electrical Contact:
 - 1. New:
 - a) Prohibit car operation unless car door or gate is closed.
- P. Door Clutch – Passenger Duty:
 - 1. New:
 - a) Heavy-duty clutch, linkage arms, drive blocks and pickup rollers or cams to provide positive, smooth, quiet door operation.
 - b) Design clutch so car doors can be closed, while hoistway doors remain open.
 - c) Clutch remains engaged with hoistway door interlock rollers allowing power close of hoistway doors to fully closed and locked position.
- Q. Restricted Opening Device:
 - 1. New:
 - a) Restrict opening of car doors to Code required limit outside unlocking zone.
 - b) Adjust for smooth and quiet operation with operating noise undetectable from inside any car or outside of the hoistway.
 - c) Plunger type restrictors not acceptable.
 - d) Mechanical angle to prevent door opening is acceptable.
- R. Passenger Door Operator:
 - 1. New:
 - a) High-speed, heavy-duty door harmonic type operator capable of opening doors at no less than 2.5 fps.

- b) Accomplish reversal in no more than 2½" of door movement.
- c) Solid-state door control with closed loop circuitry to constantly monitor and automatically adjust door operation based upon velocity, position, and motor current.
- d) Maintain consistent, smooth, and quiet car door operation at all floors, regardless of door weight or varying air pressure.

S. Passenger Door Reopening Device:

1. New:

- a) Black fully enclosed infrared device with full screen infrared matrix or multiple beams extending vertically along leading edge of each door panel to minimum height of 7' 0" above finished floor.
- b) Integral device to detect passenger or vehicle approach from elevator lobby.
- c) Extended housing, lens, and additional beams full height of door panels.

4.8. CAR OPERATING PANEL:

A. New:

1. Car 1.

- a) One (1) car operating panel(s) per car.
- b) APPLIED
- c) Metal box containing operating fixtures mounted behind the car return panel.
- d) Vandal resistant.
- e) Provide Exposed Pushbuttons to Initiate:
 - 1) Car call registration.
 - 2) Alarm.
 - 3) Door open.
 - 4) Door close.
 - 5) Emergency push-to-call communication.
 - 6) Pushbuttons:
 - I. Provide minimum 3/4" diameter raised or flush floor pushbuttons which illuminate to indicate call registration.
 - II. Brushed stainless buttons with illuminated LED halo.
 - III. Include 5/8" high floor designation on face of pushbutton.
 - IV. Locate operating controls no higher than 48" above the car floor; no lower than 35" for emergency push-to-call button and alarm button.
 - V. Identify buttons with flat stainless steel tactile symbols surface mounted.
- f) Locked Firefighters' Emergency Operation Panel:

- 1) Openable by the same key which operates the Fire Operation switch.
- 2) Including the following features:
 - I. Phase II fire access switch.
 - II. Firefighters' visual indication.
 - III. Call cancel button.
 - IV. Stop switch, manually operated.
 - V. Door open button.
 - VI. Door close button.
 - VII. Floors served signage.
- g) Service Compartment
 - 1) Provide lockable service compartment with recessed flush door.
 - 2) Door material and finish to match car return panel or car operating panel faceplate.
 - 3) Include the following controls in lockable service cabinet with function and operating positions identified by permanent signage or engraved legend.
 - I. Access switch.
 - II. Light switch.
 - III. Three position exhaust blower switch.
 - IV. Independent service switch.
 - V. Constant pressure test button for battery pack emergency lighting.
 - VI. 120-volt, AC, GFCI protected electrical convenience duplex outlet.
2. Provide black paint filled (except as noted), engraved, or approved etched signage as follows with approved size and font:
 - a) Phase II firefighters' operating instructions on inside face of firefighters' compartment door.
 - b) Engrave filled red firefighters' operation on outside face of compartment door.
 - c) Building identification car number on main car operating panel(s).
 - d) "No Smoking" on main car operating panel(s).
 - e) Car capacity in pounds on car operating panel.
 - f) Number of allowable passengers.

4.9. COMMUNICATION

A. Car Communication System:

1. Hands free two-way communication instrument in car:
 - a) Mounted behind car operating panel.
 - b) Button on car operating panel to initiate two-way communication from Car.

- c) Match car operating panel pushbutton design.
 - d) System includes:
 - 1) Auto dialer.
 - 2) Speaker.
 - 3) Microphone.
 - 4) Adjacent light jewel that illuminates and flashes when call is acknowledged.
 - 5) Call button tactile symbol, engraved signage, and Tactile marking adjacent to button mounted integral with car front return panel.
 - 6) Rechargeable back-up battery and charging system.
 - 7) Wiring and connections between all devices inside the car and the elevator controller.
 - 2. Communication for Deaf, Hard of Hearing and Speech Impaired:
 - a) Device inside car to allow text communication between passengers in the car and Authorized and Emergency Elevator Personnel. System includes:
 - 1) Video screen inside car to display text messages.
 - 2) Separate pushbuttons labeled “yes” and “no”.
 - 3) Locate on the same car operating panel as the call button for the hands free communication device.
 - b) Dedicated emergency communications video camera inside the elevator.
 - 1) Mount to capture view of all passengers in the cab.
 - c) Device is located on the same car operating panel as the phone pushbutton.
 - d) Provide shielded twisted pair wiring to communicate to machine room or equipment space network box.
 - 3. Remote Video Monitoring System:
 - a) Dedicated video camera inside elevator car to allow Authorized Personnel to remotely observe passengers at any location on the car floor.
 - b) Includes all wiring, conduit, fiber optic strands, encoders, routers, internet connections, cloud-based services required to allow Authorized Personnel to access video signal.
- 4.10. CAR ENCLOSURE AND INTERIOR FINISHES
- A. Unless specifically identified as “Retain,” “Reuse,” or “Refurbish,” provide new equipment. Contractor may, with Engineer approval, provide new equipment in lieu of refurbishing existing. See Section 7.04 and 7.05 of the General Conditions of Contract Documents.
 - B. See Section 01 03 00, Alternates and Allowances, to include provisions for custom design options not included below.
 - C. Car Enclosure (Cab Shell):
 - 1. Retain.
 - D. Passenger Car Fronts: (Included in Allowance)

1. Car Front Returns:
 - a) Retain: (RECLAD)
 - 1) Check and tighten all fastenings.
 - 2) Modify for installation of new signal and pushbutton fixtures.
2. Front Transoms:
 - a) Retain: (RECLAD)
 - 1) Check and tighten all fastenings.
 - 2) Modify for installation of new signal and pushbutton fixtures.
- E. Passenger Car Interior on Wall Finishes: (Included in Allowance)
 1. New:
 - a) See Owner approved drawings for custom cab interior design and construction details.
 - b) Removable panels faced and edged with satin.
 - c) baked enamel finish metal reveal strips fastened to enclosure between and above panels.
- F. Handrails: (Included in Allowance)
 1. New:
 - a) See Owner approved drawings for custom cab interior design and construction details.
 - b) Minimum 1½" diameter Aluminum tubular grab bar across on cab walls.
- G. Lighting: (Included in Allowance)
 1. New:
 - a) See Owner approved drawings for custom cab interior design and construction details.
 - b) Six (6) LED fixtures with all required wiring connections and controls.
 - c) Coordinate with emergency lighting requirements.
 - d) Provide emergency lighting integral with portion of normal car lighting system.
 - e) Recessed LED down lights with on/off switch in car operating panel. Recess mount fixture flush with inside surface of car top. Provide steel guard on car top over fixture.
- H. Suspended Ceiling: (Included in Allowance)
 1. New:
 - a) See Owner approved drawings for custom cab interior design and construction details.
 - b) Six (6) section translucent plastic panels mounted in an extruded aluminum angle and T-frame.
 - c) Six (6) section satin finish stainless-steel panels with lighting cutouts in each panel.
- I. Ventilation:
 1. New:

- a) Two-speed type OE exhaust blower.
- b) Mount to car canopy on isolated rubber grommets.
- c) Meet noise requirements specified herein.

J. Car Finish Floor Covering: (Included in Allowance)

1. New:
 - a) Provided and furnished furnished by Contractor.
 - b) Accommodate a minimum 2" floor thickness.

4.11. HALL CONTROLS

A. Hall Pushbutton Station Fixtures:

1. Flush mounted pushbutton station fixtures with enlarged faceplate to cover existing wall block out.
2. Provide any cutting and patching required.
3. Pushbuttons for each direction of travel which illuminate to indicate call registration. Provide LED illumination.
4. Approved engraved message and pictorial representation prohibiting use of elevator during fire or other emergency as part of faceplate.
5. Pushbutton design to match car operating panel pushbuttons.

B. Phase I Fire Service Key Switch and Signage:

1. At designated landing for each group of elevators or single elevator.
2. Included in hall pushbutton fixture.

4.12. CAR ARRIVAL AND TRAVEL DIRECTION SIGNALS

A. Hall Direction Lantern:

1. New: (REPLACE ONLY EXISTING)
 - a) Provide at each entrance to indicate travel direction of arriving car.
 - b) Illuminate up or down LED lights and sound tone once for up and twice for down direction prior to car arrival at floor.
 - c) Illuminate light until the car doors start to close.
 - d) Sound level shall be adjustable from 20-80 dBA measured at 5'-0" in front of hall control station and 3'-0" off floor.
 - e) Provide advanced predictive hall lantern notification to comply with ADA hall call notification time.
 - f) Provide adjustable car door dwell time to comply with ADA requirements relative to hall call notification time.
 - g) Hall direction lenses shall be arrow shaped with faceplates.
 - h) Lenses shall be minimum 2½" in their smallest dimension.

- i) Coordinate installation locations with Engineer.

B. Hall Position Indicator:

1. New:

- a) Alpha-numeric digital indicator containing floor designations and direction arrows a minimum of 2½" high to indicate floor served and direction of car travel.

C. Car Direction Lantern:

1. New:

- a) Provide flush-mounted car lantern in all car entrance columns.
- b) Illuminate up or down LED lights and sound tone once for up and twice for down direction.
- c) Provide advanced hall lantern notification to comply with ADA hall call notification time.
- d) Illuminate light until the car doors start to close.
- e) Sound level shall be adjustable from 20-80 dBA measured at 5'-0" in front of hall control station and 3'-0" off floor.
- f) Car direction lenses shall be arrow shaped with faceplates.
- g) Lenses shall be minimum 2½" in their smallest dimension.
- h) Provide vandal resistant lantern and light assemblies consisting of series of dots or lines for maximum visibility.

D. Car Position Indicator:

1. New:

- a) Alpha-numeric digital indicator type.
- b) Floor designations and direction arrows a minimum of 2" high to indicate floor served and direction of car travel.
- c) Vandal resistant fixture and faceplate.
- d) Locate on Car Operating Panel.
- e) When a car leaves or passes a floor, illuminate indication representing position of car in hoistway.
- f) Illuminate proper direction arrow to indicate direction of travel.

4.13. SIGNAL FIXTURE FACEPLATE FINISHES

A. All Fixtures:

- 1. stainless steel satin finish.
- 2. Provide as specified and/or detailed on Owner approved drawings.

PART 5 - EXECUTION

5.1. SITE CONDITION INSPECTION

- A. Prior to beginning installation of equipment, examine hoistway and machine room areas. Verify no irregularities exist which affect execution of the specified work.
- B. Inform Engineer of any irregularities in writing prior to commencing work.
- C. Do not proceed with installation until work in place conforms to project requirements.

5.2. INSTALLATION

- A. Hydraulic Jack Hole Clean Out: (This applies if Alternate is selected)
 - 1. After removal of the existing hydraulic jack assembly, remove all debris from the existing jack hole to allow the plumb installation of the new hydraulic jack assembly.
 - a) Remove any accumulated debris, corrosion, and obstructions from the hydraulic jack holes.
 - b) Clean the jack hole thoroughly to ensure a smooth and unobstructed surface.
 - c) Inspect the jack hole for corrosion, wear, or damage, and document the findings. Notify Engineer immediately if it is found that the condition of the existing jack hole structure, including the casing and casing plug, is not adequate for re-use.
 - d) Verify that the existing jack hole is within hydraulic jack manufacturers' tolerances for location, diameter, and plumbness.
 - e) Contractor is responsible for the containment, storage, transport, and disposal of all spoils and debris removed from the existing jack hole at no extra cost to the Owner.
- B. Install all new equipment as follows:
 - 1. in accordance with Contractor's instructions, referenced codes, specifications, and approved submittals.
 - 2. with clearances in accordance with referenced codes, and specifications.
 - 3. to be easily maintained and/or removed.
 - 4. to afford maximum accessibility, safety, and continuity of operation.
- C. Remove oil, grease, scale, and other foreign matter from the following equipment and apply one coat of field-applied machinery enamel.
 - 1. All exposed equipment and metal work installed as part of this work which does not have architectural finish.
 - 2. Machine room equipment, and pit equipment.
 - 3. Neatly touch up damaged factory-painted surfaces with original paint color.
 - 4. Protect machine-finish surfaces against corrosion.
- D. Paint machine room and pit floors.

5.3. FIELD QUALITY CONTROL

- A. Work at jobsite will be checked during course of installation. Full cooperation with reviewing personnel is mandatory. Accomplish corrective work required prior to performing further installation.
- B. Perform complete "Acceptance" level pre-testing as specified in the latest edition of ASME A17.2 "Guide for Inspection of Elevators, Escalators, and Moving Walks" prior to AHJ witnessed acceptance testing. Complete any adjustments, repairs, or replacements necessary to achieve code compliant operation including but not limited to:
 - 1. Car emergency communications. Inform Owner and Engineer of any noted failures of Owner provided and maintained equipment or systems.
 - 2. Phase I and II Firefighters' Emergency Operation. Phase I initiated by smoke sensing devices.
 - 3. Power car door operation including door closing force, reopening device, and restricted opening.
- C. Have Code Authority acceptance inspection performed and complete corrective work.
- D. Provide access to installed equipment and elevator personnel assistance for Engineer's final observation and review requirements.

5.4. ADJUSTMENTS

- A. Static balance car to equalize pressure of guide shoes on guide rails.
- B. Verify that weights of existing or altered cars, counterweights, and compensation comply with traction machine manufacturers' requirements and do not exceed total weights indicated on approved submittals. See Section 01 30 00, Submittals.
- C. Lubricate all equipment in accordance with Contractor's instructions.
- D. Adjust motors, power conversion units, brakes, controllers, leveling switches, limit switches, stopping switches, door operators, interlocks, and safety devices to achieve required performance levels.

5.5. CLEANUP

- A. Keep work areas orderly and free from debris during progress of project. Remove packaging materials daily.
- B. Elevator hoistways and all equipment therein shall be cleaned and left free of rust, filings, welding slag, rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt, and dust, including walls, building beams, sill ledges, and hoistway divider beams.
- C. Care shall be to not to mark, soil, or otherwise deface existing or new surfaces. Clean and restore such surfaces to their original condition.
- D. Clean down surfaces and areas which require final painting and finishing work. Cleaning includes removal of rubbish, broom cleaning of floors, removal of any loose plaster or mortar, dust, and other extraneous materials from finish surfaces, and surfaces which will remain visible after the work is complete.
- E. Paint machine room and pit floors.
- F. Remove all loose materials and filings resulting from work.
- G. Clean machine room equipment and floor.
- H. Clean car, car enclosure, entrances, operating and signal fixtures.

5.6. FINAL COMPLIANCE REVIEW

- A. See SECTION 01 70 00 – FINAL CONTRACT COMPLIANCE REVIEW.

END OF SECTION

CONTRACT DOCUMENTS

OLD TOWN PARKING STRUCTURE ELEVATOR MODERNIZATION

LB Project No. R0100065338-001

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Fort Collins, Colorado, Downtown
Development Authority (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- A. Modernization of the elevator located in the Old Town Parking Structure, as detailed in the Project Specifications – Old Town Parking Structure Elevator Modernization, dated May 8, 2026, and all selected alternatives.
 - B. The alternatives that Owner has selected to be performed by Contractor are those identified in the Contractor’s Bid as _____.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Old Town Parking Structure Elevator Modernization.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Lerch Bates, Inc.
- 3.02 The Owner has retained Lerch Bates, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Dates*
- A. The Work shall be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before _____.
- 4.03 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed

and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$1000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

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

- A. For all Work, at the prices stated in Contractor’s Bid, attached hereto as Exhibit A.
- B. Nothing to contrary herein withstanding (including the Contract Documents), Contractor understands and agrees that Owner is a governmental entity and that it is prohibited from authorizing any payment under this Agreement in excess of the amount that has been budgeted and appropriated for this Agreement. The amount that Owner has budgeted and appropriated for this Agreement is \$ _____, which represents the Contract Price plus a construction contingency of \$ _____ (the “Budgeted and Appropriated Amount”). Under no circumstance shall Owner be liable to Contractor for the payment of any sum under this Agreement in excess of the Budgeted and Appropriated Amount, or for any sum due and payable after the current fiscal year. All financial obligations of Owner beyond the current fiscal year shall be subject to funds for such purpose being annually budgeted and appropriated by the City Council of the City of Fort Collins, in its sole discretion, and the Board of Directors of Owner, in its sole discretion.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

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

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment (submitted by the 1st of the month for Work completed as of the 25th of the previous month) on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that

such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 95 percent of Work completed (with the balance being retainage).
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06. 6.04

6.04 *Consent of Surety*

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

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 0% percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and

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

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following, all of which are incorporated herein by this reference:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. Bonds:
 - a. Performance bond (pages 1 to 3, inclusive).
 - b. Payment bond (pages 1 to 3, inclusive).
 - 3. Lien Waiver (pages 1 to 1, inclusive).
 - 4. Consent of Surety (pages 1 to 1, inclusive).
 - 5. General Conditions (pages 1 to 72, inclusive).
 - 6. Supplementary Conditions (pages 1 to 4, inclusive).
 - 7. Project Specifications dated May 8, 2026 (not attached but incorporated by reference) consisting of 48 pages, inclusive.
 - 8. Addendum(s) (pages to , inclusive).

9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages █ to █, inclusive), labeled as Exhibit ___.
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Application for Payment
 - f. Certificate of Substantial Completion
 - g. Certificate of Final Acceptance
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

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

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

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

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

OWNER:

Fort Collins, Colorado, Downtown
Development Authority, a body corporate and
politic

By: _____
Amanda Huston, Chair

ATTEST:

By: _____
Cheryl A. Zimlich, Secretary

Address for Notices to Owner:
Fort Collins Downtown Development Authority
Attn: Matt Robenalt
19 Old Town Square, Ste. 230
Fort Collins, CO 80524

CONTRACTOR:

By: _____

Address for Notices to Contractor:

PAYMENT BOND

CONTRACTOR (name and address):

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

OWNER (name and address):

Fort Collins, Colorado, Downtown Development Authority
19 Old Town Square, Suite 230
Fort Collins, CO. 80524

CONSTRUCTION CONTRACT

Effective Date of the Agreement: _____

Amount: \$ _____

Description (name and location): Old Town Parking Structure Elevator Modernization

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

SURETY

_____, (seal)

_____, (seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (attach power of attorney)

_____,
Print Name

_____,
Print Name

_____,
Title

_____,
Title

Attest: _____
Signature

Attest: _____
Signature

_____,
Title

_____,
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party 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: NONE

PERFORMANCE BOND

CONTRACTOR (name and address):

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

OWNER (name and address):

Fort Collins, Colorado, Downtown Development Authority
19 Old Town Square, Suite 230
Fort Collins, CO. 80524

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

\$

Description (name and location):

Old Town Parking Structure Elevator Modernization

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 16

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

CONTRACTOR AS PRINCIPAL

SURETY

_____, (seal)
Contractor's Name and Corporate Seal

_____, (seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party 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 for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

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

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

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

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

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

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

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the

Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

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

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

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

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

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

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

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

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

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

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

14. Definitions

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

payments made to or on behalf of the Contractor under the Construction Contract.

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

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

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

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

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

16. Modifications to this Bond are as follows: NONE

LIEN WAIVER RELEASE (CONTRACTOR)

TO: Fort Collins, Colorado, Downtown Development Authority (OWNER)

FROM: _____(CONTRACTOR)

PROJECT: **Old Town Parking Structure Elevator Modernization**

1. The CONTRACTOR acknowledges having received payment, except final payment and retainage, from the OWNER for all work, labor, skill and material furnished, delivered and performed by the CONTRACTOR for the OWNER or for anyone in the construction, design, improvement, alteration, addition or repair of the above-described project.
2. In consideration of such payment and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CONTRACTOR voluntarily waives all rights, claims and liens, including but not limited to, mechanic's liens, Miller Act claims (40 U.S.C.A. 270 a and b), stop notices, equitable liens and labor and material bond rights which the CONTRACTOR may now or may afterward have, claim or assert for all and any work, labor, skill or materials furnished, delivered or performed for the construction, design, improvement, alteration, addition or repair of the above described project, against the OWNER or its officers, agents, employees or assigns, against any fund of or in the possession or control of the OWNER, against the project or against all land and the buildings on and appurtenances to the land improved by the project.
3. The CONTRACTOR affirms that all work, labor and materials, furnished, delivered or performed to or for the construction, design, improvement, alteration, addition or repair of the project were furnished, delivered or performed by the CONTRACTOR or its agents, employees, and servants, or by and through the CONTRACTOR by various Subcontractors or materialmen or their agents, employees and servants and further affirms the same have been paid in full and have released in full any and all existing or possible future mechanic's liens or rights or claims against the project or any funds in the OWNER'S possession or control concerning the project or against the OWNER or its officers, agents, employees or assigns arising out of the project.
4. The CONTRACTOR agrees to defend and hold harmless the OWNER, the lender, if any, and the Surety on the project against and from any claim hereinafter made by the CONTRACTOR'S Subcontractors, materialmen, employees, servants, agents or assigns against the project or against the OWNER or its officers, employees, agents or assigns arising out of the project for all loss, damage and costs, including reasonable attorneys' fees, incurred as a result of such claims.
5. The parties acknowledge that the description of the project set forth above constitutes an adequate description of the property and improvements to which this Lien Waiver Release pertains. It is further acknowledged that this Lien Waiver Release is for the benefit of and may be relied upon by the OWNER, the lender, if any, and Surety on any labor and material bonds for the project.

Signed this _____ day of _____, 20_____.

CONTRACTOR

By: _____

Title: _____

ATTEST:

Secretary

STATE OF COLORADO)

COUNTY OF LARIMER))ss.

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

Witness my hand and official seal.

My Commission Expires: _____.

Notary Public

CONSENT OF SURETY

TO: Fort Collins, Colorado, Downtown Development Authority (hereinafter referred to as the "OWNER")

CONTRACTOR: _____

PROJECT: **Old Town Parking Structure Elevator Modernization**

CONTRACT DATE: _____

In accordance with the provisions of the Contract between the OWNER and the CONTRACTOR as indicated above, for _____ (Surety), on bond of _____ hereby approves of the Final Payment to the CONTRACTOR, and agrees that Final Payment to the CONTRACTOR shall not relieve the Surety Company of any of its obligations to the OWNER, as set forth in the said Surety Company's Bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this _____ day of _____, 20____.

(Surety Company)

By: _____

ATTACH: Power of Attorney and Certificate of Authority of Attorney(s)-in-Fact.

GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

PROJECT: Old Town Parking Structure Elevator Modernization,
LB Project No. R0100065338-001

These GENERAL CONDITIONS have been developed using the STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT prepared by the Engineers Joint Contract Documents Committee, EJCDC® 2013 Edition, as a base. Changes to that document are shown by underlining text that has been added and striking through text that has been deleted.

GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Legal Holidays* - Shall be those holidays observed by the City of Fort Collins, Colorado.
25. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

26. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
28. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
29. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
30. *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.
31. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
32. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
33. *Regular Working Hours* – Regular working hours are defined as 6:00 a.m. to 4:30 p.m.
34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
35. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
36. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
37. *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.
38. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
39. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

40. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
41. *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.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
43. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
47. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner's Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - a. In no case will a schedule be acceptable which allows less than 14 calendar days for each review by Engineer.
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

- A. ~~At least 10 days before submission of the first Application for Payment,~~ Before any work at the site begins, a conference attended by Contractor, Engineer, and others as ~~appropriate designated by Owner,~~ will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A and Division 1 – General Requirements. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

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

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
 3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. *Resolving Discrepancies:*
1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - 1) In the event of conflicting or ambiguous provisions within the Contract Documents, specifications will take precedence over the drawings and addenda will take precedence over both. Notwithstanding the foregoing, the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive. On all drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at the Contractor's own risk.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract

Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

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

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

5.01 *Availability of Lands*

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

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract

Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, ~~promptly~~ immediately after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
1. Contractor ~~shall~~ may be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

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

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

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

- ~~1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or~~
 - ~~2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or~~
 - ~~3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.~~
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- ~~E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.~~
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- ~~G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.~~
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in

Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- ~~I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that

individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

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

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. ~~Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.~~
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor

to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
 - 1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.

- b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial

Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
 1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this

Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least ~~20 days~~ thirty (30) days prior written notice has been given to the ~~Owner purchasing policyholder~~. Within three days of receipt of any such written notice, the ~~Owner purchasing policyholder~~ shall provide a copy of the notice to each other insured.

- C. *Deductibles*: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. ~~All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.~~
- B. ~~Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:~~
 - 1. ~~loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~

2. ~~loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.~~
- C. ~~Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, all Work at the Site shall be performed during Regular Working Hours, Monday through Friday, subject to and in accordance with Part 1.4 of Section 01 02 00 - Summary of Work. Contractor shall not perform Work on a Saturday, Sunday, or any Legal Holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, ~~which will not be unreasonably withheld~~. Contractor shall submit requests to the Engineer no less than 48 hours in advance of any Work to be performed on Saturday, Sunday, Holidays, or outside the working hours.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Contractor shall perform not less than 20 percent of the Work with its own forces (that is, without subcontracting). The 20 percent requirement shall be understood to refer to the Work the value of which totals not less than 20 percent of the Contract Price, including labor, equipment, and value of permanent materials not provided by subcontractors. Contractor shall disclose, at the time of bidding, use of Professional Employment Organizations (PEO) and include these organizations in their percentage of subcontracted work.
- E. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- F. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection ~~after due investigation~~. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- ~~G. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement. It is a condition of the Contract to require the use of the named subcontractors, suppliers, or other persons or organization on the Work unless prior written approval is obtained from Owner and Engineer.~~

- H. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- I. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal. The relative contract value and percentage of contract participation of each such Subcontractor and Supplier shall be included in such list. On a monthly basis, Contractor shall submit a written progress report outlining work complete to date, unforeseen conditions, progress on schedule, subcontractor participation, and other work summaries deemed important by the Engineer or Owner.
- J. 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.
- K. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- L. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- M. 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.
- N. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- O. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier. Owner or Engineer may furnish to any subcontractor, supplier or other person or organization evidence of amounts paid to Contractor in accordance with Contractor's Applications for Payment.
- P. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract

Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

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

7.08 *Permits*

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

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
1. Owner is exempt from Colorado State and local sales and use taxes on materials to be permanently incorporated into the project. Said taxes shall not be included in the Contract Price.
 2. Contractor must apply for, and receive, a Certificate of Exemption from the Colorado Department of Revenue for construction materials to be physically incorporated into the project. This Certification of Exemption provides that the Contractor shall neither pay nor include in their Bid, Sales and Use Taxes on those building and construction materials physically incorporated into the project.
 - a. Address:
Colorado Department of Revenue
State Capital Annex

1375 Sherman Street
Denver, Colorado, 80261

3. Sales and Use Taxes for the State of Colorado, Regional Transportation District (RTD) and Certain Colorado counties are collected by the State of Colorado and are included in the Certification of Exemption.
4. All Applicable Sales and Use Taxes (including State collected taxes), on any item other than construction and building materials physically incorporated into the project are to be paid by Contractor and are to be included in appropriate bid items.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the

performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

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

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to

arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or

adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

9.01 Communications to Contractor

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

9.02 Replacement of Engineer

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

9.03 Furnish Data

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

9.04 Pay When Due

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

9.05 Lands and Easements; Reports, Tests, and Drawings

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

9.06 Insurance

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

9.07 Change Orders

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

9.08 Inspections, Tests, and Approvals

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraphs 10.03 and 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in ~~the Supplementary Conditions~~ paragraph 10.03 of these General Conditions. If the Engineer furnishes a Resident Project Representative (RPR) or other assistants, or if the Owner designates a Representative or agent, all as provided in paragraph 10.03 of the General Conditions, these Representatives shall have the authority and limitations as provided in paragraph 10.03 of the General Conditions and shall be subject to the following:
1. The Representative's dealings in matters pertaining to the on-site work will, in general, be with the Engineer and Contractor. However, the Representative will keep the Owner properly advised about such matters. The Representative's dealings with subcontractors will only be through or with the full knowledge and approval of the Contractor.
 2. Duties and Responsibilities. Representative will:
 - a. Schedules – Review the progress schedule and other schedules prepared by the Contractor and consult with the Engineer concerning acceptability.
 - b. Conferences and Meeting – Attend meeting with the Contractor such as preconstruction conferences, progress meetings and other job conferences and prepare and circulate copies of minutes of meetings.
 - c. Liaison
 - 1) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent to assist the Contractor in understanding the Contract Documents.
 - 2) Assist in obtaining from Owner additional details or information, when required, for proper execution of the work.
 - 3) Advise the Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or sample submission if the submission has not been approved by the Engineer.
 - d. Review of Work, Rejection of Defective Work, Inspection, and Tests
 - 1) Conduct on-site observations of the Work in progress to assist the Engineer in determining that the work is proceeding in accordance with the Contract Documents.
 - 2) Report to the Engineer whenever the Representative believes that the work is unsatisfactory, faulty, or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspections, tests, or approvals required to be made; and advise the Engineer when the Representative believes work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- 3) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the Engineer.
 - e. Interpretation of Contract Documents - Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarification and interpretation of the Contract Documents as issued by the Engineer.
 - f. Modifications – Consider and evaluate Contractor’s suggestions for modification in Drawings or Specifications and report these recommendations to the Engineer. Accurately transmit to Contractor decisions issued by the Engineer.
 - g. Records
 - 1) Maintain at the Representative’s office orderly files concerning correspondence, reports of job conferences, Shop Drawings and samples, reproductions or original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional drawings issued subsequent to the execution of the Agreement, Engineer’s clarifications and interpretations of the Contract Documents, progress reports and other project documents.
 - 2) Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of equipment and materials.
 - h. Reports
 - 1) Furnish Engineer periodic reports, as required, of the progress of the Work and of the Contractor’s compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - 2) Consult with Engineer in advance of scheduling major tests, inspections or start of important phases of the Work.
 - 3) Draft proposed Change Orders and Work Directive Changes, obtaining backup material from the Contractor and recommend to Engineer Change Orders, Work Directive Changes and field orders.
 - 4) Report immediately to Engineer and Owner the occurrence of any accident.
 - i. Payment Requests – Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendation to Engineer, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the Work.
 - j. Completion
 - 1) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring correction or completion.
 - 2) Conduct final inspection in the company of the Engineer, Owner, and Contractor and prepare a final list of items to be corrected or completed.
 - 3) Observe that all items on the final list have been corrected or completed and make recommendations to Engineer concerning acceptance.
3. Limitation of Authority: The Representative shall not:

- a. Authorize any deviations from the Contract Documents or accept any substitute materials or equipment, unless authorized by the Engineer.
- b. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
- c. Undertake any of the responsibilities of the Contractor, Subcontractor, or Contractor's superintendent.
- d. Advise on, or issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures for construction unless such is specifically called for in the Contract Documents.
- e. Advise on, or issue directions regarding or assume control over safety precautions and programs in connection with the Work.
- f. Accept Shop Drawings or sample submittals from anyone other than the Contractor.
- g. Authorize the Owner to occupy the work in whole or part.
- h. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by the Engineer.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

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

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

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

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in

contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

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

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of

Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

11.02 *Owner-Authorized Changes in the Work*

Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Contractor acknowledges and agrees that the Owner has the right to add or delete items in the Bid or change quantities at Owner's sole discretion without affecting the Contract Price of any remaining item so long as the deletion or addition does not exceed twenty-five percent (25%) of the original total Contract Price.

Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

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

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work

involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. By the execution of a Change Order, a Work Change Directive or Written Agreement, Owner and Contractor expressly acknowledge and agree that said Change Order, Work Change Directive or Written Agreement provides for a fair and equitable adjustment in the Contract Price and/or Contract Times for the additions, deletions, or revisions in the Work as authorized by said Change Order, Work Change Directive or Written Agreement. Owner and Contractor further expressly acknowledge and agree that Claims for adjustments to the Contract Price and/or Contract Times covered by a Change Order, Work Change Directive or Written Agreement are not valid.
- C. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for

resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation:*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the

Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.
4. Contractor acknowledges and agrees that the Owner has the right to add or delete items in the Bid or change quantities at Owner's sole discretion without affecting the Contract Price of any remaining item so long as the deletion or addition does not exceed twenty-five percent of the original total Contract Price.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable

set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees,

Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Any funds that are withheld by the Owner shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship. By executing the application for payment form the Contractor expressly waives his right to the benefits of Colorado Revised Statutes, Section 24-91-101, et seq.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing

Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;

- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in

writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*
 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract

Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. With the approval of Owner, in its sole discretion, in lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers. Releases or waivers of liens and the consent of the surety to finalize payment shall be submitted in a form substantially similar to the forms contained in the Contract Documents, or if no such form is present, in a form reasonably acceptable to Owner and Contractor.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:*** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

- D. *Payment Becomes Due*: Thirty days after, or after the advertisement and claims period described in C.R.S. 38-26-107, the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor, subject to Section 18.07.A.2 of these General Conditions.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Completion of Work under 15.06.C above ~~Substantial Completion~~ (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such other adjacent areas;
 2. correct such defective Work;
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if not previously identified in the Contract Documents and made a part of the Work. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due,

Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or

by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located. The laws of the State of Colorado apply to this Agreement. Reference to two pertinent Colorado statutes are as follows:
 1. Colorado Revised Statutes (CRS 8-7-101) require that Colorado labor be employed to perform the Work to the extent of not less than 80 percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the project. Colorado labor means any person who is a bona fide resident of the State of Colorado at the time of employment, without discrimination as to race, color, creed, age, religion, or sex.
 2. If a claim is filed, Owner is required by law (CRS 38-26-107) to withhold from all payments to Contractor sufficient funds to insure the payment of all claims for labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by Contractor or his subcontractors in or about the performance of the Work. Such funds must be withheld until said claims have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with Owner a receipt in full or an order for withdrawal in writing and signed by the person filing such a claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement, as published in a public newspaper in accordance with the law, unless action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the Owner. At the expiration of such ninety (90) day period, Owner shall pay to Contractor such moneys and funds as are not the subject of suit and lis pendens notices, and shall retain only sufficient funds to insure the payment of judgments which may result from the suit.

18.08 *Headings*

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

SUPPLEMENTARY CONDITIONS

PROJECT: Old Town Parking Structure Elevator Modernization, LB Project No. R0100065338-001

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

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

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

SC -2.01 Add the following new paragraph after 2.01.C

D. Contractor shall provide, from insurance companies reasonably acceptable to Owner, the insurance coverage required by the Contract Documents and pay all costs associated therewith. Before commencing Work, Contractor shall furnish to Owner certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of such policies, and containing substantially the following statement:

“The insurance evidenced by this Certificate shall not reduce coverage or limits and shall not be canceled, except after thirty (30) days’ written notice to the Fort Collins, Colorado, Downtown Development Authority.”

In case of the breach of any provision of such insurance requirements, Owner, at its option, may take out and maintain, at the expense of Contractor, such insurance as Owner may deem proper and may deduct the cost of such insurance from any monies which may be due or become due to Contractor under the Contract Documents.

SC-5.02 Add following new paragraph after 5.02.D:

E. i. Contractor shall continuously maintain adequate protection of all its work from damage and shall protect Owner property from injury or loss arising out of this Contract. Contractor shall provide all barricades required to protect open hoistways or shafts per OSHA regulations. Design of barricades in public areas shall be approved by Owner prior to fabrication and installation.

iii. Contractor shall install a suitable protective covering on all finished floors whether marble, wood, carpet or other, in areas where work is being performed. No material handling equipment shall be permitted on or over finished floors unless said floors have been protected in a manner approved by Owner.

iv. Portable fire extinguishers shall be provided throughout Contractor’s area of work and shall be placed so as to be accessible at all times. Extinguishers shall be multi-purpose dry chemical type, provided on a basis of one 2A-20BC rated unit for each 3,000 square feet of floor area. Extinguishers will remain property of

Contractor.

v. Contractor shall at all times maintain work areas, so all portions are accessible to fire department personnel and apparatus. Fire hydrants and fire department connections to building sprinkler systems must be kept free from obstruction at all times.

vi. Contractor shall strictly supervise any welding, metal cutting or other operations employing open flame work. All welding and cutting equipment shall be safely arranged and all combustibles in vicinity of any work being performed shall either be removed or protected by a noncombustible cover. Welding or cutting shall be attended by an assistant or fire watchman who is equipped with at least one 2A-20BC rated multi-purpose dry chemical fire extinguisher. Fire watchman will maintain strict surveillance during entire welding or cutting operation and extinguish flying sparks or burning slag. After welding or cutting operation fire watchman shall thoroughly search entire area for remnants of smoldering materials before he is released from his duty. Any welding or other operation employing open flame in any portion of building shall be scheduled with and receive approval of Owner. Hot work permits shall be scheduled and approved with Owner.

vii. Contractor shall provide all storage, transport, and disposal of all used hydraulic oil and jack hole clean out spoils and debris removed from an existing jack hole at no extra cost to Owner.

SC-5.03 Add the following language to 5.03.A:

The following reports of explorations or tests of subsurface conditions at or adjacent to the Site: None.

No drawings of physical conditions in or relating to existing surface of subsurface structures which are at or contiguous to the Site have been utilized by the Engineer in preparation of the Contract Documents, except the following: None.

SC-6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

State:	<u>Statutory</u>
Federal, if applicable (e.g., Longshoreman's):	<u>Statutory</u>

Employer's Liability:

Bodily injury, each accident	\$ <u>1,000,000</u>
Bodily injury by disease, each employee	\$ <u>1,000,000</u>
Bodily injury/disease aggregate	\$ <u>1,000,000</u>

Foreign voluntary worker compensation	<u>Statutory</u>
2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:	
General Aggregate	\$ <u>2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>2,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>
3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:	
Bodily Injury:	
Each person	\$ <u>1,000,000</u>
Each accident	\$ <u>1,000,000</u>
Property Damage:	
Each accident	\$ <u>1,000,000</u>
Combined Single Limit of	\$ <u>1,000,000</u>
4. Excess or Umbrella Liability:	
Per Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>
5. Contractor's Pollution Liability:	
Each Occurrence	\$ <u>1,000,000</u>
General Aggregate	\$ <u>1,000,000</u>
6. Additional Insureds: Owner and Engineer shall be named as additional insureds on all policies required under the Contract Documents.	

SC-6.05 Provide Property Insurance as required in Section 6.05 of the General Conditions. Property insurance furnished under this Contract shall have deductibles no greater than \$1,000 for all sub-limits except for earthquake, which shall have a maximum deductible

of \$5,000. When coverage for flood, landslide, or mudslide are included, the maximum deductible applicable to such coverage shall be \$50,000.

SC-6.06.A. Replace the second sentence of Section 6.06.A. with the following sentence:

Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused to the extent payment is received under such policies of insurance.

SC-7.08 Add the following language to paragraph 7.08.A:

Any building permits provided by local agencies shall be dually named, naming both Owner and Contractor on each permit.

SC-18.09 *Independent Contractor*

A. Owner hereby retains Contractor for the Project to perform the services on the terms and conditions specified in the Contract Documents, and Contractor agrees so to serve. The parties agree that Contractor shall be an independent contractor and shall not be an employee of Owner. Contractor, as an independent contractor, is not entitled to workers' compensation benefits and unemployment insurance benefits, and Contractor is obligated to pay federal and state income tax on any monies earned pursuant to the contract relationship.

END OF SECTION