LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 1

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding budget review, contracts, financial update and other matters properly relating thereto.

Public comment.

Background:

Lander County Finance Director Rogene Hill will give an update to the Commission regarding the progress of the Fiscal Year 2011-2012 audit, current year contracts, general financial operations of the County and other fiscal issues.

Recommended Action:

No specific action is necessary on this agenda item.

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 2

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion and update on Road and Bridge South projects and other matters properly related thereto.

Public comment.

Background:
Lander County Road and Bridge South Foreman Bartolo Ramos will give an update to the Commission on Road and Bridge South Projects.

Recommended Action:
No specific action is necessary or allowed on this agenda item.

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 3

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion and update on Road and Bridge North projects and other matters properly related thereto.

Public comment.

Background:
Lander County Road and Bridge North Foreman Donald Negro will give an update to the Commission on Road and Bridge North Projects.

Recommended Action:
No specific action is necessary or allowed on this agenda item.

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 4

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion and update on Public Works projects and other matters properly related thereto.

Public comment.

Background:
Lander County Public Works Foreman Jacob Edgar will give an update to the Commission on Public Works Projects.

Recommended Action:
No specific action is necessary or allowed on this agenda item.

Ag-5

Battle Mountain Raceway

Lander County, Nevada

Bidding and Contract Documents
& Project Specifications
for the

Battle Mountain Raceway Fencing Improvements

Public Works Project Number:
PWP-LA-2012-320

Prepared by:

SHAW
ENGINEERING

20 Vine Street
Reno, NV 89503
Phone 775.329.5559
Fax 775.329.5406
www.shawengineering.com

June 2012 **OWNER**

SHAW
ENGINEERING

ADDENDA NUMBER: ONE

Date: **June 14th, 2012**

Project Name: **Battle Mountain Raceway Fencing Improvements**

Bid Date: **Wednesday June 27, 2012**

Addendum Acknowledgement

The **CONTRACTOR** shall acknowledge receipt of this addendum on the Bid Proposal. This shall be accomplished by listing all addenda received on the lines provided on page 00400-1 of the Bid Proposal Form.

1. Bid Due Time: The bid due time has been changed from **11:00am to 11:30 am**, on Wednesday, June 27, 2012.

Additional information on this project can be found at www.shawengineering.com.

SHAW
ENGINEERING

Additional Information to Bidders

Date: **June 20, 2012**

Project Name: **Battle Mountain Raceway Fencing Improvements**

Bid Date: **June 27h, 2012**

Bid Due: **11:30 AM (Local Time)**

The following additional information is provided to bidders:

1. Owner will remove existing fence and clear the fence line.

SHAW
ENGINEERING

Additional Information to Bidders

Date: **June 18, 2012**

Project Name: **Battle Mountain Raceway Fencing Improvements**

Bid Date: **June 27h, 2012**

Bid Due: **11:30 AM (Local Time)**

The following additional information is provided to bidders:

1. Steel wire ties are an acceptable alternative to the 6 gauge clips specified. Steel wire ties shall be 8-1/2" 11 gauge spaced 15" on center for line posts and 18" on center for rails.

SHAW
ENGINEERING

Additional Information to Bidders

Date: **May 30, 2012**

Project Name: **Battle Mountain Raceway Fencing Improvements**

Bid Date: **June 27h, 2012**

Bid Due: **11:00 AM (Local Time)**

The following additional information is provided to bidders:

Bidders who would like to visit the Battle Mountain Raceway site of the work may contact the local Battle Mountain Representative; Rod Smith at 775-397-3613, to gain access.

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Advertisement for Bids

Lander County Convention and Tourism Authority
Battle Mountain Civic Center
625 South Broad Street
Battle Mountain, NV 89820

Public Works Project Identifying Number (PWP) LA-2012-320

Separate sealed Bids will be received by Lander County, the OWNER, for construction of the **Battle Mountain Raceway Fencing Project** at the office of the Lander County Clerk located at 315 South Humboldt, Battle Mountain, Nevada 89820 at **11:00a.m.**, local time, on Wednesday, June 27, 2012 and then at said office publicly opened and read aloud.

The Work is generally described as follows:

The Work consists of the installation of approximately 8128 linear feet of chain link fence and gates.

Copies of the Contract Documents may be obtained at the office of the ENGINEER located at Shaw Engineering, 20 Vine Street, Reno, Nevada 89503, upon payment (nonrefundable) of $25.00 for each set. At the request of prospective Bidders, the Contract Documents can be mailed for an additional fee to cover the cost of postage and handling (at cost). The ENGINEER will record only those parties who have obtained the Contract Documents from the office of the ENGINEER.

A pre-bid conference will not be conducted.

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

If the contract is awarded, OWNER will award the contract to the lowest responsive, responsible Bidder. The low Bidder will be determined on the basis of the base Bid plus any alternates which are accepted by the OWNER in the sequential order they are listed.

END OF SECTION

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00200 Instructions to Bidders

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00200 Instructions to Bidders

ARTICLE 1 - Defined Terms

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplemental Conditions. Additional terms used in these Instructions to Bidders have the meaning indicated below which are applicable to both singular and plural thereof:

A. *Bidder* --The individual or entity who submits a Bid directly to **OWNER**.

B. *Issuing Office* --The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered. The Issuing Office is **Shaw Engineering, Ltd.**, 20 Vine Street, Reno Nevada 89503.

C. *Successful Bidder* --The lowest responsible Bidder submitting a responsive Bid to whom **OWNER** (on basis of **OWNER**'s evaluation as hereinafter provided) makes an award.

ARTICLE 2 - Copies of Bidding Documents

2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office. The deposit is nonrefundable.

Complete sets of Bidding Documents must be used in preparing Bids; neither **OWNER** nor **ENGINEER** assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

Copies of documents obtained from any source other than Shaw Engineering, Ltd. will be at the sole risk of the user. Documents posted on any internet site are for information only. Contract Documents obtained from Shaw Engineering, Ltd. in a printed format shall supercede all other formats, versions, or editions.

OWNER and **ENGINEER,** in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 – Qualifications of Bidders

3.01 Bidder's must be qualified with licensure and experience to perform the work.

ARTICLE 4 - Examination of Bidding Documents, Other Related Data, and Site

4.01 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that **ENGINEER** has used in preparing the Bidding Documents.

2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that **ENGINEER** has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by the **OWNER** to any Bidder on request. If the copies are included in the Project Manual, they will be shown in the Table of Contents for Section 00300, Information Available to Bidders. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 Underground Facilities

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

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

4.04 On request, **OWNER** will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.05 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other Work that is to be performed at the Site by **OWNER** or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted.

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

A. examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;

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

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

D. carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions;

E. obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

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

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

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

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

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

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

ARTICLE 5 - Pre-Bid Conference

5.01 A pre-bid conference will not be conducted.

ARTICLE 6 – Site and Other Areas

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by **CONTRACTOR**. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by **OWNER** unless otherwise provided in the Bidding Documents.

ARTICLE 7 - Interpretations and Addenda

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

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by **OWNER** or **ENGINEER**. It is the Bidders sole responsibility to ensure that any Addenda issued are received by the Bidder and are complete.

ARTICLE 8 - Bid Security

8.01 A Bid must be accompanied by Bid security made payable to **OWNER** in an amount of 5% of Bidder's base Bid price and in the form of a certified or bank check or a Bid Bond [on the form attached] issued by a surety meeting the requirements of paragraph 5.01 and 5.02 of the General Conditions and paragraph SC5.02 of the Supplemental Conditions.

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

8.03 Bid security of other Bidders whom **OWNER** believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - Contract Times

9.01 The number of days within which or the dates by which the Work (and Milestone) is to be (a) Substantially Completed and (b) also completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 - Liquidated Damages

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

ARTICLE 11 - Substitute and "Or-Equal" Items

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by **ENGINEER** and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by **ENGINEER** as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by **ENGINEER** at least ten days prior to the date for receipt of Bids. Each such request shall conform to requirements of paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed items is upon Bidder. **ENGINEER**'s decision of approval or disapproval of a proposed item will be final. If **ENGINEER** approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12 - Subcontractors, Suppliers, and Others

12.01 Each Bidder shall list the name and business address of each Subcontractor who will perform Work or render service under this Contract in or about the construction of the improvement, or a Subcontractor licensed by the State of Nevada who specifically fabricates and installs a portion of the Work or improvement according to detailed Drawings contained in the plans, in excess of one-half of one percent of the total amount shown in the Bid, and shall also list the portion of the Work which will be done by such Subcontractor.

12.02 A **CONTRACTOR** whose Bid is accepted shall not substitute any person for a Subcontractor who is named in the Bid unless:

A. The **OWNER** objects to the Subcontractor, requests in writing a change in the Subcontractor and pays any increase in costs resulting from the change; or

B. The substitution is approved by the **OWNER** and:

1. The Subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the **CONTRACTOR** which was offered to the Subcontractor with the same terms that all other Subcontractors on the Project were offered;

2. The named Subcontractor files for bankruptcy or becomes insolvent; or

3. The named Subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance Bond and payment Bond pursuant to NRS 339.025.

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

12.04 The **CONTRACTOR** may subcontract no more than 50 percent of the total cost of the Project.

ARTICLE 13 – Preparation of Bid

13.01 The Bid Forms and Supplements are included with the Bidding Documents.

13.02 All blanks on the Bid Forms and Supplements shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each Bid item and alternative listed therein.

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and State of incorporation shall be shown below the signature.

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

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

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

13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature. Any Bidder who submits a joint venture Bid shall obtain written approval from the State of Nevada Contractor's Board prior to submitting such a Bid and shall attach approval with Bid.

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

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

13.10 The address and telephone number for communications regarding the Bid shall be shown.

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

ARTICLE 14 - Basis of Bid; Evaluation of Bids

14.01 Unit Price

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

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.

ARTICLE 15 – Submittal of Bid

15.01 Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the Bid Forms and Supplements. The unbound copy of the Bid Forms and Supplements is to be completed and submitted.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". Bids delivered via facsimile will not be accepted and will be returned to the Bidder. A mailed Bid shall be addressed to Lander County Road and Bridge Department, 315 South Humboldt St., Battle Mountain, Nevada 89820. It is the sole responsibility of the Bidder to verify that its Bid is received by the **OWNER** prior to the public opening of the Bids.

ARTICLE 16 – Modification and Withdrawal of Bid

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

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

ARTICLE 17 - Opening of Bids

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

ARTICLE 18 - Bids to Remain Subject to Acceptance

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

ARTICLE 19 - Award of Contract

19.01 **OWNER** reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. **OWNER** further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible.

OWNER may also reject the Bid of any Bidder if **OWNER** believes that it would not be in the best interest of the Project to make an award to that Bidder. **OWNER** also reserves the right to waive all informalities not involving price, time, or changes in the Work.

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

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

19.04 In evaluating Bidders, **OWNER** will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted.

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

19.06 If the Contract is to be awarded, **OWNER** will award the Contract to the lowest responsive, responsible Bidder of the Project.

19.07 The low Bidder will be determined on the basis of the base Bid plus any alternates which are accepted by the **OWNER**. The alternate Bids will be selected and awarded by the **OWNER** in the sequential order they are listed on the Bid Proposal Form and in the best interest of the **OWNER**.

ARTICLE 20 - Contract Security and Insurance

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

20.02 A performance Bond and a payment Bond, each in the amount of 100 percent of the Contract Price with a corporate surety approved by the **OWNER**, will be required for the faithful performance of the Contract. The Bond forms provided in the Contract Documents must be used.

20.03 Attorneys-in-fact who sign Bid Bonds or payment Bonds and performance Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

ARTICLE 21 – Signing of Agreement

21.01 When **OWNER** gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful

Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to **OWNER**. Within ten days thereafter, **OWNER** shall deliver one fully signed counterpart to Successful Bidder with a complete set of the drawings with appropriate identification.

ARTICLE 22 - Sales and Use Taxes

22.01 The Bidder must include all sales and use taxes in its Bid.

ARTICLE 23 - Other Items

23.01 Pursuant to Nevada Revised Statute (NRS) 338.145, the **OWNER** will not award the Contract to a Bidder who, at the time of submitting a Bid, was not properly licensed under the provisions of Chapter 624 of NRS or if the Contract would exceed the limit of the Bidder's license.

23.02 A sub-bidder named by the Bidder who is not properly licensed for that portion of the Work shall be deemed unacceptable. If the sub-bidder is deemed unacceptable, the Bidder shall provide an acceptable sub-bidder before award of the Contract without an increase in Contract Price.

23.03 The **CONTRACTOR** shall cause all appropriate provisions of the Contract to be inserted in all subcontracts relative to the Work to bind Subcontractors to the **CONTRACTOR** by the terms of the Contract Documents (NRS 338.165 and 338.170).

23.04 In each Contract for the construction of public works, a proviso shall be inserted to the effect that if the provisions of this section are not complied with by the **CONTRACTOR**, the Contract shall be void, and any failure or refusal to comply with any of the provisions of this section shall render any such Contract void (NRS 338.130).

ARTICLE 24 – Prevailing Wage Rates

24.01 State Prevailing Wage Rates shall be paid on this Project if the total bid amount is $100,000.00 or greater. The Bidder shall be solely responsible for obtaining current rates any and all modifications and/or Addenda issued on the Prevailing Wage Rates prior to the scheduled Bid opening date.

END OF SECTION

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00300 Information Available to Bidders

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Item	***Number***
Battle Mountain Raceway Project Map	N\A
Prevailing Wage Information	N\A

State Prevailing Wage Rates

for

Public Works

Note: The CONTRACTOR shall be solely responsible for obtaining the latest State Prevailing Wage Rates for Public Works projects. The following information may be helpful:

www.state.nv.us

go to:
Boards and Commissions
Labor Commission
Prevailing Wage Rates

or

State of Nevada
Labor Commission
Carson City, Nevada
(775) 687-4850

PENAL SUM FORM

Bid Bond

BIDDER (Name and Address):

Tholl Fence, Inc.
800 Glendale Avenue
Sparks, NV 89431

SURETY (Name and Address):

Fidelity and Deposit Company of Maryland
560 Mission Street, Suite 2400
San Francisco, CA 94105

OWNER (Name and Address):

Lander Clounty Battle Mountain Raceway
315 South Humboldt Street
Battle Mountain, NV 89820

BID

BID DUE DATE: June 27, 2012

DATE (Not later than Bid due date): June 22, 2012

PENAL SUM: Five percent of amount of bid and XX/100 ----------5%----------
(Words) *(Figures)*

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on page 00430-2 hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

Tholl Fence, Inc. (Seal)
Bidder's Name and Corporate Seal

By: [signature] pres.
Signature and Title

Attest: [signature] Treasurer
Signature and Title

SURETY

Fidelity and Deposit Company of Maryland (Seal)
Surety's Name and Corporate Seal

By: Elena M. Chiaretti
Signature and Title (Attach Power of Attorney)
Elena M. Chiaretti (Attorney-in-fact)

Attest: [signature]
Signature and Title
Deseree Colosimo NV #525555

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, **OWNER** or other party shall be considered plural where applicable.

EJCDC No. 1910-28-C (1996 Edition)

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 22nd day of June, 2012

Lisa D. Baird

Assistant Secretary

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Elena M. CHIARETTI, of Reno, Nevada,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.

FOR YOUR PROTECTION LOOK FOR THE ZURICH WATERMARK

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 16th day of October, A.D. 2006.

ATTEST: **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

FIDELITY AND DEPOSIT COMPANY INCORPORATED 1890 OF MARYLAND

By:

Gregory E. Murray Assistant Secretary *Frank E. Martin Jr. Vice President*

State of Maryland }
Baltimore County } ss:

On this 16th day of October, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

DENNIS R. HAYDEN NOTARY PUBLIC 02-15-2013 BALTIMORE COUNTY, MD

Dennis R. Hayden *Notary Public*

My Commission Expires: February 15, 2013

THOLL FENCE, INC.

Business Entity Information

Status:	Active	File Date:	4/24/1959
Type:	Domestic Corporation	Entity Number:	C520-1959
Qualifying State:	NV	List of Officers Due:	4/30/2013
Managed By:		Expiration Date:	
NV Business ID:	NV19591000420	Business License Exp:	4/30/2013

Additional Information

Central Index Key:	

Registered Agent Information

Name:	DARRYL J. BADER	Address 1:	621 PREAKNESS COURT
Address 2:		City:	RENO
State:	NV	Zip Code:	89521
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	25,000.00	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Secretary - STEVEN APPELBAUM			
Address 1:	7005 QUAIL ROCK LANE	Address 2:	
City:	RENO	State:	NV
Zip Code:	89511	Country:	
Status:	Active	Email:	
President - DARRYL BADER			
Address 1:	621 PREAKNESS COURT	Address 2:	
City:	RENO	State:	NV
Zip Code:	89521	Country:	USA
Status:	Active	Email:	
Director - DARRYL BADER			
Address 1:	621 PREAKNESS COURT	Address 2:	
City:	RENO	State:	NV
Zip Code:	89521	Country:	USA
Status:	Active	Email:	
Treasurer - SHAWNA J DOWNS			
Address 1:	505 BROWN ST	Address 2:	
City:	RENO	State:	NV
Zip Code:	89509	Country:	
Status:	Active	Email:	

Notice of Award, Agreement and Notice to Proceed

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Item	***Number***
Notice of Award	00510-1
Agreement	00520-1 thru 6
Notice to Proceed	00550-1

Notice of Award

Dated August 9, 2012

TO: Tholl Fence, Inc.

ADDRESS: 800 Glendale Avenue, Sparks, NV 89431

Contract: **Battle Mountain Raceway Fencing Project**

You are notified that your Bid dated June 27, 2012 for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for the Battle Mountain Raceway Fencing Improvement Project - total work.

(Indicate Total Work, Alternates or Sections of Work Awarded)

The Contract Price of your Contract is One hundred and forty thousand, five hundred and one dollars and sixteen cents. Dollars ($ 140,501.16).

2 copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. 5 sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by August 24th, 2012.

1. Deliver to the Owner 2 fully executed counterparts of the Contract Documents. [Each of the Contract Documents must bear your signature on (00520-6)].

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

3. (List other conditions precedent).
   NA

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

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

*Copy to **ENGINEER***
(use Certified Mail,
Return Receipt Requested)

Lander County
(**OWNER**)

By: _____
(AUTHORIZED SIGNATURE)

Project Engineer (TITLE)

Agreement

THIS AGREEMENT is by and between Lander County

(hereinafter called **OWNER**) and Tholl Fence, Inc

(hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - Work

1.01 **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - The Project

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Battle Mountain Raceway Fencing Project

ARTICLE 3 - Engineer

3.01 The Project has been designed by **Shaw Engineering, Ltd.**, 20 Vine Street, Reno, Nevada, 89503, who is hereinafter called **ENGINEER** and who is 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 Work in accordance with the Contract Documents.

ARTICLE 4 – Contract Times

4.01 Time of the Essence

1. 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 Days to Achieve Substantial Completion and Final Payment

1. The Work will be substantially completed within 38 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 45 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

1. **CONTRACTOR** and **OWNER** recognize that time is of the essence of this Agreement and that **OWNER** will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), **CONTRACTOR** shall pay **OWNER** $200.00 for each day that expires after the time specified in paragraph

CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by **OWNER**, **CONTRACTOR** shall pay **OWNER** $500.00 for each day that expires after the times specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – Contract Price

5.01 **OWNER** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amounts determined pursuant to the paragraph below:
A. For all Work, at the prices stated in **CONTRACTOR's** Bid, attached hereto as an exhibit.

As provided in paragraph 11.03 of the General Conditions, estimated quantities for unit price items are not guaranteed, and determinations of actual quantities and classifications are to be made by **ENGINEER** as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 – Payment Procedures

6.01 Submittal and Processing of Payments

A. **CONTRACTOR** shall submit Applications for Payment in accordance with Article 14 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 each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of 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 in the General Requirements:

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 **ENGINEER** may determine or **OWNER** may withhold, in accordance with paragraph 14.02 of the General Conditions:

   a. 90% of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by **ENGINEER**, and if the character and progress of the Work have been satisfactory to **OWNER** and **ENGINEER**, **OWNER**, on recommendation of **ENGINEER**, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

   b. 100% of cost of materials and equipment not incorporated in the Work.

2. Upon Substantial Completion, **OWNER** shall pay an amount sufficient to increase total payments to **CONTRACTOR** to 95% of the Work completed, less such amounts as **ENGINEER** shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of **ENGINEER's** estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said paragraph 14.07.

ARTICLE 7 - Interest

7.01 The **CONTRACTOR** acknowledges that he is aware of the provisions of Nevada Revised Statute 338.160, which provides for investment of contract retainages, and the payment of interest thereon to the **CONTRACTOR** after completion of the Project. The **CONTRACTOR** agrees to waive all his rights to investment of and payment of interest on retainage, upon the understanding that the regulations of the lending agency prohibit such investment and that, without this waiver, loan and/or grant funds for this Project will not be available.

ARTICLE 8 – Contractor's Representations

8.01 In order to induce **OWNER** to enter into this Agreement, **CONTRACTOR** makes the following representations:

A. **CONTRACTOR** has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. **CONTRACTOR** has visited the Site 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 federal, State, and local 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 contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions.

E. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by **CONTRACTOR**, including applying the specific means, methods, techniques, sequence, and procedures of construction, if any, expressly required by the Contract Documents to be employed by **CONTRACTOR**, and safety precautions and programs incident thereto.

F. **CONTRACTOR** does not consider that any 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 Documents.

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 correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. **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**.

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

ARTICLE 9 – Contract Documents

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (Number 00520);
2. Performance Bond (Number 00610);
3. Payment Bond (Number 00615);
4. General Conditions (Number 00700);
5. Supplementary Conditions (Number 00800);
6. Project drawing (Section 00300)
7. Addenda (Section 00900).
8. Exhibits to this Agreement (enumerated as follows):
   A. Notice to Proceed (number 00550);
   B. **CONTRACTOR's** Bid;
   C. Documentation submitted by **CONTRACTOR** prior to Notice of Award (pages _____ to _____, inclusive);
9. State Prevailing Wage Rates including Addenda;
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    1. Written Amendments;
    2. Work Change Directives;
    3. Change Order(s).

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 paragraph 3.05 of the General Conditions.

ARTICLE 10 - Miscellaneous

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. 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, moneys that may become due and moneys that are 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 partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, 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 Other Provisions

A. **CONTRACTORS** are required by law to be licensed and regulated by the Nevada's State Contractors Board. Any questions concerning a **CONTRACTOR** may be referred to the State Contractors Board, 70 Linden Street, Reno, Nevada 89502.

IN WITNESS WHEREOF, **OWNER** and **CONTRACTOR** have signed this Agreement in duplicate. One counterpart each has been delivered to **OWNER** and **CONTRACTOR**. All portions of the Contract Documents have been signed or identified by **OWNER** and **CONTRACTOR** or on their behalf.

This Agreement will be effective on October 11, 2012 (which is the Effective Date of the Agreement).

OWNER:
By: Dean Bullock

[Corporate Seal]
Attest Sadie Sullivan

Address for giving notices:

315 S. Humboldt St.
Battle Mountain, NV 89820

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

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

CONTRACTOR:
By: Darryl Bader

Darryl Bader, President

[Corporate Seal]
Attest _____

Addresses for giving notices:

800 Glendale Ave
Sparks 89431

License No.: _____
(Where applicable)

Agent for service of process: Darryl Bader
621 Preakness, Reno, NV 89521

(If **CONTRACTOR** is a corporation or a partnership, attach evidence of authority to sign.)
NV SOS entity details

Designated Representative:

Name: Andy Sutherland

Title: Estimator

Address: 800 Glendale Ave, Sparks

Phone: 775-525-2023

Facsimile: 775-358-7197

Notice to Proceed

Dated:_____

To: _____
(Contractor)

Address[1]: _____
_____

Contract:_____

You are notified that the Contract Times under the above contract will commence to run on _____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____ and the date of readiness for final payment is _____.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and **OWNER** must each deliver to the other (with copies to **ENGINEER** and other identified additional insureds) certificates of insurance, which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must (add other requirements):

_____
_____
_____

Lander County
(OWNER)

By: _____
(Authorized Signature)

_____
(Title)

Copy to **ENGINEER:**
Shaw Engineering, Ltd.

[1] (Use Certified Mail, Return Receipt Requested)

END OF SECTION

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Bonds, Application for Payment & Certificate of Substantial Completion

Table of Contents

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Payment Bond	00615-1 thru 2
Contractor's Application for Payment	00620-1 thru 2
Certificate of Substantial Completion	00620-3 thru 4
Certificate of Owner's Attorney	00620-5

Bond #09014943
Premium: $2,072.00

Performance Bond

Any singular reference to **CONTRACTOR**, Surety, **OWNER** or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
Tholl Fence, Inc.
800 Glendale Avenue
Sparks, NV 89431

SURETY (Name and Address of Principal Place of Business):
Fidelity and Deposit Company of Maryland
560 Mission Street, Suite 2400
San Francisco, CA 94105

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: August 9, 2012 Amount: $140,501.16

Description (Name and Location): Battle Mountain Raceway Fencing Project

BOND: Date (Not earlier than Contract Date): August 9, 2012 Amount: $140,501.16

Modifications to this Bond Form: none

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-2, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal

Company: Tholl Fence, Inc. (Corp. Seal)

Signature: Darl Bader

Name and Title: Darryl Bader
President

SURETY Fidelity and Deposit Company of Maryland

Company: _____ (Corp. Seal)

Signature: Elena M. Chiaretti

Name and Title: Elena M. Chiaretti (Attorney-in-fact)

_____ (attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____ (attach Power of Attorney)

Bond #09014943
Premium: included in performance bond

Payment Bond

Any singular reference to Contract, Surety, **OWNER** or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Tholl Fence, Inc.
800 Glendale Avenue
Sparks, NV 89431

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

Fidelity and Deposit Company of Maryland
560 Mission Street, Suite 2400
San Francisco, CA 94105

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: August 9, 2012 Amount: $140,501.16

Description (Name and Location): Battle Mountain Raceway Fencing Project

BOND: Date (Not earlier than Contract Date): August 9, 2012 Amount: $140.501.16

Modifications to this Bond Form:

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-4, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal

Company: Tholl Fence, Inc. (Corp. Seal)

Signature: Daryl Bader

Name and Title: Daryl Bader
President

SURETY

Company: Fidelity and Deposit Company of Maryland (Corp. Seal)

Signature: Elena M. Chiaretti

Name and Title: Elena M. Chiaretti (Attorney-in-fact)

(attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

(attach Power of Attorney)

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **GEOFFREY DELISIO, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Elena M. CHIARETTI, of Reno, Nevada,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 25th day of July, A.D. 2012.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
Geoffrey Delisio

State of Maryland
City of Baltimore

On this 25th day of July, A.D. 2012, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **GEOFFREY DELISIO, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Constance A. Dunn, Notary Public
My Commission Expires: July 14, 2015

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 8th day of August, 2012.

James M Carroll

James M. Carroll, Vice President

Performance Bond

Any singular reference to **CONTRACTOR**, Surety, **OWNER** or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

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

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: _____ Amount: _____

Description (Name and Location): Battle Mountain Raceway Fencing Project

_____

_____

BOND: Date (Not earlier than Contract Date): _____ Amount: _____

Modifications to this Bond Form: _____

_____

_____

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-2, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____ (attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____ (attach Power of Attorney)

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 Contract, which is incorporated herein by reference.

2. If the **CONTRACTOR** performs the Contract, the Surety and the **CONTRACTOR** have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

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

3.1 The **OWNER** has notified the **CONTRACTOR** and the Surety at the addresses described in paragraph 10 below, that the **OWNER** is considering declaring a **CONTRACTOR** Default and has requested and attempted to arrange a conference with the **CONTRACTOR** and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the **OWNER**, the **CONTRACTOR** and the Surety agree, the **CONTRACTOR** shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the **OWNER**'s right, if any, subsequently to declare a **CONTRACTOR** Default; and

3.2 The **OWNER** has declared a **CONTRACTOR** Default and formally terminated the **CONTRACTOR**'s right to complete the Contract. Such **CONTRACTOR** Default shall not be declared earlier than twenty days after the **CONTRACTOR** and the Surety have received notice as provided in paragraph 3.1; and

3.3 The **OWNER** has agreed to pay the Balance of the Contract Price to:

3.3.1 The Surety in accordance with the terms of the Contract;

3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. 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:

4.1 Arrange for the **CONTRACTOR**, with consent of the **OWNER**, to perform and complete the Contract; or

4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractor ; or

4.3 Obtain Bids or negotiated proposals from qualified contractor acceptable to the **OWNER** for a contract for performance and completion of the Contract, arrange for a Contract to be prepared for execution by the **OWNER** and the contractor selected with the **OWNER**'s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the **OWNER** the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the **OWNER** resulting from the **CONTRACTOR** Default; or

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

4.4.1 After investigation, determine the amount for which it may be liable to the **OWNER** and, as soon as practicable after the amount is determined, tender payment therefor to the **OWNER**; or

4.4.2 Deny liability in whole or in part and notify the **OWNER** citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 enforce any remedy available to the **OWNER**. If the Surety proceeds as provided in paragraph 4.4, and the **OWNER** refuses the payment tendered or the Surety has denied pliability, in whole or in part, without further notice the **OWNER** shall be entitled to enforce any remedy available to the **OWNER**.

6. After the **OWNER** has terminated the **CONTRACTOR**'s right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the **OWNER** shall not be greater than those of the **CONTRACTOR** under the Contract, and the responsibilities of the **OWNER** to the Surety shall not be greater than those of the **OWNER** under the Contract. To a limit of the amount of this Bond, but subject to commitment by the **OWNER** of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the **CONTRACTOR** for correction of defective Work and completion of the Contract;

6.2 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 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the **CONTRACTOR**.

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

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

9. 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 **CONTRACTOR** Default or within two years after the **CONTRACTOR** ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suite shall be applicable.

10. Notice to the Surety, the **OWNER** or the **CONTRACTOR** shall be mailed or delivered to the address shown on the signature page.

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

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the **OWNER** to the **CONTRACTOR** under the Contract after all proper adjustments have been made, including allowance to the **CONTRACTOR** of any amounts received or to be received by the **OWNER** in settlement of insurance or other Claims for damages to which the **CONTRACTOR** is entitled, reduced by all valid and proper payments made to or on behalf of the **CONTRACTOR** under the Contract.

12.2 Contract: The agreement between the **OWNER** and **CONTRACTOR** identified on the signature page, including all Contract Documents and changes thereto.

12.3 **CONTRACTOR** Default: Failure of the **CONTRACTOR**, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 **OWNER** Default: Failure of the **OWNER** which has neither been remedied nor waived, to pay the **CONTRACTOR** as required by the Contract or to perform and complete or comply with the other terms thereof.

Payment Bond

Any singular reference to Contract, Surety, **OWNER** or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

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

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: _____ Amount: _____

Description (Name and Location): Battle Mountain Raceway Fencing Project

_____

_____

BOND: Date (Not earlier than Contract Date): _____ Amount: _____

Modifications to this Bond Form: _____

_____

_____

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-4, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal	SURETY
Company: _____ (Corp. Seal)	Company: _____ (Corp. Seal)
Signature: _____	Signature: _____
Name and Title: _____	Name and Title: _____
_____	_____ (attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal	SURETY
Company: _____ (Corp. Seal)	Company: _____ (Corp. Seal)
Signature: _____	Signature: _____
Name and Title: _____	Name and Title: _____
_____	_____ (attach Power of Attorney)

1. The **CONTRACTOR** and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the **OWNER** to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the **OWNER**, this obligation shall be null and void if the **CONTRACTOR**:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the **OWNER** from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the **OWNER** has promptly notified the **CONTRACTOR** and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the **CONTRACTOR** and the Surety, and provided there is no **OWNER** Default.

3. With respect to Claimants, this obligation shall be null and void if the **CONTRACTOR** promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the **CONTRACTOR** have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the **OWNER**, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the **CONTRACTOR**:

1. Have furnished written notice to the **CONTRACTOR** and sent a copy, or notice thereof, to the **OWNER**, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the **CONTRACTOR**, or not received within 30 days of furnishing the above notice any communication from the **CONTRACTOR** by which the **CONTRACTOR** has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the **OWNER**, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the **CONTRACTOR**.

5. If a notice required by paragraph 4 is given by the **OWNER** to the **CONTRACTOR** or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety"s expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the **OWNER**, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the **OWNER** to the **CONTRACTOR** under the Contract shall be used for performance of the Contract and to satisfy claims, if any, under any 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 Contract are dedicated to satisfy obligations of the **CONTRACTOR** and the Surety under this Bond, subject to the **OWNER's** priority to use the funds for the completion of the Work

9. The Surety shall not be liable to the **OWNER**, Claimants or others for obligations of the **CONTRACTOR** that are unrelated to the Contract. The **OWNER** shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligation to Claimants under this Bond.

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

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the lcoation in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, 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.

12. Notice to the Surety, the **OWNER** or the **CONTRACTOR** shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the **OWNER** or the **CONTRACTOR**, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract 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. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the **CONTRACTOR** shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINTIONS

15.1 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 Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the 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.

15.2 Contract: The agreement between the **OWNER** and the **CONTRACTOR** identified on the signature page, including all Contract Documents and changes thereto.

15.3 **OWNER** Default: Failure of the **OWNER**, which has neither been remedied nor waived, to pay the **CONTRACTOR** as required by the Contract or to perform and complete or comply with the other terms thereof.

Application for Payment No. _____

To: **Lander County** **(OWNER)**

From: _____ **(CONTRACTOR)**

Contract: **Battle Mountain Raceway Fencing Project**

For Work accomplished through the date of: _____

1.	Original Contract Price:	$ _____
2.	Net change by Change Orders and Written Amendments (+ or -)	$ _____
3.	Current Contract Price (1 plus 2):	$ _____
4.	Total completed and stored to date:	$ _____
5.	Retainage (per Agreement)	
	_____ % of completed Work:	$ _____
	_____ % of stored material:	$ _____
	Total Retainage:	
6.	Total completed and stored to date less retainage (4 minus 5):	$ _____
7.	Less previous Application for Payments:	$ _____
8.	**DUE THIS APPLICATION (6 MINUS 7):**	$ _____

Accompanying Documentation:

CONTRACTOR's Certification:

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

Date _____ _____

CONTRACTOR

By: _____

State of _____
County of _____
Subscribed and sworn to before me this _____
day of _____, _____

Notary Stamp

_____
Notary Public

My Commission expires: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____ _____

ENGINEER

By: _____

Application No. _____ Date: _____

Item	Unit Price	Estimated Quantity	Schedule of Values Amount	Quantity Completed	Amount	%	Material Stored	Amount Completed and Stored
1.	$		$		$		$	$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
21.								
22.								
23.								
24.								
25.								
26.								
27.								
28.								
29.								
30.								
Total			$		$		$	$

Certificate of Substantial Completion

Date of Issuance: _____

OWNER Lander County

CONTRACTOR _____

Contract: Battle Mountain 2012 Road Rehabilitation Projects

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To _____
OWNER

And To _____
CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representative of **OWNER**, **CONTRACTOR** and **ENGINEER**, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

_____
Date of Substantial Completion

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of **CONTRACTOR** to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by **CONTRACTOR** within _____ days of the above date of Substantial Completion.

The responsibilities between **OWNER** and **CONTRACTOR** for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER _____

_____

_____

CONTRACTOR _____

_____

_____

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of **CONTRACTOR**'s obligation to complete the Work in accordance with the Contract Documents.

Executed by **ENGINEER** on _____
Date

_____
ENGINEER

By: _____
(Authorized Signature)

CONTRACTOR accepts this Certificate of Substantial Completion on _____
Date

_____
CONTRACTOR

By: _____
(Authorized Signature)

OWNER accepts this Certificate of Substantial Completion on _____
Date

_____
OWNER

By: _____
(Authorized Signature)

Certificate of Owner's Attorney

I, the undersigned, Angie M. Elquist, the duly authorized and acting legal representative of Lander County, do hereby certify as follows:

I have examined the attached **CONTRACTOR**(s) Performance and Payment Bonds and insurance certificates and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof. I also am of the opinion that the **CONTRACTOR**'s insurance coverage complies with the requirements of the Contract.

Angie Elquist
Attorney's Signature

Date: 10/8/12

END OF SECTION

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00700 General Conditions

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00700 General Conditions

ARTICLE 1- Definitions and Terminology

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

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

2. *Agreement*--The written instrument which is evidence of the agreement between **OWNER** and **CONTRACTOR** covering the Work.

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

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

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

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instruction to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instrument of security.

9. *Change Order*--A document recommended by **ENGINEER** which is signed by **CONTRACTOR** and **OWNER** and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

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

11. *Contract*--The entire and integrated written agreement between the **OWNER** and **CONTRACTOR** concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), **CONTRACTOR**'s bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and **ENGINEER**'s written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by **OWNER** to **CONTRACTOR** are not Contract Documents.

13. *Contract Price*--The moneys payable by **OWNER** to **CONTRACTOR** for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by **ENGINEER**'s written recommendation of final payment.

15. ***CONTRACTOR***--The individual or entity with whom **OWNER** has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

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

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

19. ***ENGINEER***--The individual or entity named as such in the Agreement.

20. ***ENGINEER's*** *Consultant*--An individual or entity having a contract with **ENGINEER** to furnish services as **ENGINEER**'s independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by **ENGINEER** which requires minor changes in the Work by which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1p04 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and others of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by **OWNER** to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, **OWNER** will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by **OWNER** to **CONTRACTOR** fixing the date on which the Contract Times will commence to run and on which **CONTRACTOR** shall start to perform the Work under the Contract Documents.

30. ***OWNER***--The individual, entity, public body, or authority with whom **CONTRACTOR** has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by **OWNER** of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

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

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of **ENGINEER** who may be assigned to the Site or any part thereof.

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

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for **CONTRACTOR** and submitted by **CONTRACTOR** to illustrate some portion of the Work.

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

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applies to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with **CONTRACTOR** or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *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 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 part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which 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 any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to **CONTRACTOR** issued on or after the Effective Date of the Agreement and signed by **OWNER** and recommended by **ENGINEER** ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by **OWNER** and **CONTRACTOR** on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed", " as approved", or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 shall not be effective to assign to **ENGINEER** any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective", when modifying the word "Work", refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspections, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to

ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by **OWNER** at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

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

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

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

4. When "furnish", "install", "perform", or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of **CONTRACTOR**, "provide" is implied.

5. Unless stated otherwise in the Contract Documents, words or phrases which 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

A. When **CONTRACTOR** delivers the executed Agreements to **OWNER**, **CONTRACTOR** shall also deliver to **OWNER** such Bonds as **CONTRACTOR** may be required to furnish.

2.02 Copies of Documents

A. **OWNER** shall furnish to **CONTRACTOR** up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

A. **CONTRACTOR** shall start to perform the Work on the date when the Contract Times

commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. **CONTRACTOR**'s Review of Contract Documents: Before undertaking each part of the Work, **CONTRACTOR** shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. **CONTRACTOR** shall promptly report in writing to **ENGINEER** any conflict, error, ambiguity, or discrepancy which **CONTRACTOR** may discover and shall obtain a written interpretation or clarification from **ENGINEER** before proceeding with any Work affected thereby; however, **CONTRACTOR** shall not be liable to **OWNER** or **ENGINEER** for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless **CONTRACTOR** knew or reasonably should have known thereof.

B. Preliminary Schedules: Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), **CONTRACTOR** shall submit to **ENGINEER** for its timely review:

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

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

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

2.06 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by **CONTRACTOR, ENGINEER,** and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by **CONTRACTOR, ENGINEER,**

and others as appropriate will be held to review for acceptability to **ENGINEER** as provided below the schedules submitted in accordance with paragraph 2.05.B. **CONTRACTOR** shall have an additional ten 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 any specified Milestones and 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 Shop Drawing and Sample submittals will be acceptable to **ENGINEER** if it provides a workable arrangement for reviewing and processing the required submittals.

3. **CONTRACTOR**'s schedule of values will be acceptable to **ENGINEER** as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – Contract Documents: Intent, Amending, Reuse

3.01 Intent

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to **OWNER.**

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

3.02 Reference Standards

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of **OWNER,**

CONTRACTOR, or **ENGINEER**, or any of their subcontractors, Consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to **OWNER**, **ENGINEER**, or any of **ENGINEER**'s Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, **CONTRACTOR** discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provisions of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, **CONTRACTOR** shall report it to **ENGINEER** in writing at once. **CONTRACTOR** shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that **CONTRACTOR** shall not be liable to **OWNER** or **ENGINEER** for failure to report any such conflict, error, ambiguity, or discrepancy unless **CONTRACTOR** knew or reasonably should have known thereof.

B. Resolving Discrepancies

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

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

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

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) **ENGINEER**'s approval of a Shop Drawing or Sample; or (iii) **ENGINEER**'s written interpretation or clarification.

3.05 Reuse of Documents

A. **CONTRACTOR** and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with **OWNER**: (i) shall not 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 **ENGINEER**'s Consultant, including electronic media editions; and (ii) shall not reuse any of 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**. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude **CONTRACTOR** from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – Availability of Lands; Subsurface & Physical Conditions; Reference Points

4.01 Availability of Lands

A. **OWNER** shall furnish the Site. **OWNER** shall notify **CONTRACTOR** of any encumbrances or restrictions not of general application but specifically related to use of the Site with which **CONTRACTOR** must comply in performing the Work. **OWNER** will obtain in a timely manner and pay for easements for permanent structures or permanent structures or permanent changes in existing facilities. If **CONTRACTOR** and **OWNER** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in **OWNER**'s furnishing the Site, **CONTRACTOR** may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, **OWNER** shall furnish **CONTRACTOR** with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and **OWNER**'s interest therein as necessary for giving notice of or filing a mechanic's or constructions lien against such lands in accordance with applicable Laws and Regulations.

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

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: the Supplementary Conditions identify:

1. those reports of explorations and test of subsurface conditions at or contiguous to the Site that **ENGINEER** has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that **ENGINEER** has used in preparing the contract Documents.

B. Limited Reliance by **CONTRACTOR** on Technical Data Authorized: **CONTRACTOR** may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", **CONTRACTOR** may not rely upon or make any Claim against **OWNER**, **ENGINEER**, or any of **ENGINEER**'s Consultants with respect to:

1. the completeness of such reports and drawings for **CONTRACTOR**'s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by **CONTRACTOR**, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any **CONTRACTOR** interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

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

1. is of such a nature as to establish that any "technical data" on which **CONTRACTOR** is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

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

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents; then **CONTRACTOR** shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify **OWNER** and **ENGINEER** in writing about such condition. **CONTRACTOR** shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in **CONTRACTOR**'s cost of, or time required for, performance of the Work; subject, however, to the following;

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraph 9.08 and 11.03.

2. **CONTRACTOR** shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. **CONTRACTOR** knew of the existence of such conditions at the time **CONTRACTOR** made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid becoming bound under a negotiated contract; or

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

   c. **CONTRACTOR** failed to give the written notice within the time as required by paragraph 4.03.A.

3. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, **OWNER**, **ENGINEER**, and **ENGINEER**'s Consultants shall not be liable to **CONTRACTOR** for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by **CONTRACTOR** on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to **OWNER** or **ENGINEER** by the owners of such Underground Facilities, including **OWNER**, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

   1. **OWNER** and **ENGINEER** shall not be responsible for the accuracy or completeness of any such information or data; and

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

      a. reviewing and checking all such information and data,

      b. locating all Underground Facilities shown or indicated in the Contract Documents,

      c. coordination of the Work with the owners of such Underground Facilities, including **OWNER**, during construction, and

      d. the safety and protection of all such Underground Facilities and repairing any
      damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, **CONTRACTOR** shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to **OWNER** and **ENGINEER. ENGINEER** will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of location of the Underground Facility. During such time, **CONTRACTOR** shall be responsible for the safety and protection of such Underground Facility.

2. If **ENGINEER** concludes that a change in the Contract Documents is required, a work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that **CONTRACTOR** did not know of and could not reasonably have been expected to be aware of or to have anticipated. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, **OWNER** or **CONTRACTOR** may make a Claim therefor as provided in paragraph 10.05.

4.05 Referenced Points

A. **OWNER** shall provide engineering surveys to establish reference points for construction which in **ENGINEER's** judgement 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 monument, and shall make no changes or relocations without the prior written approval of **OWNER. CONTRACTOR** shall report to **ENGINEER** whenever any reference points or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. Reports and Drawings: Reference is made to the Supplementary Condition for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the **ENGINEER** in the preparation of the Contract Documents.

B. Limited Reliance by **CONTRACTOR** on Technical Data Authorized: **CONTRACTOR** may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", **CONTRACTOR** may not rely upon or make any Claim against **OWNER, ENGINEER** or

any of **ENGINEER**'s Consultants with respect to:

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

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

3. any **CONTRACTOR** interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

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

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

E. **CONTRACTOR** shall not be required to resume Work in connection with such condition or in any affected area until after **OWNER** has obtained any required permits related thereto and delivered to **CONTRACTOR** written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If **OWNER** and **CONTRACTOR** cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by **CONTRACTOR**, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice **CONTRACTOR** does not agree to resume such work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then **OWNER** may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If **OWNER** and **CONTRACTOR** cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. **OWNER** may have such deleted portion of the Work performed by **OWNER**'s own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, **OWNER** shall indemnify and hold harmless **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants and

the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by **CONTRACTOR** or by anyone for whom **CONTRACTOR** is responsible. Nothing in this paragraph 4.06.E shall obligate **OWNER** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, **ENGINEER**, **ENGINEER**'s Consultants, and the officers, directors, partners, employees, agents, other 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 of arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by **CONTRACTOR** or by anyone for whom **CONTRACTOR** is responsible. Nothing in this paragraph shall obligate **CONTRACTOR** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – Bonds and Insurance

5.01 Performance, Payment, and Other Bonds

A. **CONTRACTOR** shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all **CONTRACTOR**'s obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. **CONTRACTOR** shall also furnish such other Bonds as required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current lists of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Services, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by **CONTRACTOR** is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, **CONTRACTOR** shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by **OWNER** or **CONTRACTOR** shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

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

5.04 **CONTRACTOR**'s Liability Insurance

A. **CONTRACTOR** shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from **CONTRACTOR**'s performance of the Work and **CONTRACTOR**'s other obligations under the Contract Documents, whether it is to be performed by **CONTRACTOR**, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under worker's compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of **CONTRACTOR**'s employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than **CONTRACTOR**'s employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by **CONTRACTOR**, or (ii) by any other person for any other reason;

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

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) **OWNER**, **ENGINEER**, **ENGINEER**'s

Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering **CONTRACTOR**'s indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to **OWNER** and **CONTRACTOR** and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the **CONTRACTOR** pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when **CONTRACTOR** may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and **CONTRACTOR** shall furnish **OWNER** and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to **OWNER** and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 **OWNER**'s Liability Insurance

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

5.06 Property Insurance

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

1. include the interest of **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents,

and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

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

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

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

5. allow for partial utilization of the Work by **OWNER**;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by **OWNER**, **CONTRACTOR**, and **ENGINEER** with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. **OWNER** shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interest of **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to **OWNER** and **CONTRACTOR** and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

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

E. If **CONTRACTOR** requests in writing that other special insurance be included in the

property insurance policies provided under paragraph 5.06, **OWNER** shall, if possible, include such insurance, and the cost thereof will be charged to **CONTRACTOR** by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, **OWNER** shall in writing advise **CONTRACTOR** whether or not such other insurance has been procured by **OWNER.**

5.07 Waiver of Rights

A. **OWNER** and **CONTRACTOR** intend that all policies purchased in accordance with paragraph 5.06 will protect **OWNER, CONTRACTOR,** Subcontractors, **ENGINEER, ENGINEER's** Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. **OWNER** and **CONTRACTOR** waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, **ENGINEER, ENGINEER's** Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them)under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by **OWNER** as trustee or otherwise payable under any policy so issued.

B. **OWNER** waives all rights against **CONTRACTOR,** Subcontractors, **ENGINEER, ENGINEER's** Consultants, and the officers, directors, partners, employees, agents, and other 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 peril whether or not insured by **OWNER;** and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by **OWNER** during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by **OWNER** covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against **CONTRACTOR,** Subcontractors, **ENGINEER,** or **ENGINEER's** Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

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

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

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either **OWNER** or **CONTRACTOR** has any objection to the coverage by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. **OWNER** and **CONTRACTOR** shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interest at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

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

ARTICLE 6 – Contractor's Responsibilities

6.01 Supervision and Superintendence

A. **CONTRACTOR** shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to

perform the Work in accordance with the Contract Documents. **CONTRACTOR** shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but **CONTRACTOR** shall not be responsible for the negligence of **OWNER** or **ENGINEER** in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. **CONTRACTOR** shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, **CONTRACTOR** shall assign a competent resident superintendent thereto who shall not be replaced without written notice to **OWNER** and **ENGINEER** except under extraordinary circumstances. The superintendent will be **CONTRACTOR**'s representative at the Site and shall have authority to act on behalf of **CONTRACTOR**. All communications given to or received from the superintendent shall be binding on **CONTRACTOR**.

6.02 Labor; Working Hours

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

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or Adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and **CONTRACTOR** will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without **OWNER**'s written consent (which will not be unreasonably withheld) given after prior written notice to **ENGINEER**.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, **CONTRACTOR** shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for 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. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. **CONTRACTOR** shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. **CONTRACTOR** shall submit to **ENGINEER** for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specifications or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to **ENGINEER** for review under the circumstances described below.

1. "Or-Equal" Items: If in **ENGINEER**'s sole discretion an item of material or equipment proposed by **CONTRACTOR** is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by **ENGINEER** as an "or-equal" item, in which case review and approval of the proposed item may, in **ENGINEER**'s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

   a. in the exercise of reasonable judgement **ENGINEER** determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

   b. **CONTRACTOR** certifies that: (i) there is no increase in cost to the **OWNER**; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

   a. If in **ENGINEER**'s sole discretion an item of material or equipment proposed by **CONTRACTOR** does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

   b. **CONTRACTOR** shall submit sufficient information as provided below to allow **ENGINEER** to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute thereto. Request for review of proposed substitute items of material or equipment will not be accepted by **ENGINEER** from anyone other than **CONTRACTOR**.

c. The procedure for review by **ENGINEER** will be as set forth in paragraph 6.05.A.2d, as supplemented in the General Requirements and as **ENGINEER** may decide is appropriate under the circumstances.

d. **CONTRACTOR** shall first 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 shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice **CONTRACTOR's** achievement of Substantial Completion on time, whether or not 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 work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by **ENGINEER** in evaluating the proposed substitute item. **ENGINEER** may require **CONTRACTOR** to furnish additional data about the proposed substitute item.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, **CONTRACTOR** may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by **ENGINEER**. **CONTRACTOR** shall submit sufficient information to allow **ENGINEER**, in **ENGINEER's** sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by **ENGINEER** will be similar to that provided in subparagraph 6.05.A.2.

C. **ENGINEER's** Evaluation: **ENGINEER** will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraph 6.05.A and 6.05.B. **ENGINEER** will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until **ENGINEER's** review is complete, which will be made evidence by either a Change Order for a substitute or an approved Shop Drawing for an "or-equal". **ENGINEER** will advise **CONTRACTOR** in writing of any negative determination.

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

E. **ENGINEER's** Cost Reimbursement: **ENGINEER** will record time required by **ENGINEER** and **ENGINEER's** Consultants in evaluating substitute proposed or submitted by **CONTRACTOR** pursuant to paragraph 6.05.A.2 and 6.05.B and in making changes in the

Contract Documents (or in the provisions of any other direct contract with **OWNER** for work on the Project) occasioned thereby. Whether or not **ENGINEER** approves a substitute item so proposed or submitted by **CONTRACTOR**, **CONTRACTOR** shall reimburse **OWNER** for the charges of **ENGINEER** and **ENGINEER**'s Consultants for evaluating each such proposed substitute.

F. **CONTRACTOR**'s Expense: **CONTRACTOR** shall provide all data in support of any proposed substitute or "or-equal" at **CONTRACTOR**'s expense.

6.06 Concerning Subcontractors, Suppliers, and Others

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

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

C. **CONTRACTOR** shall be fully responsible to **OWNER** and **ENGINEER** for all acts and omissions of the Subcontractors, Suppliers, and other individuals, or entities performing or furnishing any of the Work just as **CONTRACTOR** is responsible for **CONTRACTOR**'s own acts and omissions. Nothing in the Contract Documents 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 shall it create any obligation on the part of **OWNER** or **ENGINEER** to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

G. All Work performed for **CONTRACTOR** by a Subcontractor or Supplier will be pursuant to an appropriate agreement between **CONTRACTOR** and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of **OWNER** and **ENGINEER**. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the **CONTRACTOR** and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against **OWNER, CONTRACTOR, ENGINEER, ENGINEER's** Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, **CONTRACTOR** will obtain the same.

6.07 Patent Fees and Royalties

A. **CONTRACTOR** shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of **OWNER** or **ENGINEER** its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by **OWNER** in the Contract Documents. To the fullest extent permitted by Laws and Regulations **CONTRACTOR** shall indemnify and hold harmless **OWNER, ENGINEER, ENGINEER's** Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, **CONTRACTOR** shall obtain and pay for all construction permits and licenses. **OWNER** shall assist **CONTRACTOR**, when necessary, in obtaining such permits and licenses. **CONTRACTOR** shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no bids, on the Effective Date of the Agreement. **CONTRACTOR** shall pay all charges of utility owners for connections to the Work, and **OWNER** shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. **CONTRACTOR** shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither **OWNER** nor **ENGINEER** shall be responsible for monitoring **CONTRACTOR**'s compliance with any Laws or Regulations.

B. If **CONTRACTOR** performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, **CONTRACTOR** shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be **CONTRACTOR**'s primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve **CONTRACTOR** of **CONTRACTOR's** obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 Taxes

A. **CONTRACTOR** shall pay all sales, consumer, use, and other similar taxes required to be paid by **CONTRACTOR** in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limited on Use of Site and Other Areas

1. **CONTRACTOR** shall confine construction equipment, the storage or materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. **CONTRACTOR** shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting form the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, **CONTRACTOR** shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, **ENGINEER**, **ENGINEER**'s Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against **OWNER**, **ENGINEER**, or any other party indemnified hereunder

to the extent caused by or based upon **CONTRACTOR**'s performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work **CONTRACTOR** shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste material, 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 make it ready for utilization by **OWNER**. At the completion of the Work **CONTRACTOR** shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

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

6.13 Safety and Protection

A. **CONTRACTOR** shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. **CONTRACTOR** shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. **CONTRACTOR** shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. **CONTRACTOR** shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damages, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by **CONTRACTOR**, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the

Work, or anyone for whose acts any of them may be liable, shall be remedied by **CONTRACTOR** (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of **OWNER** or **ENGINEER** or **ENGINEER**'s Consultant, 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 a 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). **CONTRACTOR**'s duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and **ENGINEER** has issued a notice to **OWNER** and **CONTRACTOR** in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

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

6.17 Shop Drawings and Samples

A. **CONTRACTOR** shall submit Shop Drawings to **ENGINEER** for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as **ENGINEER** may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show **ENGINEER** the services, materials, and equipment **CONTRACTOR** proposes to provide and to enable **ENGINEER** to review the information for the limited purposes required by paragraph 6.17.E.

B. **CONTRACTOR** shall also submit Samples to **ENGINEER** for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as **ENGINEER** may require to enable **ENGINEER** to review the submittal for the limited purposes required by paragraph 6.17.E.

The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to **ENGINEER** as required by paragraph 2.07, 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**.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, **CONTRACTOR** shall have determined and verified:

   a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

   b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

   c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

   d. **CONTRACTOR** shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that **CONTRACTOR** has satisfied **CONTRACTOR**'s obligations under the Contract Documents with respect to **CONTRACTOR**'s review and approval of that submittal.

3. At the time of each submittal, **CONTRACTOR** shall give **ENGINEER** specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to **ENGINEER** for review and approval of each such variation.

E. Engineer's Review

1. **ENGINEER** will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to **ENGINEER**. **ENGINEER**'s review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. **ENGINEER**'s review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method,

technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. **ENGINEER**'s review and approval of Shop Drawings or Samples shall not relieve **CONTRACTOR** from responsibility for any variation from the requirements of the Contract Documents unless **CONTRACTOR** has in writing called **ENGINEER**'s attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by **ENGINEER** relieve **CONTRACTOR** from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. **CONTRACTOR** shall make corrections required by **ENGINEER** and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for Review and approval. **CONTRACTOR** shall direct specific attention in writing to revisions other than the corrections called for by **ENGINEER** on previous submittals.

6.18 Continuing the Work

A. **CONTRACTOR** shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with **OWNER**. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as **OWNER** and **CONTRACTOR** may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. **CONTRACTOR** warrants and guarantees to **OWNER**, **ENGINEER**, and **ENGINEER**'s Consultants that all Work will be in accordance with the Contract Documents and will not be defective. **CONTRACTOR**'s warranty and guarantee hereunder excludes defects or damages 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.

B. **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 acceptance by **OWNER** or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or 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**.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, **ENGINEER**, **ENGINEER**'s Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to 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:

1. 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; and

2. is caused in whole or in part 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against **OWNER** or **ENGINEER** or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of **CONTRACTOR**, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for **CONTRACTOR** or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of **CONTRACTOR** under paragraph 6.20.A shall not extend to the liability of **ENGINEER** and **ENGINEER**'s Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and

any of them 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.

ARTICLE 7 – Other Work

7.01 Related Work at Site

A. **OWNER** may perform other work related to the Project at the Site by **OWNER**'s employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to **CONTRACTOR** prior to starting any such other work; and
2. if **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. **CONTRACTOR** shall afford each other contractor who is a party of such a direct contract and each utility owner (and **OWNER**, if **OWNER** is performing the other work with **OWNER**'s employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, **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 their work and will only cut or alter their work with the written consent of **ENGINEER** and the others whose work will be affected. The duties and responsibilities of **CONTRACTOR** under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of **CONTRACTOR** in said direct contracts between **OWNER** and such utility owners and other contractors.

C. If the proper execution or results of any part of **CONTRACTOR**'s Work depends upon work performed by others under this Article 7, **CONTRACTOR** shall inspect such other work and promptly report to **ENGINEER** in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of **CONTRACTOR**'s Work. **CONTRACTOR**'s failure to so report will constitute an acceptance of such other work as fit and proper for integration with **CONTRACTOR**'s Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If **OWNER** intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be

itemized; and

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

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

ARTICLE 8 – Owner's Responsibilities

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, **OWNER** shall issue all communications to **CONTRACTOR** through **ENGINEER**.

8.02 Replacement of **ENGINEER**

A. In case of termination of the employment of **ENGINEER**, **OWNER** shall appoint an engineer to whom **CONTRACTOR** makes no reasonable objection, whose status under the Contract Documents shall be that of the former **ENGINEER**.

8.03 Furnish Data

A. **OWNER** shall promptly furnish the data required of **OWNER** under the Contract Documents.

8.04 Pay Promptly When Due

A. **OWNER** shall make payments to **CONTRACTOR** promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. **OWNER**'s duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to **OWNER**'s identifying and making available to **CONTRACTOR** copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by **ENGINEER** in preparing the Contract Documents.

8.06 Insurance

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

8.07 Change Orders

A. **OWNER** is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspection, Tests, and Approvals

A. **OWNER**'s responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on **OWNER**'s Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

A. **OWNER**'s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent **OWNER** has agreed to furnish **CONTRACTOR** reasonable evidence that financial arrangements have been made to satisfy **OWNER**'s obligations under the Contract Documents, **OWNER**'s responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 – Engineer's Status During Construction

9.01 **OWNER**'s Representative

A. **ENGINEER** will be **OWNER**'s representative during the construction period. The duties and responsibilities and the limitations of authority of **ENGINEER** as **OWNER**'s representative during construction are set forth in the Contract Documents and will not be changed without written consent of **OWNER** and **ENGINEER**.

9.02 Visits to Site

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

B. **ENGINEER**'s visits and observations are subject to all the limitations on **ENGINEER**'s authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of **ENGINEER**'s visit or observations of **CONTRACTOR**'s Work **ENGINEER** will not supervise, direct, control, or have authority over or be responsible for **CONTRACTOR**'s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of

CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If **OWNER** and **ENGINEER** agree, **ENGINEER** will furnish a Resident Project Representative to assist **ENGINEER** in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If **OWNER** designates another representative or agent to represent **OWNER** at the Site who is not **ENGINEER**'s Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 Clarifications and Interpretations

A. **ENGINEER** will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as **ENGINEER** may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on **OWNER** and **CONTRACTOR**. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 Authorized Variations in Work

A. **ENGINEER** may authorize minor variations in the Work from the requirements of the Contract Documents that are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on **OWNER** and also on **CONTRACTOR**, who shall perform the Work involved promptly. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a claim may be made therefor as provided in paragraph 10.05.

9.06 Rejecting Defective Work

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

9.07 Shop Drawings, Change Orders and Payments

A. In connection with **ENGINEER**'s authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with **ENGINEER**'s authority as to Change Orders, see Articles 10,11, and 12.

C. In connection with **ENGINEER**'s authority as to Applications for Payment, see Article 14.

9.08 Determinations for Unit Price Work

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

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

A. **ENGINEER** will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to **ENGINEER** in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, **ENGINEER** will not show partiality to **OWNER** or **CONTRACTOR** and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by **ENGINEER** pursuant to this paragraph 9.09 with respect to any such Claims, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by **OWNER** or **CONTRACTOR** of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 Limitations on **ENGINEER**'s Authority and Responsibilities

A. Neither **ENGINEER**'s authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by **ENGINEER** in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by **ENGINEER** shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by **ENGINEER** to **CONTRACTOR**, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. **ENGINEER** will not supervise, direct, control, or have authority over or be responsible for **CONTRACTOR**'s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of **CONTRACTOR** to comply with Laws and Regulations applicable to the performance of the Work. **ENGINEER** will not be responsible for **CONTRACTOR**'s failure to perform the Work in accordance with the Contract Documents.

C. **ENGINEER** will not be responsible for the acts or omissions of **CONTRACTOR** or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. **ENGINEER**'s review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to **ENGINEER**'s Consultants, Resident Project Representative, and assistants.

ARTICLE 10 – Changes in the Work; Claims

10.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, **OWNER** may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, **CONTRACTOR** shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

10.02 Unauthorized Changes in the Work

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

10.03 Execution of Change Orders

A. **OWNER** and **CONTRACTOR** shall execute appropriate Change Orders recommended by **ENGINEER** (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by **OWNER** pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or **OWNER**'s correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by **ENGINEER** pursuant to paragraph 10.05; provided

that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, **CONTRACTOR** shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 Notification to Surety

A. If notice 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) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be **CONTRACTOR's** responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 Claims and Disputes

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to **ENGINEER** and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the **ENGINEER** and the other party to the Contract within 60 days after the start of such event (unless **ENGINEER** allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to **ENGINEER** and the claimant within 30 days after receipt of the claimant's last submittal (unless **ENGINEER** allows additional time).

B. **ENGINEER's** Decision: **ENGINEER** will render a formal decision in writing 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. **ENGINEER**'s written decision on such Claim, dispute, or other matter will be final and binding upon **OWNER** and **CONTRACTOR** unless:

1. an appeal from **ENGINEER's** decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from **ENGINEER's** written decision is delivered by **OWNER** or **CONTRACTOR** to the other and to **ENGINEER** within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by **OWNER** and **CONTRACTOR**) to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If **ENGINEER** does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirely shall be deemed to have been

issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 – Cost of the Work; Cash Allowance; Unit Price Work

11.01 Cost of the Work

A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by **CONTRACTOR** in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to **CONTRACTOR** will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by **OWNER**, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

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 at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by **OWNER**.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to **CONTRACTOR** unless **OWNER** deposits funds with **CONTRACTOR** with which to make payments, in which case the cash discounts shall accrue to **OWNER**. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to **OWNER**, and **CONTRACTOR** shall make provisions so that they may be obtained.

3. Payments made by **CONTRACTOR** to Subcontractors for Work performed by Subcontractor. If required by **OWNER**, **CONTRACTOR** shall obtain competitive bids from subcontractors acceptable to **OWNER** and **CONTRACTOR** and shall deliver such bids to **OWNER**, who will then determine, with the advice of **ENGINEER**, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as **CONTRACTOR's** Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

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

   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the worker, 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, imposed by Laws and Regulations.

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

   f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by **CONTRACTOR** in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of **CONTRACTOR**, any Subcontractor, or anyone directly, or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of **OWNER**. No such losses, damages, and expenses shall be included in the Cost of the Work for the purposes of determining **CONTRACTOR**'s fee.

   g. The cost of utilities, fuel, and sanitary facilities at the Site.

   h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the costs of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance **CONTRACTOR** is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of **CONTRACTOR**'s officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by **CONTRACTOR**'s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the **CONTRACTOR**'s fee.

2. Expenses of **CONTRACTOR**'s principal and branch offices other than **CONTRACTOR**'s office at the Site.

3. Any part of **CONTRACTOR**'s capital expenses, including interest on **CONTRACTOR**'s capital employed for the Work and charges against **CONTRACTOR** for delinquent payments.

4. Costs due to the negligence of **CONTRACTOR**, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. **CONTRACTOR**'s Fee: When all the Work is performed on the basis of cost-plus, **CONTRACTOR**'s fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, **CONTRACTOR**'s fee shall be determined as set forth in paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, **CONTRACTOR** will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to **ENGINEER** an itemized cost breakdown together with supporting data.

11.02 Cash 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 as may be acceptable to **OWNER** and **ENGINEER**. **CONTRACTOR** agrees that:

1. the 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 costs, overhead, profit, and other expenses contemplated for the 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.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by **ENGINEER** to reflect actual amounts due **CONTRACTOR** on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by **CONTRACTOR** will be made by **ENGINEER** subject to the provisions of paragraph 9.08.

B. 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.

C. **OWNER** or **CONTRACTOR** may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by **CONTRACTOR** differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if **CONTRACTOR** believes that **CONTRACTOR** is entitled to an increase in Contract Price as a result of having incurred additional expense or **OWNER** believes that **OWNER** is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – Change of Contract Price; Change of Contract Times

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the **ENGINEER** and the other party to the Contract in

accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a **CONTRACTOR**'s fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. **CONTRACTOR**'s Fee: The **CONTRACTOR**'s fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, then **CONTRACTOR**'s fee shall be 15 percent;
   b. for costs incurred under paragraph 11.01.A.3, the **CONTRACTOR**'s fee shall be five percent;

   c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and **CONTRACTOR** will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   e. the amount of credit to be allowed by **CONTRACTOR** to **OWNER** for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in **CONTRACTOR**'s fee by an amount equal to five percent of such net decrease; and

   f. when both additions and credits are involved in any one change, the adjustment in **CONTRACTOR**'s fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the **ENGINEER** and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

12.03 Delays Beyond **CONTRACTOR**'s Control

A. Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of **CONTRACTOR**, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of **CONTRACTOR** shall include but not be limited to acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within **CONTRACTOR**'s Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of **CONTRACTOR**. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of **CONTRACTOR**.

12.05 Delays Beyond **OWNER**'s and **CONTRACTOR**'s Control

A. Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both **OWNER** and **CONTRACTOR**, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be **CONTRACTOR**'s sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall **OWNER** or **ENGINEER** be liable to **CONTRACTOR**, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of **CONTRACTOR**; or

2. delays beyond the control of both **OWNER** and **CONTRACTOR** including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate **CONTRACTOR** due to delay, interference, or disruption directly attributable to actions or inactions of **OWNER** or anyone for whom **OWNER** is responsible.

ARTICLE 13 – Tests & Inspection; Correction, Removal, or Acceptance of Defective Work

13.01 Notice of Defects

A. Prompt notice of all defective Work of which **OWNER** or **ENGINEER** has actual knowledge will be given to **CONTRACTOR**. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. **OWNER, ENGINEER, ENGINEER's** Consultants, other representatives and personnel of **OWNER**, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. **CONTRACTOR** shall provide them proper and safe conditions for such access and advise them of **CONTRACTOR's** Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Testing and Inspections

A. **CONTRACTOR** shall give **ENGINEER** timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. **OWNER** shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, **CONTRACTOR** shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish **ENGINEER** the required certificates of inspection or approval.

D. **CONTRACTOR** shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for **OWNER's** and **ENGINEER's** acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to **CONTRACTOR's** purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to **OWNER** and **ENGINEER**.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by **CONTRACTOR** without written concurrence of **ENGINEER**, it must, if requested by **ENGINEER**, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at **CONTRACTOR's** expense unless **CONTRACTOR** has given **ENGINEER** timely notice of **CONTRACTOR's** intention to cover the same and **ENGINEER** has not acted with reasonable promptness in

response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of **ENGINEER**, it must, if requested by **ENGINEER**, be uncovered for **ENGINEER**'s observation and replaced at **CONTRACTOR**'s expense.

B. If **ENGINEER** considers it necessary or advisable that covered Work be observed by **ENGINEER** or inspected or tested by others, **CONTRACTOR**, at **ENGINEER**'s request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as **ENGINEER** may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, **CONTRACTOR** shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and **OWNER** shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, **OWNER** may make a claim thereof as provided in paragraph 10.05. If, however, such 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 Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, **CONTRACTOR** may make a Claim therefor as provided in paragraph 10.05.

13.05 **OWNER** May Stop the Work

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

13.06 Correction or Removal of Defective Work

A. **CONTRACTOR** shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by **ENGINEER**, remove it from the Project and replaces it with Work that is not defective. **CONTRACTOR** shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents,

any Work is found to be defective, or if the repair of any damages to the land or areas made available for **CONTRACTOR**'s use by **OWNER** or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, **CONTRACTOR** shall promptly, without cost to **OWNER** and in accordance with **OWNER**'s written instruction: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by **OWNER**, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If **CONTRACTOR** does not promptly comply with the terms of such 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, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by **CONTRACTOR**.

B. 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 or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. **CONTRACTOR**'s obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

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

13.09 **OWNER** May Correct Defective Work

A. If **CONTRACTOR** fails within a reasonable time after written notice from **ENGINEER** to correct defective Work or to remove and replace rejected Work as required by **ENGINEER**

in accordance with paragraph 13.06.A, or if **CONTRACTOR** fails to perform the Work in accordance with the Contract Documents, or if **CONTRACTOR** fails to comply with any other provision of the Contract Documents, **OWNER** may, after seven days written notice to **CONTRACTOR**, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, **OWNER** shall proceed expeditiously. In connection with such corrective and remedial action, **OWNER** may exclude **CONTRACTOR** from all or part of the Site, take possession of all or part of the Work and suspend **CONTRACTOR**'s services related thereto, take possession of **CONTRACTOR**'s tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which **OWNER** has paid **CONTRACTOR** but which are stored elsewhere. **CONTRACTOR** shall allow **OWNER**, **OWNER**'s representatives, agents and employees, **OWNER**'s other contractors, and **ENGINEER** and **ENGINEER**'s Consultants access to the Site to enable **OWNER** to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by **OWNER** in exercising the rights and remedies under this paragraph 13.09 will be charged against **CONTRACTOR**, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and **OWNER** shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, **OWNER** may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of **CONTRACTOR**'s defective Work.

D. **CONTRACTOR** shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by **OWNER** of **OWNER**'s rights and remedies under this paragraph 13.09.

ARTICLE 14 – Payments to Contractor and Completion

14.01 Schedule of Values

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to **ENGINEER**. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), **CONTRACTOR** shall submit to **ENGINEER** for review an Application for Payment filled out and signed by **CONTRACTOR** covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other

documentation warranting that **OWNER** has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect **OWNER**'s interest therein, all of which must be satisfactory to **OWNER**.

2. Beginning with second Application for Payment, each Application shall include an affidavit of **CONTRACTOR** stating that all previous progress payments received on account of the Work have been applied on account to discharge **CONTRACTOR**'s legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. **ENGINEER** will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to **OWNER** or return the Application to **CONTRACTOR** indicating in writing **ENGINEER**'s reasons for refusing to recommend payment. In the latter case, **CONTRACTOR** may make the necessary corrections and resubmit the Application.

2. **ENGINEER**'s recommendation of any payment requested in an Application for Payment will constitute a representation by **ENGINEER** to **OWNER**, based on **ENGINEER**'s observations on the site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to 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: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to **ENGINEER** in the Contract Documents; or (ii) that 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** to supervise, direct, or control the Work or for the means, methods, techniques, sequences, ro procedures of construction, or the safety precautions and programs incident thereto, or for **CONTRACTOR**'s failure to comply with Laws and Regulations applicable to **CONTRACTOR**'s performance of the Work. Additionally, said review or recommendation will not impose responsibility on **ENGINEER** to make any examination to ascertain how or for what purpose **CONTRACTOR** has used the moneys paid on account of the Contract Price, or 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** referred to in paragraph 14.02.B.2. **ENGINEER** may also refuse to recommend any such payment or, because of subsequently recovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in **ENGINEER**'s opinion to protect **OWNER** from loss because:

   a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

   b. the Contract Price has been reduced by Written Amendment or Change Orders;

   c. **OWNER** has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

   d. **ENGINEER** has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to **OWNER** with **ENGINEER**'s recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by **OWNER** to **CONTRACTOR**.

D. Reduction in Payment

1. **OWNER** may refuse to make payment of the full amount recommended by **ENGINEER** because:

   a. claims have been made against **OWNER** on account of **CONTRACTOR**'s performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where **CONTRACTOR** has delivered a specific Bond satisfactory to **OWNER** to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling **OWNER** to a set-off against the amount

recommended; or

d. **OWNER** has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If **OWNER** refuses to make payment of the full amount recommended by **ENGINEER, OWNER** must give **CONTRACTOR** immediate written notice (with a copy to **ENGINEER**) stating the reasons for such action and promptly pay **CONTRACTOR** any amount remaining after deduction of the amount so withheld. **OWNER** shall promptly pay **CONTRACTOR** the amount so withheld, or any adjustment thereto agreed to by **OWNER** and **CONTRACTOR**, when **CONTRACTOR** corrects to **OWNER**'s satisfaction the reasons for such action.

3. If it is subsequently determined that **OWNER**'s refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 **CONTRACTOR**'s Warranty of Title

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

14.04 Substantial Completion

A. When **CONTRACTOR** considers the entire Work ready for its intended use **CONTRACTOR** shall notify **OWNER** and **ENGINEER** in writing that the entire Work is substantially complete (except for items specifically listed by **CONTRACTOR** as incomplete) and request that **ENGINEER** issue a certificate of Substantial Completion. Promptly thereafter, **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. If **ENGINEER** considers the Work substantially complete, **ENGINEER** will prepare and deliver to **OWNER** a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. **OWNER** shall have seven days after receipt of the tentative certificate during which to make written objection to **ENGINEER** as to any provisions of the certificate or attached list. If, after considering such objections, **ENGINEER** concludes that the Work is not substantially complete, **ENGINEER** will within 14 days after submission of the tentative certificate to **OWNER** notify **CONTRACTOR** in writing, stating the reasons therefor. If, after consideration of **OWNER**'s objections, **ENGINEER** considers the Work substantially complete, **ENGINEER** will within said 14 days execute and deliver to **OWNER** and **CONTRACTOR** a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as **ENGINEER** believes justified after consideration of any objections from **OWNER**. At the time of delivery of the tentative certificate of Substantial Completion **ENGINEER** will deliver to **OWNER** and **CONTRACTOR** a written recommendation as to division of responsibilities pending final payment between **OWNER** and **CONTRACTOR** with respect to security, operation,

safety, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless **OWNER** and **CONTRACTOR** agree otherwise in writing and so inform **ENGINEER** in writing prior to **ENGINEER**'s issuing the definitive certificate of Substantial Completion, **ENGINEER**'s aforesaid recommendation will be binding on **OWNER** and **CONTRACTOR** until final payment.

B. **OWNER** shall have the right to exclude **CONTRACTOR** from the Site after the date of Substantial Completion, but **OWNER** shall allow **CONTRACTOR** reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by **OWNER** at **OWNER**'s option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. **OWNER** at any time may request **CONTRACTOR** in writing to permit **OWNER** to use any such part of the Work which **OWNER** believes to be ready for its intended use and substantially complete. If **CONTRACTOR** agrees that such part of the Work is substantially complete, **CONTRACTOR** will certify to **OWNER** and **ENGINEER** that such part of the Work is substantially complete and request **ENGINEER** to issue a certificate of Substantial Completion for that part of the Work. **CONTRACTOR** at any time may notify **OWNER** and **ENGINEER** in writing that **CONTRACTOR** considers any such part of the Work ready for its intended use and substantially complete and request **ENGINEER** to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, **OWNER, CONTRACTOR,** and **ENGINEER** shall make an inspection of that part of the Work to determine its status of completion. If **ENGINEER** does not consider that part of the Work to be substantially complete, **ENGINEER** will notify **OWNER** and **CONTRACTOR** in writing giving the reasons therefor. If **ENGINEER** considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

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

14.07 Final Payment

A. Application for Payment

1. After **CONTRACTOR** has, in the opinion of **ENGINEER**, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, **CONTRACTOR** may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by : (i) all documentation called for in the contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to **OWNER**) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by **OWNER, CONTRACTOR** may furnish receipts or releases in full and an affidavit of **CONTRACTOR** that: (i) the releases and receipts include all labor, services, materials, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which **OWNER** or **OWNER's** property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, **CONTRACTOR** may furnish a Bond or other collateral satisfactory to **OWNER** to indemnify **OWNER** against any Lien.

B. Review of Application and Acceptance

1. If on the basis of **ENGINEER's** observation of the Work during construction and final inspection, and **ENGINEER's** review of the final Application for Payment and accompanying documentation as required by the Contract Documents, **ENGINEER** is satisfied that the Work has been completed and **CONTRACTOR's** other obligations under the Contract Documents have been fulfilled, **ENGINEER** will, within ten days after receipt of the final Application for Payment, indicate in writing **ENGINEER's** recommendation of payment and present the Application for Payment to **OWNER** for payment. At the same time **ENGINEER** will also give written notice to **OWNER** and **CONTRACTOR** that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, **ENGINEER** will return the Application for Payment to **CONTRACTOR**, indicating in writing the reasons for refusing to recommend final payment, in which case **CONTRACTOR** shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to **OWNER** of the Application for Payment and accompanying documentation, the amount recommended by **ENGINEER** will become due and, will be paid by **OWNER** to **CONTRACTOR**.

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by **OWNER** against **CONTRACTOR**, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from **CONTRACTOR**'s continuing obligations under the Contract Documents; and

2. a waiver of all Claims by **CONTRACTOR** against **OWNER** other than those previously made in writing which are still unsettled.

ARTICLE 15 – Suspension of Work and Termination

15.01 **OWNER** May Suspend Work

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

15.02 **OWNER** May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. **CONTRACTOR**'s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. **CONTRACTOR**'s disregard of Laws or Regulations of any public body having jurisdiction;

3. **CONTRACTOR**'s disregard of the authority of **ENGINEER**; or

4. **CONTRACTOR**'s violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, **OWNER** may, after giving the **CONTRACTOR** (and the surety, if any) seven days written notice, terminate the services of **CONTRACTOR**, exclude **CONTRACTOR** from the Site, and take possession of the Work and of all **CONTRACTOR**'s tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by **CONTRACTOR** (without liability to **CONTRACTOR** for trespass or conversion), 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 finish the Work as **OWNER** may deem expedient. In such case, **CONTRACTOR** shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court arbitration or other dispute resolution costs) sustained by **OWNER** arising out of or relating to completing the Work, such excess will be paid to **CONTRACTOR**. If such claims, costs, losses, and damages exceed such unpaid balance, **CONTRACTOR** shall pay the difference to **OWNER**. Such claims, costs, losses, and damages incurred by **OWNER** will be reviewed by **ENGINEER** as to their reasonableness and, when so approved by **ENGINEER**, incorporated in a Change Order. When exercising any rights or remedies under this paragraph **OWNER** shall not be required to obtain the lowest price for the Work performed.

C. Where **CONTRACTOR**'s services have been so terminated by **OWNER**, the termination will not affect any rights or remedies of **OWNER** against **CONTRACTOR** then existing or which may thereafter accrue. Any retention or payment of moneys due **CONTRACTOR** by **OWNER** will not release **CONTRACTOR** from liability.

15.03 **OWNER** May Terminate For Convenience

A. Upon seven days written notice to **CONTRACTOR** and **ENGINEER**, **OWNER** may, without cause and without prejudice to any other right or remedy of **OWNER**, elect to terminate the Contract. In such case, **CONTRACTOR** shall be paid (without duplication of any items):

1. for 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. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. **CONTRACTOR** shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 **CONTRACTOR** May Stop Work or Terminate

A. If, through no act or fault of **CONTRACTOR**, the Work is suspended for more than 90 consecutive days by **OWNER** or under an order of court or other public authority, or **ENGINEER** fails to act on any Application for Payment within 30 days after it is submitted, or **OWNER** fails for 30 days to pay **CONTRACTOR** any sum finally determined to be due, then **CONTRACTOR** may, upon seven days written notice to **OWNER** and **ENGINEER**, and provided **OWNER** or **ENGINEER** do not remedy such suspension or failure within that time, terminate the Contract and recover from **OWNER** payment on the same terms as provided in paragraph 15.03. In lieu of terminating the contract and without prejudice to any other right or remedy, if **ENGINEER** has failed to act on an Application for Payment within 30 days after it is submitted, or **OWNER** has failed for 30 days to pay **CONTRACTOR** any sum finally determined to be due, **CONTRACTOR** may, seven days after written notice to **OWNER** and **ENGINEER**, stop the Work until payment is made of all such amounts due **CONTRACTOR**, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude **CONTRACTOR** from making a Claim under paragraph 10.05 for an adjustment in Contract Price times or otherwise for expenses or damage directly attributable to **CONTRACTOR**'s stopping the Work as permitted by this paragraph.

ARTICLE 16 – Dispute Resolution

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, **OWNER** and **CONTRACTOR** may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - Miscellaneous

17.01 Giving Notice

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

17.02 Computation of Times

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

17.03 Cumulative Remedies

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

17.04 Survival of Obligations

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

17.05 Controlling Law

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

END OF SECTION

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00800 Supplemental Conditions

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00800 Supplemental Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. The **CONTRACTOR** is advised to thoroughly review these amendments to the Standard General Conditions.

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

SC-2.02 Copies of Documents

Delete paragraph 2.02.A in its entirety and insert the following in its place:

A. **ENGINEER** shall furnish to **CONTRACTOR** up to five copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

SC-3.03 Reporting and Resolving Discrepancies

Add the following new paragraph immediately after 3.03.B.1.b:

c. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies as may be required by law
2. Change Orders
3. Agreement
4. Addenda
5. Bid
6. Supplementary Conditions
7. Invitations to Bid
8. Instructions to Bidders
9. General Conditions
10. Technical Specifications
11. Referenced Standard Specifications
12. Drawings

With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over the called dimensions
2. Detail drawings govern over the general drawings
3. Addenda/Change Order drawings govern over Contract Drawings
4. Contract Drawings govern over standard drawings

SC-4.01 Availability of Lands

Add the following paragraph immediately after paragraph 4.01.C:

D. The Work for this Project is indicated on the Drawing in Section 00300 of the Contract Documents.

SC-4.02 Subsurface and Physical Conditions

Add the following paragraph(s) immediately after paragraph 4.02.B:

C. In the preparation of Drawings and Specifications, **ENGINEER** or **ENGINEER**'s Consultants relied upon the following reports of explorations and tests of subsurface conditions at the site:

1. No reports available for this project.

SC-4.04 Underground Facilities

Add the following paragraph immediately after 4.04.A.2.d:

e. locating individual residential and commercial gas and water and fire hydrant services which are not shown or indicated in the Contract Documents.

Add the following paragraph immediately after 4.04.B.2:

3. Individual residential and commercial gas and water and fire hydrant services are not shown in the Contract Documents. These shall be considered as having been shown or indicated and will be treated as such.

SC-5.02 Licensed Sureties and Insurers

Add the following paragraph immediately after 5.02.A:

B. Surety Companies executing bonds must appear on the U.S. Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

SC-5.04 **CONTRACTOR**'s Liability Insurance

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

C. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

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

a. State:	Statutory
b. Applicable Federal (e.g., Longshoreman's):	Statutory
c. Employer's Liability	$1,000,000

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

a. General Aggregate	$2,000,000
b. Products-Completed Operations Aggregate	$1,000,000
c. Personal and Advertising Injury	$1,000,000
d. Each Occurrence (Bodily Injury and Property Damage)	$1,000,000

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

f. Excess or Umbrella Liability

(1) General Aggregate	$2,000,000
(2) Each Occurrence	$1,000,000

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

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

SC-5.06 Property Insurance

Delete paragraph 5.06.A in its entirety and insert the following in its place:

A. **CONTRACTOR** shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:

1. include the interests of **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occassioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions

3. cover materials and equipment stored at the Site or at another location that was agreed to in writing by **OWNER** prior to being

incorporated in the Work, provide that such materials and equipment have been included in an Application for Payment recommended by **ENGINEER**; and

4. allow for partial utilization of the Work by **OWNER**;

5. include testing and startup; and

6. be maintained in effect until final payment is made unless otherwise agreed to in writing by **OWNER**, **CONTRACTOR** and **ENGINEER** with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

CONTRACTOR shall be responsible for any deductible or self-insured retention.

The policies of insurance required to be purchased and maintained by **CONTRACTOR** in accordance with this paragraph SC-5.06 shall comply with the requirements of paragraph 5.06.C of the General Conditions.

SC-5.08 Receipt and Application of Insurance Proceeds

Delete paragraph 5.08 in its entirety and insert the following in its place:

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

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

SC-6.02 Labor; Working Hours

Add the following paragraph immediately after paragraph 6.02.B:

C. **CONTRACTOR** shall bear the expense (at one and one half times the fee schedule rate) of all inspection, testing, engineering time, and other

associated costs during any period of work exceeding forty (40) hours per week. **CONTRACTOR** is not allowed to perform work on-site more than forty (40) hours per week unless authorized by the **OWNER**.

SC-6.03 Service, Materials, and Equipment

Add the following sentence to paragraph 6.03.A:

This shall include all local and long distance phone, facsimile, and modem usage.

SC-6.04 Progress Schedule

Delete paragraph 6.04.A in its entirety and insert the following in its place:

A. The **ENGINEER** may, at his discretion, require the **CONTRACTOR** to submit a revised schedule upon his request in a format convenient to him. **CONTRACTOR** shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

SC-6.06 Concerning Subcontractors, Suppliers, and Others

Add the following new paragraphs immediately after paragraph 6.06.G:

H. The **CONTRACTOR** shall not substitute any person for a Subcontractor who is named on the Bid unless:

1. The **OWNER** objects to the Subcontractor, requests in writing a change in the Subcontractor and pays any increase in costs resulting from the change; or

2. The substitution is approved by the **OWNER** and:

a. The Subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the **CONTRACTOR** which was offered to the Subcontractor with the same terms that all other Subcontractors on the Project were offered;

b. The named Subcontractor files for bankruptcy or becomes insolvent; or

c. The named Subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance Bond and payment Bond pursuant to NRS 339.025.

I. The **CONTRACTOR** may subcontract no more than 50 percent of the total cost of the Project.

SC-6.13 Safety and Protection

Add the following paragraph immediately following 6.13.B:

C. **CONTRACTOR** shall take all reasonable means to minimize inconvenience to the public by dust, noise, diversion of storm water, or other agencies under his control.

SC-6.20 Indemnification

Delete the first sentence in paragraph 6.20.A and replace with the following:

To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, **ENGINEER**, **ENGINEER**'s Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to 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:

Delete paragraph 6.20.B in its entirety and insert the following in its place:

B. In any and all claims against **OWNER**, **ENGINEER**, or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of **CONTRACTOR**, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for **CONTRACTOR** or any such Subcontractor, Supplier, or other individual or entity under worker's compensation acts, disability acts, or other employee benefit acts.

SC-7.0 Other Work

Add the following new paragraph immediately after paragraph 7.02:

7.03 Work by Others

The **OWNER**, utilities, and others may be working within the Project area while the Work is in progress. If so, the **CONTRACTOR** shall schedule his Work in conjunction with these other organizations to minimize interference.

SC-10.05 Claims and Disputes

Delete the first sentence in A. Notice in its entirety and insert the following in its place:

A. Notice: Written notice stating the general nature of each claim, dispute, or other matter shall be delivered by the claimant to the **ENGINEER** and the other party to the Contract promptly (but in no event later than 45 days) after the start of the event giving rise thereto.

SC-11.03 Unit Price Work

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

C. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

1. if the total cost of a particular item of Unit Price Work amounts to 10 % or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 % from the estimated quantity of such item indicated in the Agreement; and

2. if there is no corresponding adjustment with respect to any other item of Work; and

3. if **CONTRACTOR** believes that **CONTRACTOR** has incurred additional expense as a result thereof; or if **OWNER** believes that the quantity variation entitles **OWNER** to an adjustment in the unit price, either **OWNER** or **CONTRACTOR** may make a claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC-14.02 Progress Payments

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

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to **OWNER** with **ENGINEER's** recommendation, the amount recommended will (subject to provisions of paragraph 14.02.D) become due, and when due will be paid by **OWNER** to **CONTRACTOR.**

SC-14.04 Substantial Completion

Delete the second sentence and replace with the following in paragraph 14.04.A:

Promptly thereafter, **OWNER, CONTRACTOR, ENGINEER,** shall make an inspection of the Work to determine the status of completion.

SC-14.05 Partial Utilization

Delete the first sentence in paragraph 14.05.A.1 and replace with the following:

OWNER at any time may request **CONTRACTOR** in writing to permit **OWNER** to use any such part of the Work which **OWNER** believes to be ready for its intended use and substantially complete.

SC-14.06 Final Inspection

Delete the entire paragraph 14.06.A and replace with the following:

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

SC-16.0 Dispute Resolution

Add the following new paragraph immediately after paragraph 16.01:

16.02 Mediation

A. **OWNER** and **CONTRACTOR** agree that they shall submit any and all unsettled Claims or counterclaims, disputes, or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to mediation [prior to either of them initiating against the other a demand for arbitration pursuant to paragraph SC-16.03, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The 30 day time limit within which to file a demand for arbitration as provided in paragraphs SC-16.03.B and 16.03.C shall be suspended with respect to a dispute submitted to mediation within that time limit and shall remain suspended until 10 days after the termination of the mediation.] The mediator of any dispute submitted to mediation under this agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

Add the following new paragraph immediately after paragraph 16.02:

16.03 Arbitration

A. All Claims or counterclaims, disputes, or other matters in question between **OWNER** and **CONTRACTOR** arising out of or relating to the Contract Documents or the breach thereof (except for Claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.09) not resolved under the provisions of paragraph SC-16.02 will be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the America Arbitration Association then obtaining, subject to the limitations of this paragraph SC-16.03. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforced under the prevailing law of any court having jurisdiction.

B. No demand for arbitration of any Claim or counterclaim, dispute, or other matter that is required to be referred to **ENGINEER** initially

for decision in accordance with paragraph 9.09 will be made until the earlier of: (i) the date on which **ENGINEER** has rendered a written decision, or (ii) the 31st day after the parties have presented their final evidence to **ENGINEER** if a written decision has not been rendered by **ENGINEER** before that date. No demand for arbitration of any such Claim or counterclaim, dispute, or other matter will made later than 30 days after the date on which **ENGINEER** has rendered a written decision in respect thereof in accordance with paragraph 10.05; and the failure to demand arbitration within said 30 day period will result in **ENGINEER**'s decision being final and binding upon **OWNER** and **CONTRACTOR**. If **ENGINEER** renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned.

C. Notice of the demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator, and a copy will be sent to **ENGINEER** for information. The demand for arbitration will be made within the30 day period specified in paragraph SC-16.03.B, and in all other cases within a reasonable time after the Claim or counterclaim, dispute, or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim or other dispute or matter in question would be barred by the applicable statue of limitations.

D. Except as provided in paragraph SC-16.03.E, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder, or in any other manner any other individual or entity (including **ENGINEER**, and **ENGINEER**'s Consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

3. the written consent of the other individual or entity sought to be included and of **OWNER** and **CONTRACTOR** has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

E. Notwithstanding paragraph SC-16.03.D, if a Claim or counterclaim, dispute, or other matter in question between **OWNER** and **CONTRACTOR** involves the Work of a Subcontractor, either **OWNER** or **CONTRACTOR** may join such Subcontractor as a party to the arbitration between **OWNER** and **CONTRACTOR** hereunder. **CONTRACTOR** shall include in all subcontracts required by paragraph 6.06.G a specific provision whereby the Subcontractor consents to being joined in an arbitration between **OWNER** and **CONTRACTOR** involving the Work of such Subcontractor. Nothing in this paragraph SC-16.03.E nor in the provisions of such subcontract consenting to joinder shall create any claim, right, or cause of action in favor of Subcontractor and against **OWNER**, **ENGINEER**, or **ENGINEER**'s Consultants that does not otherwise exist.

F. The award rendered by the arbitrators will be final, judgement may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

SC-18.0 Control of Water

A. When water is encountered in the performance of the Work, the **CONTRACTOR** shall furnish, install, maintain and operate all the necessary machinery, appliances, and equipment to keep excavations free from water until the Work is completed, inspected, and approved and all danger of flotation and other damages are removed.

SC-20.0 Disruption of Service

A. The **CONTRACTOR** shall coordinate any required utility shut-downs with the utility company involved, **OWNER** and Resident Project Representative and obtain their approval. The **CONTRACTOR** shall notify the utility, **OWNER** and Resident Project Representative, in writing, at least 5 days in advance of any desired utility shut-down. The **CONTRACTOR** will be required to notify each affected customer in writing in advance of the disruption of service.

B. Any Services exposed to freezing shall be adequately protected from freezing by the **CONTRACTOR** until the service is sufficiently backfilled to preclude freezing.

SC-21.0 Conflict of Interest

21.01 No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be constructed to extend to this Contract if made with a corporation for its general benefit.

21.02 No official of the **OWNER** who is authorized in such capacity and on behalf of the **OWNER** to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney,

engineer, or inspector of or for the **OWNER** who is authorized in such capacity and on behalf of the **OWNER** who is in any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

END OF SECTION

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Work Change Directive & Change Order

Table of Contents

Item	***Number***
Work Change Directive	00940-1
Change Order	00940-3
Stamping Requirements	00940-5

Work Change Directive

No. _____.

Date of Issuance _____. Effective Date _____.

OWNER **Lander County**

CONTRACTOR _____.

Contract **Battle Mountain Raceway Fencing Project**

If OWNER or CONTRACTOR believes that the above change has affected Contract Price, any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

☐ Unit Price
☐ Lump Sum
☐ Cost of the Work _____.

Estimated increase (decrease) in Contract Price: $_____. If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:

Substantial Completion: _____ days;
Ready for final payment: _____ days.

Recommended:

ENGINEER

By:

Authorized:

OWNER

By:

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Change Order

No. _____.

Date of Issuance _____. Effective Date _____.

OWNER **Lander County**

CONTRACTOR _____.

Contract **Battle Mountain Raceway Fencing Project**

ENGINEER **Shaw Engineering**

You are directed to make the following changes in the Contract Documents:

Description:

Reasons for Change Order:

Attachments (list documents supporting change):

Change in Contract Price:
Original Contract Price $ _____.
Net increase (decrease) from previous Change Orders No. _____ to _____. $ _____.
Contract Price prior to this Change Order $ _____.
Net increase (decrease) of this Change Order $ _____.
Contract Price with all approved Change Orders $ _____.

Change in Contract Times:
Original Contract Times Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Net change from previous Change Orders No. _____ to _____. Original Contract Times Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Contract Times prior to this Change Order Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Net increase (decrease) this Change Order Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Contract Times with all approved Change Orders Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*

Recommended:	Approved:	Accepted:
By: _____.	By: _____.	By: _____.
ENGINEER *(authorized signature)*	OWNER *(authorized signature)*	CONTRACTOR *(authorized signature)*
Date _____.	Date _____.	Date _____.

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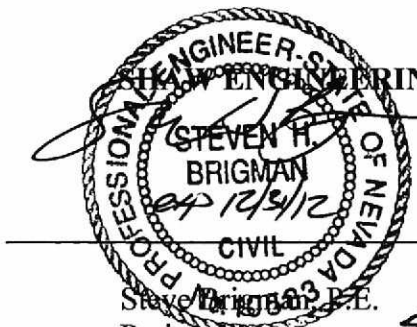
Stamping Requirements

Per NAC 625.611, the following specifications for civil engineering were prepared and approved by:



SHAW ENGINEERING

Steve Brigman, P.E.
Project Manager

5/30/12

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Technical Specifications

BATTLE MOUNTAIN RACEWAY
FENCING IMPROVEMENT PROJECT

Section 02820 – Chain Link Fence and Gates

1.0 General

A. The work to be performed under this Section shall be the construction and installation of a 6-foot chain link fence with three strands of barbed wire on top. The fence shall be constructed and installed per this specification and as shown on the Drawings.

B. The fence may be erected at any time after the earthwork, pipe work, and structures to which the fence is related have been completed. The fence shall be protected against damage and, if damaged, it shall be repaired to the satisfaction of the **ENGINEER** prior to final acceptance.

2.0 Materials

A. The chain link fence and gates shall be a USS Cyclone-Type I, Anchor Post Products, Inc., or equal. The components shall be as listed and specified below:

Privacy Slats:

Height	6'-0"
Material	Ultraviolet Resistant
Color	Standard Color to be selected by **OWNER**.

Fabric:

Height	6'-0"
Mesh	2-inch
Size wire	9 gauge
Coating	Galvanized
Coating specifications	ASTM A 121 - Class 3
Tensile strength	80,000 psi minimum

Barbed Wire:

Total number strands	3
Wires per strand	2
Size wires	12 gauge
Barbs	14-gauge, 4-point, at 4 inches o.c.
Coating	Galvanized
Coating specifications	ASTM A 121 - Class 3
Style	Angled outward

Top Rail Size: 1-5/8-inch O.D., Schedule 40 pipe weighing 2.27 pounds per lineal foot galvanized

Tension Wire: 7-gauge galvanized coil spring wire

Line Posts:	1.875-inch O.D., Schedule 40 pipe weighing 2.72 pounds per lineal foot galvanized.
Terminal Corner and Corner and Pull Posts Size:	2.875-inch O.D., Schedule 40 pipe weighing 3.8 pounds per lineal foot

Except where shown differently on the Plans, gate posts and concrete foundations for gate posts shall be as determined by the following schedule.

Concrete Foundation

Gate Leaf Width, feet	Size OD, inches	Weight Size, lb/lf	Diameter	Depth
0 to 6	3	5.79	12"	3.5'
over 6 to 13	4	9.11	18"	4.5'
over 13 to 18	6-5/8	18.75	18"	5'

Gates posts shall have vertical extension arms with 3 strands of barbed wire.

All posts, rails, and appurtenances shall be hot-dipped zinc coated steel per ASTM A 120, A 121, A 123, or A 153, whichever is applicable. Pipe posts shall have tops which exclude moisture. End corner, pull, and gate posts shall be braced with the same material as top rail and trussed to line posts with 3/8-inch rods and tighteners.

The fabric shall be connected to the line posts with 6-gauge hot-dip galvanized wire clips every 14 inches to terminals, corner, and gate posts by using 1/4" x 3/4" tension bars tied to posts every 14 inches with 11-gauge, 1-inch wide, hot-dipped galvanized steel bands and 3/8-inch diameter bolts and nuts, and to tension wires with 11-gauge hog rings every 24 inches.

Post top fittings shall have galvanized 45 degree angle extension arms. Three barbed wire strands shall be carried on each extension arm. The top rail shall pass through the extension arm. The top rail shall pass through the extension arm fitting.

A 7-gauge galvanized coiled spring tension wire shall be installed along the bottom of the fence fabric and at the top when the top rail is not shown on the Plans.

Swing chain link gates shall be provided where indicated on the Plans. Gate frames shall be made of 1.90-inch O.D. galvanized pipe weighing 2.72 pounds per linear foot. Corner fittings shall be heavy pressed steel or malleable castings.

3.0 Construction

A. Fence

The chain link fence shall be located as indicated on the Plans. Finished fence shall be plumb, taut, true to line and grade, and complete in all details. End, corner, slope, and gate posts shall be braced to the midpoint of the nearest line post or posts with horizontal braces used as compression members and the said line posts trussed from the brace back to the bottom of the end, corner, slope, or gate post with 3/8 inch steel truss rods with turnbuckles or other suitable tightening devices used as tension members.

Unless otherwise specified, all fencing shall be installed with a top rail and a bottom tension

wire. When top rail is omitted, a top and bottom tension wire shall be used.

The fabric shall be placed on the outward facing side of the posts and shall be installed so that the top edge projects over the top rail of the fence. The fabric shall be stretched taut and securely fastened to the posts, the top rail, and the bottom tension wire. The tension wire shall be installed parallel to the line of the fabric.

The fence shall follow the general finished grade of the ground and shall have pull posts at all points where required to conform to a change in grade. Space between the bottom of the fence and the finished groundline shall not exceed 3 inches. The ground shall be graded before fence posts are located to permit the grade of the fence to remain constant over any local elevations or depressions in the groundline. The surplus dirt, concrete, etc., shall be cleaned up and the grade dressed up after completion of the work.

Fence posts shall be set in concrete foundations at least 3 feet into the ground and shall be spaced not over 10 feet apart. Concrete shall be a minimum of 12 inches in diameter for line posts. Exposed concrete fence post caps shall be finished off in a workman like manner. A minimum of 1-inch of concrete shall be above the finished grade and shall be sloped to drain away from the post.

B. Swing Gates

Except as otherwise shown or specified, all chain link fence gates shall be swing gates.

The corners of gate frames shall be fastened together and reinforced with a fitting designed for the purpose or by welding. All welds shall be ground smooth.

Chain link fence fabric shall be attached to the gate frame by the use of tension bars and tie wires as specified for fence construction, and suitable tension connectors spaced at approximately 16-inch intervals.

Gates shall be provided with a combination steel or malleable iron catch and locking attachment of approved design. Stops to hold gates open and a center rest with catch shall be provided where required.

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ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/27/2012

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

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

PRODUCER	CONTACT NAME: Jessica Riviera	
L/P Insurance Services, Inc. dba: ISU-L/P Insurance Services 6275 Neil Road, 3rd Floor Reno NV 89511	PHONE (A/C, No, Ext): (775) 996-6000	FAX (A/C, No): (775) 473-9208
	E-MAIL ADDRESS: jessica.riviera@lpins.net	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Peerless Indemnity Insurance Co	18333

INSURED

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/27/2012

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

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PRODUCER	CONTACT NAME: Jessica Riviera
L/P Insurance Services, Inc. dba:ISU-L/P Insurance Services 6275 Neil Road, 3rd Floor Reno NV 89511	PHONE (A/C, No, Ext): (775) 996-6000 FAX (A/C, No): (775) 473-9208 E-MAIL ADDRESS: jessica.riviera@lpins.net

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Tholl Fence Inc PO Box 855 Sparks NV 89432	INSURER A: Peerless Indemnity Insurance Co	18333
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 12-13 Master Revised REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	X		CBP8923749	9/1/2012	9/1/2013	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			BA8924249	9/1/2012	9/1/2013	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
							Medical payments	$
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000			CUB924749	9/1/2012	9/1/2013	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC5341773	1/1/2012	1/1/2013	X WC STATU-TORY LIMITS OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Job: Battle Mountain Raceway Fencing Project #11036.00G. Lander County is named as additional insured with respects to general liability coverage per form 22-133 01/08. Coverage provided is primary and non-contributory per form 22-111 01/07.

CERTIFICATE HOLDER

Lander County
315 So Humboldt St
Battle Mountain, NV 89820

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Jessica Riviera/JLR

ACORD 25 (2010/05)
INS025 (201005) 01

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED CONTRACTORS – PRODUCTS/COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Paragraph 2. under **SECTION II – WHO IS AN INSURED** is amended to include any person or organization, when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, but only with respect to liability for "bodily injury" or "property damage":

1. Caused by "your work" performed for that additional insured that is the subject of the written contract or agreement; and
2. Included in the "products-completed operations hazard".

The insurance provided by this endorsement applies only if the written contract or agreement is executed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a claim or "suit" as required in provision b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS.**

B. With respect to the insurance provided by this endorsement, the following are added to paragraph **2. Exclusions** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I – COVERAGES)**:

This insurance does not apply to:

1. "Bodily injury" or "property damage" arising out of any act or omission of the additional insured or the additional insured's employees; or
2. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
3. "Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:
   a. The preparing, approving or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawing and specifications; and
   b. Supervisory, inspection, architectural or engineering activities; or

C. With respect to the insurance afforded by this endorsement, exclusion **l. Damage To Your Work** of paragraph **2. Exclusions** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I – COVERAGES)** is replaced by the following:

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

D. With respect to the insurance afforded by this endorsement, the following is added to **SECTION III – LIMITS OF INSURANCE**:

The Limits Of Insurance applicable to the additional insured are the lesser of:

1. The amount specified in a written contract or written agreement between you and the person or organization described in paragraph **A.** above; or
2. The amount shown in the Declarations for this Coverage Part.

These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations for this Coverage Part as described in this **SECTION III – LIMITS OF INSURANCE.**

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E. With respect to the Insurance afforded by this endorsement, **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

1. The following is added to condition **2. Duties in The Event Of Occurrence, Offense, Claims Or Suit:**

An additional insured under the Blanket Additional Insured Contractors – Products/Completed Operations endorsement must comply with all the provisions of this condition.

2. With respect to the insurance afforded by this endorsement, provision **b. Excess Insurance** of condition **4. Other Insurance** is replaced by the following:

4. Other Insurance

b. Excess Insurance

This Insurance is excess over any other insurance for which the additional insured qualifies as an insured whether primary, excess, contingent or on any other basis unless the written contract or written agreement between you and the person of organization described above specifically requires that this insurance be provided on either a primary basis or a primary and noncontributory basis.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to provision **a. Primary Insurance** of paragraph **4. Other Insurance** under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

However, when an additional insured has been added to this Coverage Part by attachment of an endorsement, we will not seek contribution from the "additional insured's own insurance" provided that:

(1) You and the additional insured have agreed in a written contract that this insurance is primary and non-contributory; and

(2) The "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the execution of such contract.

B. For the purposes of this endorsement the following is added to **SECTION V – DEFINITIONS:**

"Additional insured's own insurance" means other insurance for which the additional insured is designated as a Named Insured.

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LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 6

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding approval/disapproval of agreement between Lander County and Nelson Electric, in the amount of $418,000.00, for the Battle Mountain Raceway Lighting Project and other matters properly related thereto.

Public comment.

Background:

The agreement between Lander County and Nelson Electric, in the amount of $418,000.00, for the Battle Mountain Raceway Lighting Project is presented for Commission consideration.

This Agreement is the contract for performance of services per the bid awarded for the Battle Mountain Raceway Lighting Project during the regular Commission meeting of August 9, 2012, (Agenda Item #7).

Recommended Action:

It is recommended that the Commission approve the Agreement between Lander County and Nelson Electric, **in the amount of $418,000.00**, for the Battle Mountain Raceway Lighting Project.

Ag.4

Battle Mountain Raceway

Lander County, Nevada

Bidding and Contract Documents
& Project Specifications
for the

Battle Mountain Raceway Lighting Project

Public Works Project Number:
PWP-LA-2012-321

Prepared by:

SHAW
ENGINEERING

20 Vine Street
Reno, NV 89503
Phone 775.329.5559
Fax 775.329.5406
www.shawengineering.com

June 2012 **OWNER**

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Advertisement for Bids

Lander County Convention and Tourism Authority
Battle Mountain Civic Center
625 South Broad Street
Battle Mountain, NV 89820

Public Works Project Identifying Number (PWP) LA-2012-321

Separate sealed Bids will be received by Lander County, the OWNER, for construction of the **Battle Mountain Raceway Lighting Project** at the office of the Lander County Clerk located at 315 South Humboldt, Battle Mountain, Nevada 89820 at **11:00 a.m.**, local time, on Wednesday June 27th, 2012 and then at said office publicly opened and read aloud.

The Work is generally described as follows:

The work includes providing all labor, materials, equipment, appurtenances, services and other incidentals necessary to install and construct a new lighting system for the Battle Mountain Race Track, Cart Track, Motocross Track, and Mud-Bog Track and associated access road and parking areas.

Copies of the Contract Documents may be obtained at the office of the ENGINEER located at Shaw Engineering, 20 Vine Street, Reno, Nevada 89503, upon payment (nonrefundable) of $50.00 for each set. At the request of prospective Bidders, the Contract Documents can be mailed for an additional fee to cover the cost of postage and handling (at cost). The ENGINEER will record only those parties who have obtained the Contract Documents from the office of the ENGINEER.

A pre-bid conference will not be conducted.

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

If the contract is awarded, OWNER will award the contract to the lowest responsive, responsible Bidder. The low Bidder will be determined on the basis of the base Bid plus any alternates which are accepted by the OWNER in the sequential order they are listed.

END OF SECTION

00200 Instructions to Bidders

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00200 Instructions to Bidders

ARTICLE 1 - Defined Terms

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplemental Conditions. Additional terms used in these Instructions to Bidders have the meaning indicated below which are applicable to both singular and plural thereof:

A. *Bidder* --The individual or entity who submits a Bid directly to **OWNER**.

B. *Issuing Office* --The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered. The Issuing Office is **Shaw Engineering, Ltd.**, 20 Vine Street, Reno Nevada 89503.

C. *Successful Bidder* --The lowest responsible Bidder submitting a responsive Bid to whom **OWNER** (on basis of **OWNER**'s evaluation as hereinafter provided) makes an award.

ARTICLE 2 - Copies of Bidding Documents

2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office. The deposit is nonrefundable.

Complete sets of Bidding Documents must be used in preparing Bids; neither **OWNER** nor **ENGINEER** assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

Copies of documents obtained from any source other than Shaw Engineering, Ltd. will be at the sole risk of the user. Documents posted on any internet site are for information only. Contract Documents obtained from Shaw Engineering, Ltd. in a printed format shall supercede all other formats, versions, or editions.

OWNER and **ENGINEER,** in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 – Qualifications of Bidders

3.01 Bidder's must be qualified with licensure and experience to perform the work.

ARTICLE 4 - Examination of Bidding Documents, Other Related Data, and Site

4.01 Subsurface and Physical Conditions

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that **ENGINEER** has used in preparing the Bidding Documents.

2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that **ENGINEER** has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.01.A will be made available by the **OWNER** to any Bidder on request. If the copies are included in the Project Manual, they will be shown in the Table of Contents for Section 00300, Information Available to Bidders. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 Underground Facilities

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

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

4.04 On request, **OWNER** will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.05 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other Work that is to be performed at the Site by **OWNER** or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted.

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

A. examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;

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

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

D. carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions;

E. obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

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

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

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

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

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

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

ARTICLE 5 - Pre-Bid Conference

5.01 A pre-bid conference will not be conducted.

ARTICLE 6 – Site and Other Areas

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by **CONTRACTOR**. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by **OWNER** unless otherwise provided in the Bidding Documents.

ARTICLE 7 - Interpretations and Addenda

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

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by **OWNER** or **ENGINEER**. It is the Bidders sole responsibility to ensure that any Addenda issued are received by the Bidder and are complete.

ARTICLE 8 - Bid Security

8.01 A Bid must be accompanied by Bid security made payable to **OWNER** in an amount of 5% of Bidder's base Bid price and in the form of a certified or bank check or a Bid Bond [on the form attached] issued by a surety meeting the requirements of paragraph 5.01 and 5.02 of the General Conditions and paragraph SC5.02 of the Supplemental Conditions.

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

8.03 Bid security of other Bidders whom **OWNER** believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - Contract Times

9.01 The number of days within which or the dates by which the Work (and Milestone) is to be (a) Substantially Completed and (b) also completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 - Liquidated Damages

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

ARTICLE 11 - Substitute and "Or-Equal" Items

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by **ENGINEER** and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by **ENGINEER** as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by **ENGINEER** at least ten days prior to the date for receipt of Bids. Each such request shall conform to requirements of paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed items is upon Bidder. **ENGINEER**'s decision of approval or disapproval of a proposed item will be final. If **ENGINEER** approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12 - Subcontractors, Suppliers, and Others

12.01 Each Bidder shall list the name and business address of each Subcontractor who will perform Work or render service under this Contract in or about the construction of the improvement, or a Subcontractor licensed by the State of Nevada who specifically fabricates and installs a portion of the Work or improvement according to detailed Drawings contained in the plans, in excess of one-half of one percent of the total amount shown in the Bid, and shall also list the portion of the Work which will be done by such Subcontractor.

12.02 A **CONTRACTOR** whose Bid is accepted shall not substitute any person for a Subcontractor who is named in the Bid unless:

A. The **OWNER** objects to the Subcontractor, requests in writing a change in the Subcontractor and pays any increase in costs resulting from the change; or

B. The substitution is approved by the **OWNER** and:

1. The Subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the **CONTRACTOR** which was offered to the Subcontractor with the same terms that all other Subcontractors on the Project were offered;

2. The named Subcontractor files for bankruptcy or becomes insolvent; or

3. The named Subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance Bond and payment Bond pursuant to NRS 339.025.

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

12.04 The **CONTRACTOR** may subcontract no more than 50 percent of the total cost of the Project.

ARTICLE 13 – Preparation of Bid

13.01 The Bid Forms and Supplements are included with the Bidding Documents.

13.02 All blanks on the Bid Forms and Supplements shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each Bid item and alternative listed therein.

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and State of incorporation shall be shown below the signature.

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

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

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

13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature. Any Bidder who submits a joint venture Bid shall obtain written approval from the State of Nevada Contractor's Board prior to submitting such a Bid and shall attach approval with Bid.

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

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

13.10 The address and telephone number for communications regarding the Bid shall be shown.

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

ARTICLE 14 - Basis of Bid; Evaluation of Bids

14.01 Bid Price

A. Bidders shall submit a Bid price for each item of Work listed in the Bid Form. The Bid Form includes lump sum bid prices.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances.

ARTICLE 15 – Submittal of Bid

15.01 Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the Bid Forms and Supplements. The unbound copy of the Bid Forms and Supplements is to be completed and submitted.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title, the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". Bids delivered via facsimile will not be accepted and will be returned to the Bidder. A mailed Bid shall be addressed to Lander County Road and Bridge Department, 315 South Humboldt St., Battle Mountain, Nevada 89820. It is the sole responsibility of the Bidder to verify that its Bid is received by the **OWNER** prior to the public opening of the Bids.

ARTICLE 16 – Modification and Withdrawal of Bid

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

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

ARTICLE 17 - Opening of Bids

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

ARTICLE 18 - Bids to Remain Subject to Acceptance

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

ARTICLE 19 - Award of Contract

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

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

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

19.04 In evaluating Bidders, **OWNER** will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted.

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

19.06 If the Contract is to be awarded, **OWNER** will award the Contract to the lowest responsive, responsible Bidder of the Project.

19.07 The low Bidder will be determined on the basis of the base Bid plus any alternates which are accepted by the **OWNER**. The alternate Bids will be selected and awarded by the **OWNER** in the sequential order they are listed on the Bid Proposal Form and in the best interest of the **OWNER**.

ARTICLE 20 - Contract Security and Insurance

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

20.02 A performance Bond and a payment Bond, each in the amount of 100 percent of the Contract Price with a corporate surety approved by the **OWNER**, will be required for the faithful performance of the Contract. The Bond forms provided in the Contract Documents must be used.

20.03 Attorneys-in-fact who sign Bid Bonds or payment Bonds and performance Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

ARTICLE 21 – Signing of Agreement

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

ARTICLE 22 - Sales and Use Taxes

22.01 The Bidder must include all sales and use taxes in its Bid.

ARTICLE 23 - Other Items

23.01 Pursuant to Nevada Revised Statute (NRS) 338.145, the **OWNER** will not award the Contract to a Bidder who, at the time of submitting a Bid, was not properly licensed under the provisions of Chapter 624 of NRS or if the Contract would exceed the limit of the Bidder's license.

23.02 A sub-bidder named by the Bidder who is not properly licensed for that portion of the Work shall be deemed unacceptable. If the sub-bidder is deemed unacceptable, the Bidder shall provide an acceptable sub-bidder before award of the Contract without an increase in Contract Price.

23.03 The **CONTRACTOR** shall cause all appropriate provisions of the Contract to be inserted in all subcontracts relative to the Work to bind Subcontractors to the **CONTRACTOR** by the terms of the Contract Documents (NRS 338.165 and 338.170).

23.04 In each Contract for the construction of public works, a proviso shall be inserted to the effect that if the provisions of this section are not complied with by the **CONTRACTOR**, the Contract shall be void, and any failure or refusal to comply with any of the provisions of this section shall render any such Contract void (NRS 338.130).

ARTICLE 24 – Prevailing Wage Rates

24.01 State Prevailing Wage Rates shall be paid on this Project. The Bidder shall be solely responsible for obtaining current rates any and all modifications and/or Addenda issued on the Prevailing Wage Rates prior to the scheduled Bid opening date.

END OF SECTION

00300 Information Available to Bidders

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Item	***Number***
Prevailing Wage Information	N\A

State Prevailing Wage Rates

for

Public Works

Note: The CONTRACTOR shall be solely responsible for obtaining the latest State Prevailing Wage Rates for Public Works projects. The following information may be helpful:

www.state.nv.us

go to:
Boards and Commissions
Labor Commission
Prevailing Wage Rates

or

State of Nevada
Labor Commission
Carson City, Nevada
(775) 687-4850

PENAL SUM FORM

Bid Bond

BIDDER (Name and Address):

Nelson Electric Co., Inc.
1410 Freeport Blvd.
Sparks, NV 89431

SURETY (Name and Address):

Fidelity and Deposit company of Maryland
560 Mission Street
Suite 2400
San Francisco, CA 94105

OWNER (Name and Address):

Lander County
315 South Humboldt
Battle Mountain, NV 89820

BID

BID DUE DATE: June 26,2012

DATE (Not later than Bid due date): June 25, 2012

PENAL SUM: Five Percent of amount of bid and XX/100 ----------5%----------
(Words) *(Figures)*

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on page 00430-2 hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

Nelson Electric Company, Inc. (Seal)
Bidder's Name and Corporate Seal

By: Lloyd L Nelson
Signature and Title
Lloyd L. Nelson, General Manager

Attest: Lisa M. Teglia
Signature and Title
Lisa M. Teglia, Office Manager

SURETY

Fidelity and Deposit Company of Maryland (Seal)
Surety's Name and Corporate Seal

By: Elena M Chiaretti
Signature and Title (Attach Power of Attorney)
Elena M. Chiaretti Attorney-in-fact

Attest: Georgene McNeill
Signature and Title
Georgene McNeill - NV Agent

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, **OWNER** or other party shall be considered plural where applicable.

EJCDC No. 1910-28-C (1996 Edition)

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to **OWNER** upon default of Bidder the penal sum set forth on the face of this Bond.

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

3. This obligation shall be null and void if:

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

   3.2 All Bids are rejected by **OWNER**, or

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

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

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

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

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

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

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

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

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

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Elena M. CHIARETTI, of Reno, Nevada,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.

FOR YOUR PROTECTION LOOK FOR THE ZURICH WATERMARK

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 16th day of October, A.D. 2006.

ATTEST: **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By:

Gregory E. Murray Assistant Secretary *Frank E. Martin Jr.* *Vice President*

State of Maryland }
Baltimore County } ss:

On this 16th day of October, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came FRANK E. MARTIN JR., Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Dennis R. Hayden *Notary Public*
My Commission Expires: February 15, 2013

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 25th day of June, 2012.

Jim D. Burt

Assistant Secretary

NEVADA STATE CONTRACTORS BOARD

9670 GATEWAY DRIVE, SUITE 100, RENO, NEVADA, 89521 (775) 688-1141 FAX (775) 688-1271
2310 CORPORATE CIRCLE, SUITE 200, HENDERSON, NEVADA, 89074, (702) 486-1100 FAX (702) 486-1190

SPECIALTY CONTRACTOR'S RESTRICTED CERTIFICATE OF ELIGIBILITY PER NRS 338.147 and NRS 338.1389

CERTIFICATE NUMBER: *SBPC-02-06-06-0034*

NELSON ELECTRIC CO., INC. **(HEREIN THE "CONTRACTOR") NEVADA STATE CONTRACTORS' LICENSE NUMBER: *16697* ORIGINAL ISSUE DATE: *09/27/1979* BUSINESS TYPE: *CORPORATION* CLASSIFICATION: *C-2-(ELECTRICAL)* MONETARY LICENSE LIMIT: *UNLIMITED* STATUS: *ACTIVE*, IS HEREBY ISSUED THIS CERTIFICATE BY THE NEVADA STATE CONTRACTORS' BOARD, BASED UPON THE INFORMATION CONTAINED IN THE STATEMENT OF COMPLIANCE WITH NEVADA REVISED STATUTES (NRS) 338.147 AND NRS 338.1389 AND THE AFFIDAVIT OF CERTIFIED PUBLIC ACCOUNTANT SUBMITTED TO THE NEVADA STATE CONTRACTORS BOARD AS PROOF OF CONTRACTOR'S COMPLIANCE WITH THE PROVISIONS OF NRS 338.147 AND NRS 338.1389. IN ACCORDANCE WITH THE PROVISIONS OF NRS 338.147(3), THE ABOVE-NAMED CONTRACTOR AND A CERTIFIED PUBLIC ACCOUNTANT HAVE SUBMITTED FULLY EXECUTED AND NOTARIZED SWORN AFFIDAVITS AS PROOF OF PREFERENTIAL BIDDER STATUS, UNDER PENALTY OF PERJURY, CERTIFYING THAT THE CONTRACTOR IS QUALIFIED TO RECEIVE A PREFERENCE IN BIDDING AS SET FORTH IN NRS 338.147 AND NRS 338.1389 AND OTHER MATTERS RELATING THERETO WHEN ACTING AS A PRIME CONTRACTOR ON THE SPECIFIC PUBLIC WORKS PROJECT FOR WHICH THIS CERTIFICATE IS SUBMITTED BY THE CONTRACTOR.**

THIS CERTIFICATE OF ELIGIBILITY IS ISSUED ON *OCTOBER 1, 2011* AND EXPIRES ON *SEPTEMBER 30, 2012*, UNLESS SOONER REVOKED OR SUSPENDED BY THE NEVADA STATE CONTRACTORS BOARD.

9/7/2011

NANCY MATHIAS, LICENSING ADMINISTRATOR DATE
FOR MARGI GREIN, EXECUTIVE OFFICER

The Nevada State Contractors Board assumes no liability or responsibility for the accuracy or validity of the information contained in the Contractors Statement of Compliance or the Affidavit of Certified Public Accountant as Proof of Contractors Compliance with the Provisions of NRS 338.147 and NRS 338.1389. The above-named Contractor shall bear the responsibility to ascertain the accuracy and validity of the affidavits provided to support the issuance of this certificate.

PREFERENTIAL BIDDER STATUS AFFIDAVIT

(This form must be submitted with Certificate of Eligibility for Preferential Bidder Status)

I, LLOYD L. NELSON ("Affiant"), on behalf of NELSON ELECTRIC CO., INC. ("Contractor"), swear and affirm that in order to be in compliance with NRS 338.147, as revised by Assembly Bill 144 of the 76th Session of the 2011 Nevada Legislature, effective April 27, 2011, and be eligible to receive a preference in bidding for Project No. PWP-LA-2012-321, Project Name BATTLE MOUNTAIN RACEWAY LIGHTING PROJECT ("Project"), certify that for the duration of the Project:

(a) At least 50 percent of all workers employed on the Project, including, without limitation, any employees of the Contractor and of any Subcontractor engaged on the Project, will hold a valid driver's license or identification card issued by the State of Nevada Department of Motor Vehicles ("DMV");

(b) All vehicles used primarily for the Project will be:

(1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the DMV pursuant to NRS 707.826; or

(2) Registered in the State of Nevada;

(c) At least 50 percent of the design professionals working on the Project, including, without limitation, any employees of the Contractor and of any Subcontractor engaged on the Project, will have a valid driver's license or identification card issued by the DMV;

(d) At least 25 percent of the suppliers of the materials used for the Project will be located in the State of Nevada; and

(e) The Contractor and any Subcontractor engaged on the Project will maintain and make available for the inspection within this State his or her records concerning payroll relating to the Project.

Upon submission of the State Contractors' Board certificate of eligibility to receive a preference in bidding on public works and this Affidavit, Contractor recognizes and accepts that failure to comply with the requirements herein, including all recording keeping obligations detailed in the General Conditions, : 1) is a material breach of the Contract; 2) may result in the loss of a preference in bidding public works for five (5) years and/or the ability to bid on any contracts for public works within the State of Nevada for one(1) year; and 3) may entitle the Washoe County School District to civil damages in the amount of ten (10) percent of the Contract Price. The Contractor acknowledges that he/she is required to follow the requirements regardless of whether the bidder's preference was considered in determining the lowest responsive and responsible bidder on the Project.

By: LLOYD L. NELSON

Title: GENERAL MANAGER

(Print Name of Affiant)

Signature of Affiant: Lloyd L. Nelson

Date: 06/27/12

Signed and sworn to (or affirmed) before me on this 27 day of JUNE, 20 12,

by LLOYD L. NELSON (name of Affiant).

State of NEVADA)

)ss.

County of WASHOE)

Janice Kahl

Notary Signature

JANICE KAHL
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 11-4648-2 - Expires May 1, 2015

STAMP AND SEAL

Proof of Authorization to Sign Affidavit

The person must establish his/her actual authority to act on behalf of the business organization. The individual must be the person indicated in the table below and provide written documentation clearly indicating the person's position within that business organization. If the individual signing the Affidavit is an employee of the business organization, written documentation, on organization letterhead, clearly indicating the person's authority to act on behalf of the business organization must be provided. The written documentation must be signed by the authorized person identified on the table.

If the individual making application for the business organization is not one of the persons identified in the table or an authorized employee, a valid power of attorney executed by an authorized person on behalf of the business organization must be provided. The power of attorney must be made not more than 90 days before the Affidavit is signed.

BUSINESS ENTITY	PERSON WHO HAS AUTHORITY TO COMPLETE AFFIDAVIT
Sole Proprietorship	Sole Proprietor
Partnership	A Partner
Corporation	1. Director, if Authorized 2. Executive Officer as indicated in the Article of Incorporation
Limited Liability Company	1. Member, if Member-Managed LLC 2. Manager, if Manager-Managed LLC

WRITTEN CONSENT IN LIEU OF
A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF
NELSON ELECTRIC COMPANY, INC.,
a Nevada corporation

The undersigned, being all members of the Board of Directors of NELSON ELECTRIC COMPANY, INC., a Nevada corporation (the "Corporation"), pursuant to the terms of the Bylaws of the Corporation, in lieu of a special meeting of the Board of Directors, unanimously agree to, approve and adopt the following resolutions as acts of the Corporation:

Endorsement of Documents; Contracts.

RESOLVED, that subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, share certificate, conveyance or other instrument in writing and any assignment or endorsements thereof executed or entered into between the Corporation and any other person, when signed by the Chairman of the Board, the President or any Vice President and the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Chief Financial Officer of the Corporation shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount; and.

RESOLVED FURTHER, that subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsements thereof executed or entered into between the Corporation and any other person, when signed by the General Manager of the Corporation, Lloyd Nelson, shall be valid and binding on the Corporation in the absence of actual knowledge on the part of the other person that said General Manager had no authority to execute the same.

The Directors, by signing this consent, waive notice of the time, place, and purpose of the special meeting of the Board of Directors and agree to the transaction of business of the special meeting by written consent of the Directors in lieu of special meeting.

DATED: This 25 day of FEBRUARY, 2010.

DIRECTORS:

Lloyd L Nelson
LLOYD L. NELSON

Patricia A Nelson
PATRICIA A. NELSON

Lisa M. Teglia
LISA M. TEGLIA

CERTIFICATE OF SECRETARY
of
NELSON ELECTRIC COMPANY, INC.,
a Nevada corporation

I hereby certify that I am the duly elected and acting Secretary of **NELSON ELECTRIC COMPANY, INC.,** a Nevada corporation, and that the foregoing resolutions, constitute Resolutions of said Corporation as duly adopted by the Board of Directors on the 25 day of FEBRUARY, 2010.

Patricia A. Nelson
PATRICIA A. NELSON, Secretary

Notice of Award, Agreement and Notice to Proceed

Table of Contents

Item	***Number***
Notice of Award	00510-1
Agreement	00520-1 thru 7
Notice to Proceed	00550-1

Notice of Award

Dated August 9, 2012

TO: Nelson Electric Co. Inc.

ADDRESS: 1410 Freeport Blvd, Sparks, NV 89431

Contract: **Battle Mountain Raceway Lighting Project**

You are notified that your Bid dated June 27, 2012 for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for the Battle Mountain Raceway Lighting Improvement Project - total work .

(Indicate Total Work, Alternates or Sections of Work Awarded)

The Contract Price of your Contract is four hundred and eighteen thousand Dollars ($ 418,000.00).

2 copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.
NA sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by August 24th, 2012 .

1. Deliver to the Owner 2 fully executed counterparts of the Contract Documents. [Each of the Contract Documents must bear your signature on (00520-6)].

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

3. (List other conditions precedent).
   NA

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

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

*Copy to **ENGINEER***
(use Certified Mail,
Return Receipt Requested)

Lander County
(**OWNER**)

By: _____
(AUTHORIZED SIGNATURE)

Project Engineer (TITLE)

Agreement

THIS AGREEMENT is by and between **Lander County** .

(hereinafter called **OWNER**) and Nelson Electric .

(hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - Work

1.01 **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - The Project

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Battle Mountain Raceway Lighting Project

ARTICLE 3 - Engineer

3.01 The Project has been designed by **Shaw Engineering, Ltd.**, 20 Vine Street, Reno, Nevada, 89503, who is hereinafter called **ENGINEER** and who is 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 Work in accordance with the Contract Documents.

ARTICLE 4 – Contract Times

4.01 Time of the Essence

1. 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 Days to Achieve Substantial Completion and Final Payment

1. The Work will be substantially completed within 76 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 90 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

1. **CONTRACTOR** and **OWNER** recognize that time is of the essence of this Agreement and that **OWNER** will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), **CONTRACTOR** shall pay **OWNER** $200.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if

CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by **OWNER**, **CONTRACTOR** shall pay **OWNER** $500.00 for each day that expires after the times specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – Contract Price

5.01 **OWNER** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amounts determined pursuant to the paragraph below:
A. For all Work, at the prices stated in **CONTRACTOR's** Bid, attached hereto as an exhibit.

As provided in paragraph 11.03 of the General Conditions, estimated quantities for unit price items are not guaranteed, and determinations of actual quantities and classifications are to be made by **ENGINEER** as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 – Payment Procedures

6.01 Submittal and Processing of Payments

A. **CONTRACTOR** shall submit Applications for Payment in accordance with Article 14 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 each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of 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 in the General Requirements:

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 **ENGINEER** may determine or **OWNER** may withhold, in accordance with paragraph 14.02 of the General Conditions:

    a. 90% of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by **ENGINEER**, and if the character and progress of the Work have been satisfactory to **OWNER** and **ENGINEER**, **OWNER**, on recommendation of **ENGINEER**, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

    b. 100% of cost of materials and equipment not incorporated in the Work.

2. Upon Substantial Completion, **OWNER** shall pay an amount sufficient to increase total payments to **CONTRACTOR** to 95% of the Work completed, less such amounts as **ENGINEER** shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of **ENGINEER's** estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said paragraph 14.07.

ARTICLE 7 - Interest

7.01 The **CONTRACTOR** acknowledges that he is aware of the provisions of Nevada Revised Statute 338.160, which provides for investment of contract retainages, and the payment of interest thereon to the **CONTRACTOR** after completion of the Project. The **CONTRACTOR** agrees to waive all his rights to investment of and payment of interest on retainage, upon the understanding that the regulations of the lending agency prohibit such investment and that, without this waiver, loan and/or grant funds for this Project will not be available.

ARTICLE 8 – Contractor's Representations

8.01 In order to induce **OWNER** to enter into this Agreement, **CONTRACTOR** makes the following representations:

A. **CONTRACTOR** has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. **CONTRACTOR** has visited the Site 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 federal, State, and local 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 contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions.

E. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by **CONTRACTOR**, including applying the specific means, methods, techniques, sequence, and procedures of construction, if any, expressly required by the Contract Documents to be employed by **CONTRACTOR**, and safety precautions and programs incident thereto.

F. **CONTRACTOR** does not consider that any 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 Documents.

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 correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. **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**.

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

ARTICLE 9 – Contract Documents

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (Number 00520);
2. Performance Bond (Number 00610);
3. Payment Bond (Number 00615);
4. General Conditions (Number 00700);
5. Supplementary Conditions (Number 00800);
6. Project drawings consisting 9 sheets titled Battle Mountain Raceway Lighting Improvements
7. Addenda (Section 00900).
8. Exhibits to this Agreement (enumerated as follows):
   A. Notice to Proceed (number 00550);
   B. **CONTRACTOR's** Bid;
   C. Documentation submitted by **CONTRACTOR** prior to Notice of Award (pages _____ to _____, inclusive);
9. State Prevailing Wage Rates including Addenda;
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    1. Written Amendments;
    2. Work Change Directives;
    3. Change Order(s).

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 paragraph 3.05 of the General Conditions.

ARTICLE 10 - Miscellaneous

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. 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, moneys that may become due and moneys that are 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 partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, 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 Other Provisions

A. **CONTRACTORS** are required by law to be licensed and regulated by the Nevada's State Contractors Board. Any questions concerning a **CONTRACTOR** may be referred to the State Contractors Board, 70 Linden Street, Reno, Nevada 89502.

IN WITNESS WHEREOF, **OWNER** and **CONTRACTOR** have signed this Agreement in duplicate. One counterpart each has been delivered to **OWNER** and **CONTRACTOR**. All portions of the Contract Documents have been signed or identified by **OWNER** and **CONTRACTOR** or on their behalf.

This Agreement will be effective on Oct. 11, 2012 (which is the Effective Date of the Agreement).

OWNER:
By: Dean Bullock

[Corporate Seal]
Attest Sadie Sullivan

Address for giving notices:
315 S. Humboldt St.
Battle Mountain, NV 89820

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

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

CONTRACTOR:
By: Lloyd L Nelson
LLOYD L. NELSON

[Corporate Seal]
Attest Lisa M. Teglia

Addresses for giving notices:
1410 FREEPORT BLVD.
SPARKS, NV 89431

License No.: 016697
(Where applicable)

Agent for service of process: MCDONALD CARANO WILSON
100 W. LIBERTY, RENO, NV 89501

(If **CONTRACTOR** is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: LLOYD NELSON

Title: GENERAL MANAGER

Address: 1410 FREEPORT BLVD., SPARKS, NV 89431

Phone: 775-358-0643

Facsimile: 775-358-0674

Notice to Proceed

Dated:_____

To: _____
(Contractor)

Address[1]: _____

_____

Contract:_____

You are notified that the Contract Times under the above contract will commence to run on _____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____ and the date of readiness for final payment is _____.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and **OWNER** must each deliver to the other (with copies to **ENGINEER** and other identified additional insureds) certificates of insurance, which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must (add other requirements):

_____

_____

_____

Lander County
(OWNER)

By: _____
(Authorized Signature)

_____
(Title)

Copy to **ENGINEER:**
Shaw Engineering, Ltd.

[1] (Use Certified Mail, Return Receipt Requested)

END OF SECTION

Bonds, Application for Payment & Certificate of Substantial Completion

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Performance Bond

Any singular reference to **CONTRACTOR**, Surety, **OWNER** or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

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

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: _____ Amount: _____

Description (Name and Location): Battle Mountain Raceway Lighting Improvements

_____

_____

BOND: Date (Not earlier than Contract Date): _____ Amount: _____

Modifications to this Bond Form: _____

_____

_____

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-2, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____ (attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

_____ (attach Power of Attorney)

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 Contract, which is incorporated herein by reference.

2. If the **CONTRACTOR** performs the Contract, the Surety and the **CONTRACTOR** have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

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

3.1 The **OWNER** has notified the **CONTRACTOR** and the Surety at the addresses described in paragraph 10 below, that the **OWNER** is considering declaring a **CONTRACTOR** Default and has requested and attempted to arrange a conference with the **CONTRACTOR** and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the **OWNER**, the **CONTRACTOR** and the Surety agree, the **CONTRACTOR** shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the **OWNER**'s right, if any, subsequently to declare a **CONTRACTOR** Default; and

3.2 The **OWNER** has declared a **CONTRACTOR** Default and formally terminated the **CONTRACTOR**'s right to complete the Contract. Such **CONTRACTOR** Default shall not be declared earlier than twenty days after the **CONTRACTOR** and the Surety have received notice as provided in paragraph 3.1; and

3.3 The **OWNER** has agreed to pay the Balance of the Contract Price to:

3.3.1 The Surety in accordance with the terms of the Contract;

3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. 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:

4.1 Arrange for the **CONTRACTOR**, with consent of the **OWNER**, to perform and complete the Contract; or

4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractor ; or

4.3 Obtain Bids or negotiated proposals from qualified contractor acceptable to the **OWNER** for a contract for performance and completion of the Contract, arrange for a Contract to be prepared for execution by the **OWNER** and the contractor selected with the **OWNER**'s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the **OWNER** the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the **OWNER** resulting from the **CONTRACTOR** Default; or

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

4.4.1 After investigation, determine the amount for which it may be liable to the **OWNER** and, as soon as practicable after the amount is determined, tender payment therefor to the **OWNER**; or

4.4.2 Deny liability in whole or in part and notify the **OWNER** citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 enforce any remedy available to the **OWNER**. If the Surety proceeds as provided in paragraph 4.4, and the **OWNER** refuses the payment tendered or the Surety has denied pliability, in whole or in part, without further notice the **OWNER** shall be entitled to enforce any remedy available to the **OWNER**.

6. After the **OWNER** has terminated the **CONTRACTOR**'s right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the **OWNER** shall not be greater than those of the **CONTRACTOR** under the Contract, and the responsibilities of the **OWNER** to the Surety shall not be greater than those of the **OWNER** under the Contract. To a limit of the amount of this Bond, but subject to commitment by the **OWNER** of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the **CONTRACTOR** for correction of defective Work and completion of the Contract;

6.2 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 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the **CONTRACTOR**.

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

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

9. 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 **CONTRACTOR** Default or within two years after the **CONTRACTOR** ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suite shall be applicable.

10. Notice to the Surety, the **OWNER** or the **CONTRACTOR** shall be mailed or delivered to the address shown on the signature page.

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

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the **OWNER** to the **CONTRACTOR** under the Contract after all proper adjustments have been made, including allowance to the **CONTRACTOR** of any amounts received or to be received by the **OWNER** in settlement of insurance or other Claims for damages to which the **CONTRACTOR** is entitled, reduced by all valid and proper payments made to or on behalf of the **CONTRACTOR** under the Contract.

12.2 Contract: The agreement between the **OWNER** and **CONTRACTOR** identified on the signature page, including all Contract Documents and changes thereto.

12.3 **CONTRACTOR** Default: Failure of the **CONTRACTOR**, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 **OWNER** Default: Failure of the **OWNER** which has neither been remedied nor waived, to pay the **CONTRACTOR** as required by the Contract or to perform and complete or comply with the other terms thereof.

Payment Bond

Any singular reference to Contract, Surety, **OWNER** or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

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

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: _____ Amount: _____

Description (Name and Location): Battle Mountain Raceway Lighting Improvements

_____

_____

BOND: Date (Not earlier than Contract Date): _____ Amount: _____

Modifications to this Bond Form: _____

_____

_____

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-4, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal	SURETY
Company: _____ (Corp. Seal)	Company: _____ (Corp. Seal)
Signature: _____	Signature: _____
Name and Title: _____	Name and Title: _____
_____	_____ (attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal	SURETY
Company: _____ (Corp. Seal)	Company: _____ (Corp. Seal)
Signature: _____	Signature: _____
Name and Title: _____	Name and Title: _____
_____	_____ (attach Power of Attorney)

1. The **CONTRACTOR** and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the **OWNER** to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the **OWNER**, this obligation shall be null and void if the **CONTRACTOR**:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the **OWNER** from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the **OWNER** has promptly notified the **CONTRACTOR** and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the **CONTRACTOR** and the Surety, and provided there is no **OWNER** Default.

3. With respect to Claimants, this obligation shall be null and void if the **CONTRACTOR** promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the **CONTRACTOR** have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the **OWNER**, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the **CONTRACTOR**:

1. Have furnished written notice to the **CONTRACTOR** and sent a copy, or notice thereof, to the **OWNER**, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the **CONTRACTOR**, or not received within 30 days of furnishing the above notice any communication from the **CONTRACTOR** by which the **CONTRACTOR** has indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the **OWNER**, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the **CONTRACTOR**.

5. If a notice required by paragraph 4 is given by the **OWNER** to the **CONTRACTOR** or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety"s expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the **OWNER**, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the **OWNER** to the **CONTRACTOR** under the Contract shall be used for performance of the Contract and to satisfy claims, if any, under any 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 Contract are dedicated to satisfy obligations of the **CONTRACTOR** and the Surety under this Bond, subject to the **OWNER**'s priority to use the funds for the completion of the Work

9. The Surety shall not be liable to the **OWNER**, Claimants or others for obligations of the **CONTRACTOR** that are unrelated to the Contract. The **OWNER** shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligation to Claimants under this Bond.

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

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the lcoation in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, 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.

12. Notice to the Surety, the **OWNER** or the **CONTRACTOR** shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the **OWNER** or the **CONTRACTOR**, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract 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. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the **CONTRACTOR** shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINTIONS

15.1 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 Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the 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.

15.2 Contract: The agreement between the **OWNER** and the **CONTRACTOR** identified on the signature page, including all Contract Documents and changes thereto.

15.3 **OWNER** Default: Failure of the **OWNER**, which has neither been remedied nor waived, to pay the **CONTRACTOR** as required by the Contract or to perform and complete or comply with the other terms thereof.

Application for Payment No. _____

To: **Lander County** **(OWNER)**

From: _____ **(CONTRACTOR)**

Contract: **Battle Mountain Raceway Lighting Project**

For Work accomplished through the date of: _____

1.	Original Contract Price:	$ _____
2.	Net change by Change Orders and Written Amendments (+ or -)	$ _____
3.	Current Contract Price (1 plus 2):	$ _____
4.	Total completed and stored to date:	$ _____
5.	Retainage (per Agreement)	
	_____ % of completed Work:	$ _____
	_____ % of stored material:	$ _____
	Total Retainage:	
6.	Total completed and stored to date less retainage (4 minus 5):	$ _____
7.	Less previous Application for Payments:	$ _____
8.	**DUE THIS APPLICATION (6 MINUS 7):**	$ _____

Accompanying Documentation:

CONTRACTOR's Certification:

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

Date _____ _____

CONTRACTOR

By: _____

State of _____
County of _____
Subscribed and sworn to before me this _____
day of _____, _____

Notary Stamp

_____
Notary Public

My Commission expires: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated _____ _____

ENGINEER

By: _____

Application No. _____ Date: _____

Item	Unit Price	Estimated Quantity	Schedule of Values Amount	Quantity Completed	Amount	%	Material Stored	Amount Completed and Stored
1.	$		$		$		$	$
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
21.								
22.								
23.								
24.								
25.								
26.								
27.								
28.								
29.								
30.								
Total			$		$		$	$

Certificate of Substantial Completion

Date of Issuance: _____

OWNER Lander County

CONTRACTOR _____

Contract: Battle Mountain Raceway Lighting Porject

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To _____
OWNER

And To _____
CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representative of **OWNER**, **CONTRACTOR** and **ENGINEER**, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

_____
Date of Substantial Completion

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of **CONTRACTOR** to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by **CONTRACTOR** within _____ days of the above date of Substantial Completion.

The responsibilities between **OWNER** and **CONTRACTOR** for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER _____

_____

_____

CONTRACTOR _____

_____

_____

The following documents are attached to and made a part of this Certificate:

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of **CONTRACTOR**'s obligation to complete the Work in accordance with the Contract Documents.

Executed by **ENGINEER** on _____
Date

_____
ENGINEER

By: _____
(Authorized Signature)

CONTRACTOR accepts this Certificate of Substantial Completion on _____
Date

_____
CONTRACTOR

By: _____
(Authorized Signature)

OWNER accepts this Certificate of Substantial Completion on _____
Date

_____
OWNER

By: _____
(Authorized Signature)

Certificate of Owner's Attorney

I, the undersigned, Angie M. Elgrist, the duly authorized and acting legal representative of Lander County, do hereby certify as follows:

I have examined the attached **CONTRACTOR**(s) Performance and Payment Bonds and insurance certificates and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof. I also am of the opinion that the **CONTRACTOR**'s insurance coverage complies with the requirements of the Contract.

Angie E

Attorney's Signature

Date: 10/8/12

END OF SECTION

00700 General Conditions

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00700 General Conditions

ARTICLE 1- Definitions and Terminology

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

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

2. *Agreement*--The written instrument which is evidence of the agreement between **OWNER** and **CONTRACTOR** covering the Work.

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

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

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

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instruction to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instrument of security.

9. *Change Order*--A document recommended by **ENGINEER** which is signed by **CONTRACTOR** and **OWNER** and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

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

11. *Contract*--The entire and integrated written agreement between the **OWNER** and **CONTRACTOR** concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), **CONTRACTOR**'s bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and **ENGINEER**'s written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by **OWNER** to **CONTRACTOR** are not Contract Documents.

13. *Contract Price*--The moneys payable by **OWNER** to **CONTRACTOR** for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by **ENGINEER**'s written recommendation of final payment.

15. ***CONTRACTOR***--The individual or entity with whom **OWNER** has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

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

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

19. ***ENGINEER***--The individual or entity named as such in the Agreement.

20. ***ENGINEER's*** *Consultant*--An individual or entity having a contract with **ENGINEER** to furnish services as **ENGINEER**'s independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by **ENGINEER** which requires minor changes in the Work by which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1p04 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and others of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by **OWNER** to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, **OWNER** will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by **OWNER** to **CONTRACTOR** fixing the date on which the Contract Times will commence to run and on which **CONTRACTOR** shall start to perform the Work under the Contract Documents.

30. ***OWNER***--The individual, entity, public body, or authority with whom **CONTRACTOR** has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by **OWNER** of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

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

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of **ENGINEER** who may be assigned to the Site or any part thereof.

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

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for **CONTRACTOR** and submitted by **CONTRACTOR** to illustrate some portion of the Work.

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

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applies to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with **CONTRACTOR** or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *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 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 part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which 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 any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to **CONTRACTOR** issued on or after the Effective Date of the Agreement and signed by **OWNER** and recommended by **ENGINEER** ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by **OWNER** and **CONTRACTOR** on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed", " as approved", or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 shall not be effective to assign to **ENGINEER** any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective", when modifying the word "Work", refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspections, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to

ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by **OWNER** at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

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

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

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

4. When "furnish", "install", "perform", or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of **CONTRACTOR**, "provide" is implied.

5. Unless stated otherwise in the Contract Documents, words or phrases which 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

A. When **CONTRACTOR** delivers the executed Agreements to **OWNER, CONTRACTOR** shall also deliver to **OWNER** such Bonds as **CONTRACTOR** may be required to furnish.

2.02 Copies of Documents

A. **OWNER** shall furnish to **CONTRACTOR** up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

A. **CONTRACTOR** shall start to perform the Work on the date when the Contract Times

commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. **CONTRACTOR**'s Review of Contract Documents: Before undertaking each part of the Work, **CONTRACTOR** shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. **CONTRACTOR** shall promptly report in writing to **ENGINEER** any conflict, error, ambiguity, or discrepancy which **CONTRACTOR** may discover and shall obtain a written interpretation or clarification from **ENGINEER** before proceeding with any Work affected thereby; however, **CONTRACTOR** shall not be liable to **OWNER** or **ENGINEER** for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless **CONTRACTOR** knew or reasonably should have known thereof.

B. Preliminary Schedules: Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), **CONTRACTOR** shall submit to **ENGINEER** for its timely review:

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

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

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

2.06 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by **CONTRACTOR**, **ENGINEER**, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by **CONTRACTOR**, **ENGINEER**,

and others as appropriate will be held to review for acceptability to **ENGINEER** as provided below the schedules submitted in accordance with paragraph 2.05.B. **CONTRACTOR** shall have an additional ten 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 any specified Milestones and 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 Shop Drawing and Sample submittals will be acceptable to **ENGINEER** if it provides a workable arrangement for reviewing and processing the required submittals.

3. **CONTRACTOR**'s schedule of values will be acceptable to **ENGINEER** as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – Contract Documents: Intent, Amending, Reuse

3.01 Intent

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

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to **OWNER**.

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

3.02 Reference Standards

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of **OWNER**,

CONTRACTOR, or **ENGINEER**, or any of their subcontractors, Consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to **OWNER**, **ENGINEER**, or any of **ENGINEER**'s Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, **CONTRACTOR** discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provisions of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, **CONTRACTOR** shall report it to **ENGINEER** in writing at once. **CONTRACTOR** shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that **CONTRACTOR** shall not be liable to **OWNER** or **ENGINEER** for failure to report any such conflict, error, ambiguity, or discrepancy unless **CONTRACTOR** knew or reasonably should have known thereof.

B. Resolving Discrepancies

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

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

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

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) **ENGINEER**'s approval of a Shop Drawing or Sample; or (iii) **ENGINEER**'s written interpretation or clarification.

3.05 Reuse of Documents

A. **CONTRACTOR** and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with **OWNER**: (i) shall not 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 **ENGINEER**'s Consultant, including electronic media editions; and (ii) shall not reuse any of 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**. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude **CONTRACTOR** from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – Availability of Lands; Subsurface & Physical Conditions; Reference Points

4.01 Availability of Lands

A. **OWNER** shall furnish the Site. **OWNER** shall notify **CONTRACTOR** of any encumbrances or restrictions not of general application but specifically related to use of the Site with which **CONTRACTOR** must comply in performing the Work. **OWNER** will obtain in a timely manner and pay for easements for permanent structures or permanent structures or permanent changes in existing facilities. If **CONTRACTOR** and **OWNER** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in **OWNER**'s furnishing the Site, **CONTRACTOR** may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, **OWNER** shall furnish **CONTRACTOR** with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and **OWNER**'s interest therein as necessary for giving notice of or filing a mechanic's or constructions lien against such lands in accordance with applicable Laws and Regulations.

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

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: the Supplementary Conditions identify:

1. those reports of explorations and test of subsurface conditions at or contiguous to the Site that **ENGINEER** has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that **ENGINEER** has used in preparing the contract Documents.

B. Limited Reliance by **CONTRACTOR** on Technical Data Authorized: **CONTRACTOR** may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", **CONTRACTOR** may not rely upon or make any Claim against **OWNER**, **ENGINEER**, or any of **ENGINEER**'s Consultants with respect to:

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

4.03 Differing Subsurface or Physical Conditions

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

1. is of such a nature as to establish that any "technical data" on which **CONTRACTOR** is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents; then **CONTRACTOR** shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify **OWNER** and **ENGINEER** in writing about such condition. **CONTRACTOR** shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in **CONTRACTOR**'s cost of, or time required for, performance of the Work; subject, however, to the following;
   a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and
   b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraph 9.08 and 11.03.

2. **CONTRACTOR** shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. **CONTRACTOR** knew of the existence of such conditions at the time **CONTRACTOR** made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid becoming bound under a negotiated contract; or

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

   c. **CONTRACTOR** failed to give the written notice within the time as required by paragraph 4.03.A.

3. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, **OWNER**, **ENGINEER**, and **ENGINEER**'s Consultants shall not be liable to **CONTRACTOR** for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by **CONTRACTOR** on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to **OWNER** or **ENGINEER** by the owners of such Underground Facilities, including **OWNER**, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

   1. **OWNER** and **ENGINEER** shall not be responsible for the accuracy or completeness of any such information or data; and

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

      a. reviewing and checking all such information and data,

      b. locating all Underground Facilities shown or indicated in the Contract Documents,

      c. coordination of the Work with the owners of such Underground Facilities, including **OWNER**, during construction, and

      d. the safety and protection of all such Underground Facilities and repairing any
      damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, **CONTRACTOR** shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to **OWNER** and **ENGINEER**. **ENGINEER** will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of location of the Underground Facility. During such time, **CONTRACTOR** shall be responsible for the safety and protection of such Underground Facility.

2. If **ENGINEER** concludes that a change in the Contract Documents is required, a work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that **CONTRACTOR** did not know of and could not reasonably have been expected to be aware of or to have anticipated. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, **OWNER** or **CONTRACTOR** may make a Claim therefor as provided in paragraph 10.05.

4.05 Referenced Points

A. **OWNER** shall provide engineering surveys to establish reference points for construction which in **ENGINEER**'s judgement 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 monument, and shall make no changes or relocations without the prior written approval of **OWNER**. **CONTRACTOR** shall report to **ENGINEER** whenever any reference points or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. Reports and Drawings: Reference is made to the Supplementary Condition for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the **ENGINEER** in the preparation of the Contract Documents.

B. Limited Reliance by **CONTRACTOR** on Technical Data Authorized: **CONTRACTOR** may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data", **CONTRACTOR** may not rely upon or make any Claim against **OWNER, ENGINEER** or

any of **ENGINEER**'s Consultants with respect to:

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

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

3. any **CONTRACTOR** interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

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

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

E. **CONTRACTOR** shall not be required to resume Work in connection with such condition or in any affected area until after **OWNER** has obtained any required permits related thereto and delivered to **CONTRACTOR** written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If **OWNER** and **CONTRACTOR** cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by **CONTRACTOR**, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice **CONTRACTOR** does not agree to resume such work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then **OWNER** may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If **OWNER** and **CONTRACTOR** cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. **OWNER** may have such deleted portion of the Work performed by **OWNER**'s own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, **OWNER** shall indemnify and hold harmless **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants and

the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by **CONTRACTOR** or by anyone for whom **CONTRACTOR** is responsible. Nothing in this paragraph 4.06.E shall obligate **OWNER** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER, ENGINEER, ENGINEER**'s Consultants, and the officers, directors, partners, employees, agents, other 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 of arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by **CONTRACTOR** or by anyone for whom **CONTRACTOR** is responsible. Nothing in this paragraph shall obligate **CONTRACTOR** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – Bonds and Insurance

5.01 Performance, Payment, and Other Bonds

A. **CONTRACTOR** shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all **CONTRACTOR**'s obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. **CONTRACTOR** shall also furnish such other Bonds as required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current lists of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Services, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by **CONTRACTOR** is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, **CONTRACTOR** shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by **OWNER** or **CONTRACTOR** shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

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

5.04 **CONTRACTOR**'s Liability Insurance

A. **CONTRACTOR** shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from **CONTRACTOR**'s performance of the Work and **CONTRACTOR**'s other obligations under the Contract Documents, whether it is to be performed by **CONTRACTOR**, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under worker's compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of **CONTRACTOR**'s employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than **CONTRACTOR**'s employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by **CONTRACTOR**, or (ii) by any other person for any other reason;

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

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) **OWNER**, **ENGINEER**, **ENGINEER**'s

Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering **CONTRACTOR**'s indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to **OWNER** and **CONTRACTOR** and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the **CONTRACTOR** pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when **CONTRACTOR** may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and **CONTRACTOR** shall furnish **OWNER** and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to **OWNER** and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 **OWNER**'s Liability Insurance

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

5.06 Property Insurance

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

1. include the interest of **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents,

and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

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

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

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

5. allow for partial utilization of the Work by **OWNER**;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by **OWNER**, **CONTRACTOR**, and **ENGINEER** with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. **OWNER** shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interest of **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to **OWNER** and **CONTRACTOR** and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

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

E. If **CONTRACTOR** requests in writing that other special insurance be included in the

property insurance policies provided under paragraph 5.06, **OWNER** shall, if possible, include such insurance, and the cost thereof will be charged to **CONTRACTOR** by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, **OWNER** shall in writing advise **CONTRACTOR** whether or not such other insurance has been procured by **OWNER**.

5.07 Waiver of Rights

A. **OWNER** and **CONTRACTOR** intend that all policies purchased in accordance with paragraph 5.06 will protect **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. **OWNER** and **CONTRACTOR** waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them)under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by **OWNER** as trustee or otherwise payable under any policy so issued.

B. **OWNER** waives all rights against **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and the officers, directors, partners, employees, agents, and other 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 peril whether or not insured by **OWNER**; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by **OWNER** during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by **OWNER** covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against **CONTRACTOR**, Subcontractors, **ENGINEER**, or **ENGINEER**'s Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

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

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

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either **OWNER** or **CONTRACTOR** has any objection to the coverage by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. **OWNER** and **CONTRACTOR** shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interest at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

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

ARTICLE 6 – Contractor's Responsibilities

6.01 Supervision and Superintendence

A. **CONTRACTOR** shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to

perform the Work in accordance with the Contract Documents. **CONTRACTOR** shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but **CONTRACTOR** shall not be responsible for the negligence of **OWNER** or **ENGINEER** in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. **CONTRACTOR** shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, **CONTRACTOR** shall assign a competent resident superintendent thereto who shall not be replaced without written notice to **OWNER** and **ENGINEER** except under extraordinary circumstances. The superintendent will be **CONTRACTOR**'s representative at the Site and shall have authority to act on behalf of **CONTRACTOR**. All communications given to or received from the superintendent shall be binding on **CONTRACTOR**.

6.02 Labor; Working Hours

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

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or Adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and **CONTRACTOR** will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without **OWNER**'s written consent (which will not be unreasonably withheld) given after prior written notice to **ENGINEER**.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, **CONTRACTOR** shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for 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. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. **CONTRACTOR** shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. **CONTRACTOR** shall submit to **ENGINEER** for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specifications or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to **ENGINEER** for review under the circumstances described below.

1. "Or-Equal" Items: If in **ENGINEER's** sole discretion an item of material or equipment proposed by **CONTRACTOR** is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by **ENGINEER** as an "or-equal" item, in which case review and approval of the proposed item may, in **ENGINEER's** sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

   a. in the exercise of reasonable judgement **ENGINEER** determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

   b. **CONTRACTOR** certifies that: (i) there is no increase in cost to the **OWNER**; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

   a. If in **ENGINEER's** sole discretion an item of material or equipment proposed by **CONTRACTOR** does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

   b. **CONTRACTOR** shall submit sufficient information as provided below to allow **ENGINEER** to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute thereto. Request for review of proposed substitute items of material or equipment will not be accepted by **ENGINEER** from anyone other than **CONTRACTOR.**

c. The procedure for review by **ENGINEER** will be as set forth in paragraph 6.05.A.2d, as supplemented in the General Requirements and as **ENGINEER** may decide is appropriate under the circumstances.

d. **CONTRACTOR** shall first 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 shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice **CONTRACTOR**'s achievement of Substantial Completion on time, whether or not 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 work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by **ENGINEER** in evaluating the proposed substitute item. **ENGINEER** may require **CONTRACTOR** to furnish additional data about the proposed substitute item.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, **CONTRACTOR** may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by **ENGINEER**. **CONTRACTOR** shall submit sufficient information to allow **ENGINEER**, in **ENGINEER**'s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by **ENGINEER** will be similar to that provided in subparagraph 6.05.A.2.

C. **ENGINEER's** Evaluation: **ENGINEER** will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraph 6.05.A and 6.05.B. **ENGINEER** will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until **ENGINEER**'s review is complete, which will be made evidence by either a Change Order for a substitute or an approved Shop Drawing for an "or-equal". **ENGINEER** will advise **CONTRACTOR** in writing of any negative determination.

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

E. **ENGINEER**'s Cost Reimbursement: **ENGINEER** will record time required by **ENGINEER** and **ENGINEER**'s Consultants in evaluating substitute proposed or submitted by **CONTRACTOR** pursuant to paragraph 6.05.A.2 and 6.05.B and in making changes in the

Contract Documents (or in the provisions of any other direct contract with **OWNER** for work on the Project) occasioned thereby. Whether or not **ENGINEER** approves a substitute item so proposed or submitted by **CONTRACTOR**, **CONTRACTOR** shall reimburse **OWNER** for the charges of **ENGINEER** and **ENGINEER's** Consultants for evaluating each such proposed substitute.

F. **CONTRACTOR's** Expense: **CONTRACTOR** shall provide all data in support of any proposed substitute or "or-equal" at **CONTRACTOR's** expense.

6.06 Concerning Subcontractors, Suppliers, and Others

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

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

C. **CONTRACTOR** shall be fully responsible to **OWNER** and **ENGINEER** for all acts and omissions of the Subcontractors, Suppliers, and other individuals, or entities performing or furnishing any of the Work just as **CONTRACTOR** is responsible for **CONTRACTOR's** own acts and omissions. Nothing in the Contract Documents 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 shall it create any obligation on the part of **OWNER** or **ENGINEER** to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

G. All Work performed for **CONTRACTOR** by a Subcontractor or Supplier will be pursuant to an appropriate agreement between **CONTRACTOR** and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of **OWNER** and **ENGINEER**. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the **CONTRACTOR** and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against **OWNER, CONTRACTOR, ENGINEER, ENGINEER's** Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, **CONTRACTOR** will obtain the same.

6.07 Patent Fees and Royalties

A. **CONTRACTOR** shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of **OWNER** or **ENGINEER** its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by **OWNER** in the Contract Documents. To the fullest extent permitted by Laws and Regulations **CONTRACTOR** shall indemnify and hold harmless **OWNER, ENGINEER, ENGINEER's** Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, **CONTRACTOR** shall obtain and pay for all construction permits and licenses. **OWNER** shall assist **CONTRACTOR**, when necessary, in obtaining such permits and licenses. **CONTRACTOR** shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no bids, on the Effective Date of the Agreement. **CONTRACTOR** shall pay all charges of utility owners for connections to the Work, and **OWNER** shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. **CONTRACTOR** shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither **OWNER** nor **ENGINEER** shall be responsible for monitoring **CONTRACTOR**'s compliance with any Laws or Regulations.

B. If **CONTRACTOR** performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, **CONTRACTOR** shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be **CONTRACTOR**'s primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve **CONTRACTOR** of **CONTRACTOR**'s obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 Taxes

A. **CONTRACTOR** shall pay all sales, consumer, use, and other similar taxes required to be paid by **CONTRACTOR** in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limited on Use of Site and Other Areas

1. **CONTRACTOR** shall confine construction equipment, the storage or materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. **CONTRACTOR** shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting form the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, **CONTRACTOR** shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, **ENGINEER**, **ENGINEER**'s Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against **OWNER**, **ENGINEER**, or any other party indemnified hereunder

to the extent caused by or based upon **CONTRACTOR**'s performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work **CONTRACTOR** shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste material, 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 make it ready for utilization by **OWNER**. At the completion of the Work **CONTRACTOR** shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

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

6.13 Safety and Protection

A. **CONTRACTOR** shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. **CONTRACTOR** shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. **CONTRACTOR** shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. **CONTRACTOR** shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damages, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by **CONTRACTOR**, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the

Work, or anyone for whose acts any of them may be liable, shall be remedied by **CONTRACTOR** (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of **OWNER** or **ENGINEER** or **ENGINEER**'s Consultant, 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 a 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). **CONTRACTOR**'s duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and **ENGINEER** has issued a notice to **OWNER** and **CONTRACTOR** in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

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

6.17 Shop Drawings and Samples

A. **CONTRACTOR** shall submit Shop Drawings to **ENGINEER** for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as **ENGINEER** may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show **ENGINEER** the services, materials, and equipment **CONTRACTOR** proposes to provide and to enable **ENGINEER** to review the information for the limited purposes required by paragraph 6.17.E.

B. **CONTRACTOR** shall also submit Samples to **ENGINEER** for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as **ENGINEER** may require to enable **ENGINEER** to review the submittal for the limited purposes required by paragraph 6.17.E.

The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to **ENGINEER** as required by paragraph 2.07, 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**.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, **CONTRACTOR** shall have determined and verified:

   a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

   b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

   c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

   d. **CONTRACTOR** shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that **CONTRACTOR** has satisfied **CONTRACTOR**'s obligations under the Contract Documents with respect to **CONTRACTOR**'s review and approval of that submittal.

3. At the time of each submittal, **CONTRACTOR** shall give **ENGINEER** specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to **ENGINEER** for review and approval of each such variation.

E. Engineer's Review

1. **ENGINEER** will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to **ENGINEER**. **ENGINEER**'s review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. **ENGINEER**'s review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method,

technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. **ENGINEER**'s review and approval of Shop Drawings or Samples shall not relieve **CONTRACTOR** from responsibility for any variation from the requirements of the Contract Documents unless **CONTRACTOR** has in writing called **ENGINEER**'s attention to each such variation at the time of each submittal as required by paragraph 6.17.D.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 approval; nor will any approval by **ENGINEER** relieve **CONTRACTOR** from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. **CONTRACTOR** shall make corrections required by **ENGINEER** and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for Review and approval. **CONTRACTOR** shall direct specific attention in writing to revisions other than the corrections called for by **ENGINEER** on previous submittals.

6.18 Continuing the Work

A. **CONTRACTOR** shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with **OWNER**. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as **OWNER** and **CONTRACTOR** may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. **CONTRACTOR** warrants and guarantees to **OWNER**, **ENGINEER**, and **ENGINEER**'s Consultants that all Work will be in accordance with the Contract Documents and will not be defective. **CONTRACTOR**'s warranty and guarantee hereunder excludes defects or damages 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.

B. **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 acceptance by **OWNER** or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or 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**.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER**, **ENGINEER**, **ENGINEER's** Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to 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:

1. 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; and

2. is caused in whole or in part 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against **OWNER** or **ENGINEER** or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of **CONTRACTOR**, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for **CONTRACTOR** or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of **CONTRACTOR** under paragraph 6.20.A shall not extend to the liability of **ENGINEER** and **ENGINEER's** Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and

any of them 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.

ARTICLE 7 – Other Work

7.01 Related Work at Site

A. **OWNER** may perform other work related to the Project at the Site by **OWNER**'s employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to **CONTRACTOR** prior to starting any such other work; and
2. if **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. **CONTRACTOR** shall afford each other contractor who is a party of such a direct contract and each utility owner (and **OWNER**, if **OWNER** is performing the other work with **OWNER**'s employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, **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 their work and will only cut or alter their work with the written consent of **ENGINEER** and the others whose work will be affected. The duties and responsibilities of **CONTRACTOR** under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of **CONTRACTOR** in said direct contracts between **OWNER** and such utility owners and other contractors.

C. If the proper execution or results of any part of **CONTRACTOR**'s Work depends upon work performed by others under this Article 7, **CONTRACTOR** shall inspect such other work and promptly report to **ENGINEER** in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of **CONTRACTOR**'s Work. **CONTRACTOR**'s failure to so report will constitute an acceptance of such other work as fit and proper for integration with **CONTRACTOR**'s Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If **OWNER** intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be

itemized; and

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

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

ARTICLE 8 – Owner's Responsibilities

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, **OWNER** shall issue all communications to **CONTRACTOR** through **ENGINEER**.

8.02 Replacement of **ENGINEER**

A. In case of termination of the employment of **ENGINEER**, **OWNER** shall appoint an engineer to whom **CONTRACTOR** makes no reasonable objection, whose status under the Contract Documents shall be that of the former **ENGINEER**.

8.03 Furnish Data

A. **OWNER** shall promptly furnish the data required of **OWNER** under the Contract Documents.

8.04 Pay Promptly When Due

A. **OWNER** shall make payments to **CONTRACTOR** promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. **OWNER**'s duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to **OWNER**'s identifying and making available to **CONTRACTOR** copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by **ENGINEER** in preparing the Contract Documents.

8.06 Insurance

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

8.07 Change Orders

A. **OWNER** is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspection, Tests, and Approvals

A. **OWNER**'s responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on **OWNER**'s Responsibilities

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

8.10 Undisclosed Hazardous Environmental Condition

A. **OWNER**'s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent **OWNER** has agreed to furnish **CONTRACTOR** reasonable evidence that financial arrangements have been made to satisfy **OWNER**'s obligations under the Contract Documents, **OWNER**'s responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 – Engineer's Status During Construction

9.01 **OWNER**'s Representative

A. **ENGINEER** will be **OWNER**'s representative during the construction period. The duties and responsibilities and the limitations of authority of **ENGINEER** as **OWNER**'s representative during construction are set forth in the Contract Documents and will not be changed without written consent of **OWNER** and **ENGINEER**.

9.02 Visits to Site

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

B. **ENGINEER**'s visits and observations are subject to all the limitations on **ENGINEER**'s authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of **ENGINEER**'s visit or observations of **CONTRACTOR**'s Work **ENGINEER** will not supervise, direct, control, or have authority over or be responsible for **CONTRACTOR**'s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of

CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If **OWNER** and **ENGINEER** agree, **ENGINEER** will furnish a Resident Project Representative to assist **ENGINEER** in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If **OWNER** designates another representative or agent to represent **OWNER** at the Site who is not **ENGINEER**'s Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 Clarifications and Interpretations

A. **ENGINEER** will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as **ENGINEER** may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on **OWNER** and **CONTRACTOR**. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 Authorized Variations in Work

A. **ENGINEER** may authorize minor variations in the Work from the requirements of the Contract Documents that are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on **OWNER** and also on **CONTRACTOR**, who shall perform the Work involved promptly. If **OWNER** and **CONTRACTOR** are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a claim may be made therefor as provided in paragraph 10.05.

9.06 Rejecting Defective Work

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

9.07 Shop Drawings, Change Orders and Payments

A. In connection with **ENGINEER**'s authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with **ENGINEER**'s authority as to Change Orders, see Articles 10,11, and 12.

C. In connection with **ENGINEER**'s authority as to Applications for Payment, see Article 14.

9.08 Determinations for Unit Price Work

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

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

A. **ENGINEER** will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes, and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to **ENGINEER** in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, **ENGINEER** will not show partiality to **OWNER** or **CONTRACTOR** and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by **ENGINEER** pursuant to this paragraph 9.09 with respect to any such Claims, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by **OWNER** or **CONTRACTOR** of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 Limitations on **ENGINEER**'s Authority and Responsibilities

A. Neither **ENGINEER**'s authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by **ENGINEER** in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by **ENGINEER** shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by **ENGINEER** to **CONTRACTOR**, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. **ENGINEER** will not supervise, direct, control, or have authority over or be responsible for **CONTRACTOR**'s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of **CONTRACTOR** to comply with Laws and Regulations applicable to the performance of the Work. **ENGINEER** will not be responsible for **CONTRACTOR**'s failure to perform the Work in accordance with the Contract Documents.

C. **ENGINEER** will not be responsible for the acts or omissions of **CONTRACTOR** or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. **ENGINEER**'s review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to **ENGINEER**'s Consultants, Resident Project Representative, and assistants.

ARTICLE 10 – Changes in the Work; Claims

10.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, **OWNER** may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, **CONTRACTOR** shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

10.02 Unauthorized Changes in the Work

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

10.03 Execution of Change Orders

A. **OWNER** and **CONTRACTOR** shall execute appropriate Change Orders recommended by **ENGINEER** (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by **OWNER** pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or **OWNER**'s correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by **ENGINEER** pursuant to paragraph 10.05; provided

that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, **CONTRACTOR** shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 Notification to Surety

A. If notice 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) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be **CONTRACTOR**'s responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 Claims and Disputes

A. Notice: Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to **ENGINEER** and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the **ENGINEER** and the other party to the Contract within 60 days after the start of such event (unless **ENGINEER** allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to **ENGINEER** and the claimant within 30 days after receipt of the claimant's last submittal (unless **ENGINEER** allows additional time).

B. **ENGINEER**'s Decision: **ENGINEER** will render a formal decision in writing 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. **ENGINEER**'s written decision on such Claim, dispute, or other matter will be final and binding upon **OWNER** and **CONTRACTOR** unless:

1. an appeal from **ENGINEER**'s decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from **ENGINEER**'s written decision is delivered by **OWNER** or **CONTRACTOR** to the other and to **ENGINEER** within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by **OWNER** and **CONTRACTOR**) to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If **ENGINEER** does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirely shall be deemed to have been

issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 – Cost of the Work; Cash Allowance; Unit Price Work

11.01 Cost of the Work

A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by **CONTRACTOR** in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to **CONTRACTOR** will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by **OWNER**, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

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 at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by **OWNER**.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to **CONTRACTOR** unless **OWNER** deposits funds with **CONTRACTOR** with which to make payments, in which case the cash discounts shall accrue to **OWNER**. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to **OWNER**, and **CONTRACTOR** shall make provisions so that they may be obtained.

3. Payments made by **CONTRACTOR** to Subcontractors for Work performed by Subcontractor. If required by **OWNER**, **CONTRACTOR** shall obtain competitive bids from subcontractors acceptable to **OWNER** and **CONTRACTOR** and shall deliver such bids to **OWNER**, who will then determine, with the advice of **ENGINEER**, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as **CONTRACTOR**'s Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

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

   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the worker, 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, imposed by Laws and Regulations.

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

   f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by **CONTRACTOR** in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of **CONTRACTOR**, any Subcontractor, or anyone directly, or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of **OWNER**. No such losses, damages, and expenses shall be included in the Cost of the Work for the purposes of determining **CONTRACTOR**'s fee.

   g. The cost of utilities, fuel, and sanitary facilities at the Site.

   h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the costs of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance **CONTRACTOR** is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of **CONTRACTOR**'s officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by **CONTRACTOR**'s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the **CONTRACTOR**'s fee.

2. Expenses of **CONTRACTOR**'s principal and branch offices other than **CONTRACTOR**'s office at the Site.

3. Any part of **CONTRACTOR**'s capital expenses, including interest on **CONTRACTOR**'s capital employed for the Work and charges against **CONTRACTOR** for delinquent payments.

4. Costs due to the negligence of **CONTRACTOR**, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. **CONTRACTOR**'s Fee: When all the Work is performed on the basis of cost-plus, **CONTRACTOR**'s fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, **CONTRACTOR**'s fee shall be determined as set forth in paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, **CONTRACTOR** will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to **ENGINEER** an itemized cost breakdown together with supporting data.

11.02 Cash 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 as may be acceptable to **OWNER** and **ENGINEER. CONTRACTOR** agrees that:

1. the 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 costs, overhead, profit, and other expenses contemplated for the 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.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by **ENGINEER** to reflect actual amounts due **CONTRACTOR** on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by **CONTRACTOR** will be made by **ENGINEER** subject to the provisions of paragraph 9.08.

B. 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.

C. **OWNER** or **CONTRACTOR** may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by **CONTRACTOR** differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if **CONTRACTOR** believes that **CONTRACTOR** is entitled to an increase in Contract Price as a result of having incurred additional expense or **OWNER** believes that **OWNER** is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – Change of Contract Price; Change of Contract Times

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the **ENGINEER** and the other party to the Contract in

accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a **CONTRACTOR**'s fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. **CONTRACTOR**'s Fee: The **CONTRACTOR**'s fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, then **CONTRACTOR**'s fee shall be 15 percent;
   b. for costs incurred under paragraph 11.01.A.3, the **CONTRACTOR**'s fee shall be five percent;

   c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and **CONTRACTOR** will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

   d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

   e. the amount of credit to be allowed by **CONTRACTOR** to **OWNER** for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in **CONTRACTOR**'s fee by an amount equal to five percent of such net decrease; and

   f. when both additions and credits are involved in any one change, the adjustment in **CONTRACTOR**'s fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the **ENGINEER** and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

12.03 Delays Beyond **CONTRACTOR**'s Control

A. Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of **CONTRACTOR**, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of **CONTRACTOR** shall include but not be limited to acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within **CONTRACTOR**'s Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of **CONTRACTOR**. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of **CONTRACTOR**.

12.05 Delays Beyond **OWNER**'s and **CONTRACTOR**'s Control

A. Where **CONTRACTOR** is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both **OWNER** and **CONTRACTOR**, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be **CONTRACTOR**'s sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall **OWNER** or **ENGINEER** be liable to **CONTRACTOR**, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of **CONTRACTOR**; or

2. delays beyond the control of both **OWNER** and **CONTRACTOR** including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate **CONTRACTOR** due to delay, interference, or disruption directly attributable to actions or inactions of **OWNER** or anyone for whom **OWNER** is responsible.

ARTICLE 13 – Tests & Inspection; Correction, Removal, or Acceptance of Defective Work

13.01 Notice of Defects

A. Prompt notice of all defective Work of which **OWNER** or **ENGINEER** has actual knowledge will be given to **CONTRACTOR**. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. **OWNER, ENGINEER, ENGINEER's** Consultants, other representatives and personnel of **OWNER**, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. **CONTRACTOR** shall provide them proper and safe conditions for such access and advise them of **CONTRACTOR's** Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Testing and Inspections

A. **CONTRACTOR** shall give **ENGINEER** timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. **OWNER** shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, **CONTRACTOR** shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish **ENGINEER** the required certificates of inspection or approval.

D. **CONTRACTOR** shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for **OWNER's** and **ENGINEER's** acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to **CONTRACTOR's** purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to **OWNER** and **ENGINEER**.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by **CONTRACTOR** without written concurrence of **ENGINEER**, it must, if requested by **ENGINEER**, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at **CONTRACTOR's** expense unless **CONTRACTOR** has given **ENGINEER** timely notice of **CONTRACTOR's** intention to cover the same and **ENGINEER** has not acted with reasonable promptness in

response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of **ENGINEER**, it must, if requested by **ENGINEER**, be uncovered for **ENGINEER**'s observation and replaced at **CONTRACTOR**'s expense.

B. If **ENGINEER** considers it necessary or advisable that covered Work be observed by **ENGINEER** or inspected or tested by others, **CONTRACTOR**, at **ENGINEER**'s request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as **ENGINEER** may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, **CONTRACTOR** shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and **OWNER** shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, **OWNER** may make a claim thereof as provided in paragraph 10.05. If, however, such 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 Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, **CONTRACTOR** may make a Claim therefor as provided in paragraph 10.05.

13.05 **OWNER** May Stop the Work

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

13.06 Correction or Removal of Defective Work

A. **CONTRACTOR** shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by **ENGINEER**, remove it from the Project and replaces it with Work that is not defective. **CONTRACTOR** shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents,

any Work is found to be defective, or if the repair of any damages to the land or areas made available for **CONTRACTOR**'s use by **OWNER** or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, **CONTRACTOR** shall promptly, without cost to **OWNER** and in accordance with **OWNER**'s written instruction: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by **OWNER**, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If **CONTRACTOR** does not promptly comply with the terms of such 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, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by **CONTRACTOR**.

B. 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 or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. **CONTRACTOR**'s obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

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

13.09 **OWNER** May Correct Defective Work

A. If **CONTRACTOR** fails within a reasonable time after written notice from **ENGINEER** to correct defective Work or to remove and replace rejected Work as required by **ENGINEER**

in accordance with paragraph 13.06.A, or if **CONTRACTOR** fails to perform the Work in accordance with the Contract Documents, or if **CONTRACTOR** fails to comply with any other provision of the Contract Documents, **OWNER** may, after seven days written notice to **CONTRACTOR**, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, **OWNER** shall proceed expeditiously. In connection with such corrective and remedial action, **OWNER** may exclude **CONTRACTOR** from all or part of the Site, take possession of all or part of the Work and suspend **CONTRACTOR**'s services related thereto, take possession of **CONTRACTOR**'s tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which **OWNER** has paid **CONTRACTOR** but which are stored elsewhere. **CONTRACTOR** shall allow **OWNER**, **OWNER**'s representatives, agents and employees, **OWNER**'s other contractors, and **ENGINEER** and **ENGINEER**'s Consultants access to the Site to enable **OWNER** to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by **OWNER** in exercising the rights and remedies under this paragraph 13.09 will be charged against **CONTRACTOR**, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and **OWNER** shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, **OWNER** may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of **CONTRACTOR**'s defective Work.

D. **CONTRACTOR** shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by **OWNER** of **OWNER**'s rights and remedies under this paragraph 13.09.

ARTICLE 14 – Payments to Contractor and Completion

14.01 Schedule of Values

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to **ENGINEER**. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), **CONTRACTOR** shall submit to **ENGINEER** for review an Application for Payment filled out and signed by **CONTRACTOR** covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other

documentation warranting that **OWNER** has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect **OWNER**'s interest therein, all of which must be satisfactory to **OWNER**.

2. Beginning with second Application for Payment, each Application shall include an affidavit of **CONTRACTOR** stating that all previous progress payments received on account of the Work have been applied on account to discharge **CONTRACTOR**'s legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. **ENGINEER** will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to **OWNER** or return the Application to **CONTRACTOR** indicating in writing **ENGINEER**'s reasons for refusing to recommend payment. In the latter case, **CONTRACTOR** may make the necessary corrections and resubmit the Application.

2. **ENGINEER**'s recommendation of any payment requested in an Application for Payment will constitute a representation by **ENGINEER** to **OWNER**, based on **ENGINEER**'s observations on the site 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to 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: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to **ENGINEER** in the Contract Documents; or (ii) that 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** to supervise, direct, or control the Work or for the means, methods, techniques, sequences, ro procedures of construction, or the safety precautions and programs incident thereto, or for **CONTRACTOR**'s failure to comply with Laws and Regulations applicable to **CONTRACTOR**'s performance of the Work. Additionally, said review or recommendation will not impose responsibility on **ENGINEER** to make any examination to ascertain how or for what purpose **CONTRACTOR** has used the moneys paid on account of the Contract Price, or 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** referred to in paragraph 14.02.B.2. **ENGINEER** may also refuse to recommend any such payment or, because of subsequently recovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in **ENGINEER**'s opinion to protect **OWNER** from loss because:

   a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

   b. the Contract Price has been reduced by Written Amendment or Change Orders;

   c. **OWNER** has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

   d. **ENGINEER** has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to **OWNER** with **ENGINEER**'s recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by **OWNER** to **CONTRACTOR**.

D. Reduction in Payment

1. **OWNER** may refuse to make payment of the full amount recommended by **ENGINEER** because:

   a. claims have been made against **OWNER** on account of **CONTRACTOR**'s performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where **CONTRACTOR** has delivered a specific Bond satisfactory to **OWNER** to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling **OWNER** to a set-off against the amount

recommended; or

d. **OWNER** has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If **OWNER** refuses to make payment of the full amount recommended by **ENGINEER**, **OWNER** must give **CONTRACTOR** immediate written notice (with a copy to **ENGINEER**) stating the reasons for such action and promptly pay **CONTRACTOR** any amount remaining after deduction of the amount so withheld. **OWNER** shall promptly pay **CONTRACTOR** the amount so withheld, or any adjustment thereto agreed to by **OWNER** and **CONTRACTOR**, when **CONTRACTOR** corrects to **OWNER**'s satisfaction the reasons for such action.

3. If it is subsequently determined that **OWNER**'s refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 **CONTRACTOR**'s Warranty of Title

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

14.04 Substantial Completion

A. When **CONTRACTOR** considers the entire Work ready for its intended use **CONTRACTOR** shall notify **OWNER** and **ENGINEER** in writing that the entire Work is substantially complete (except for items specifically listed by **CONTRACTOR** as incomplete) and request that **ENGINEER** issue a certificate of Substantial Completion. Promptly thereafter, **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. If **ENGINEER** considers the Work substantially complete, **ENGINEER** will prepare and deliver to **OWNER** a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. **OWNER** shall have seven days after receipt of the tentative certificate during which to make written objection to **ENGINEER** as to any provisions of the certificate or attached list. If, after considering such objections, **ENGINEER** concludes that the Work is not substantially complete, **ENGINEER** will within 14 days after submission of the tentative certificate to **OWNER** notify **CONTRACTOR** in writing, stating the reasons therefor. If, after consideration of **OWNER**'s objections, **ENGINEER** considers the Work substantially complete, **ENGINEER** will within said 14 days execute and deliver to **OWNER** and **CONTRACTOR** a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as **ENGINEER** believes justified after consideration of any objections from **OWNER**. At the time of delivery of the tentative certificate of Substantial Completion **ENGINEER** will deliver to **OWNER** and **CONTRACTOR** a written recommendation as to division of responsibilities pending final payment between **OWNER** and **CONTRACTOR** with respect to security, operation,

safety, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless **OWNER** and **CONTRACTOR** agree otherwise in writing and so inform **ENGINEER** in writing prior to **ENGINEER's** issuing the definitive certificate of Substantial Completion, **ENGINEER's** aforesaid recommendation will be binding on **OWNER** and **CONTRACTOR** until final payment.

B. **OWNER** shall have the right to exclude **CONTRACTOR** from the Site after the date of Substantial Completion, but **OWNER** shall allow **CONTRACTOR** reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by **OWNER** at **OWNER's** option of 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, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. **OWNER** at any time may request **CONTRACTOR** in writing to permit **OWNER** to use any such part of the Work which **OWNER** believes to be ready for its intended use and substantially complete. If **CONTRACTOR** agrees that such part of the Work is substantially complete, **CONTRACTOR** will certify to **OWNER** and **ENGINEER** that such part of the Work is substantially complete and request **ENGINEER** to issue a certificate of Substantial Completion for that part of the Work. **CONTRACTOR** at any time may notify **OWNER** and **ENGINEER** in writing that **CONTRACTOR** considers any such part of the Work ready for its intended use and substantially complete and request **ENGINEER** to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, **OWNER, CONTRACTOR,** and **ENGINEER** shall make an inspection of that part of the Work to determine its status of completion. If **ENGINEER** does not consider that part of the Work to be substantially complete, **ENGINEER** will notify **OWNER** and **CONTRACTOR** in writing giving the reasons therefor. If **ENGINEER** considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

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

14.07 Final Payment

A. Application for Payment

1. After **CONTRACTOR** has, in the opinion of **ENGINEER**, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, **CONTRACTOR** may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by : (i) all documentation called for in the contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to **OWNER**) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by **OWNER**, **CONTRACTOR** may furnish receipts or releases in full and an affidavit of **CONTRACTOR** that: (i) the releases and receipts include all labor, services, materials, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which **OWNER** or **OWNER**'s property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, **CONTRACTOR** may furnish a Bond or other collateral satisfactory to **OWNER** to indemnify **OWNER** against any Lien.

B. Review of Application and Acceptance

1. If on the basis of **ENGINEER**'s observation of the Work during construction and final inspection, and **ENGINEER**'s review of the final Application for Payment and accompanying documentation as required by the Contract Documents, **ENGINEER** is satisfied that the Work has been completed and **CONTRACTOR**'s other obligations under the Contract Documents have been fulfilled, **ENGINEER** will, within ten days after receipt of the final Application for Payment, indicate in writing **ENGINEER**'s recommendation of payment and present the Application for Payment to **OWNER** for payment. At the same time **ENGINEER** will also give written notice to **OWNER** and **CONTRACTOR** that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, **ENGINEER** will return the Application for Payment to **CONTRACTOR**, indicating in writing the reasons for refusing to recommend final payment, in which case **CONTRACTOR** shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to **OWNER** of the Application for Payment and accompanying documentation, the amount recommended by **ENGINEER** will become due and, will be paid by **OWNER** to **CONTRACTOR**.

14.08 Final Completion Delayed

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

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by **OWNER** against **CONTRACTOR**, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from **CONTRACTOR**'s continuing obligations under the Contract Documents; and

2. a waiver of all Claims by **CONTRACTOR** against **OWNER** other than those previously made in writing which are still unsettled.

ARTICLE 15 – Suspension of Work and Termination

15.01 **OWNER** May Suspend Work

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

15.02 **OWNER** May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. **CONTRACTOR**'s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. **CONTRACTOR**'s disregard of Laws or Regulations of any public body having jurisdiction;

3. **CONTRACTOR**'s disregard of the authority of **ENGINEER**; or

4. **CONTRACTOR**'s violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, **OWNER** may, after giving the **CONTRACTOR** (and the surety, if any) seven days written notice, terminate the services of **CONTRACTOR**, exclude **CONTRACTOR** from the Site, and take possession of the Work and of all **CONTRACTOR**'s tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by **CONTRACTOR** (without liability to **CONTRACTOR** for trespass or conversion), 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 finish the Work as **OWNER** may deem expedient. In such case, **CONTRACTOR** shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court arbitration or other dispute resolution costs) sustained by **OWNER** arising out of or relating to completing the Work, such excess will be paid to **CONTRACTOR**. If such claims, costs, losses, and damages exceed such unpaid balance, **CONTRACTOR** shall pay the difference to **OWNER**. Such claims, costs, losses, and damages incurred by **OWNER** will be reviewed by **ENGINEER** as to their reasonableness and, when so approved by **ENGINEER**, incorporated in a Change Order. When exercising any rights or remedies under this paragraph **OWNER** shall not be required to obtain the lowest price for the Work performed.

C. Where **CONTRACTOR**'s services have been so terminated by **OWNER**, the termination will not affect any rights or remedies of **OWNER** against **CONTRACTOR** then existing or which may thereafter accrue. Any retention or payment of moneys due **CONTRACTOR** by **OWNER** will not release **CONTRACTOR** from liability.

15.03 **OWNER** May Terminate For Convenience

A. Upon seven days written notice to **CONTRACTOR** and **ENGINEER**, **OWNER** may, without cause and without prejudice to any other right or remedy of **OWNER**, elect to terminate the Contract. In such case, **CONTRACTOR** shall be paid (without duplication of any items):

1. for 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. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. **CONTRACTOR** shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 **CONTRACTOR** May Stop Work or Terminate

A. If, through no act or fault of **CONTRACTOR**, the Work is suspended for more than 90 consecutive days by **OWNER** or under an order of court or other public authority, or **ENGINEER** fails to act on any Application for Payment within 30 days after it is submitted, or **OWNER** fails for 30 days to pay **CONTRACTOR** any sum finally determined to be due, then **CONTRACTOR** may, upon seven days written notice to **OWNER** and **ENGINEER**, and provided **OWNER** or **ENGINEER** do not remedy such suspension or failure within that time, terminate the Contract and recover from **OWNER** payment on the same terms as provided in paragraph 15.03. In lieu of terminating the contract and without prejudice to any other right or remedy, if **ENGINEER** has failed to act on an Application for Payment within 30 days after it is submitted, or **OWNER** has failed for 30 days to pay **CONTRACTOR** any sum finally determined to be due, **CONTRACTOR** may, seven days after written notice to **OWNER** and **ENGINEER**, stop the Work until payment is made of all such amounts due **CONTRACTOR**, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude **CONTRACTOR** from making a Claim under paragraph 10.05 for an adjustment in Contract Price times or otherwise for expenses or damage directly attributable to **CONTRACTOR**'s stopping the Work as permitted by this paragraph.

ARTICLE 16 – Dispute Resolution

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, **OWNER** and **CONTRACTOR** may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - Miscellaneous

17.01 Giving Notice

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

17.02 Computation of Times

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

17.03 Cumulative Remedies

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

17.04 Survival of Obligations

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

17.05 Controlling Law

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

END OF SECTION

00800 Supplemental Conditions

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00800 Supplemental Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. The **CONTRACTOR** is advised to thoroughly review these amendments to the Standard General Conditions.

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

SC-2.02 Copies of Documents

Delete paragraph 2.02.A in its entirety and insert the following in its place:

A. **ENGINEER** shall furnish to **CONTRACTOR** up to five copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

SC-3.03 Reporting and Resolving Discrepancies

Add the following new paragraph immediately after 3.03.B.1.b:

c. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies as may be required by law
2. Change Orders
3. Agreement
4. Addenda
5. Bid
6. Supplementary Conditions
7. Invitations to Bid
8. Instructions to Bidders
9. General Conditions
10. Technical Specifications
11. Referenced Standard Specifications
12. Drawings

With reference to the Drawings, the order of precedence is as follows:

1. Figures govern over the called dimensions
2. Detail drawings govern over the general drawings
3. Addenda/Change Order drawings govern over Contract Drawings
4. Contract Drawings govern over standard drawings

SC-4.01 Availability of Lands

Add the following paragraph immediately after paragraph 4.01.C:

D. The Work for this Project is indicated on the Drawing in Section 00300 of the Contract Documents.

SC-4.02 Subsurface and Physical Conditions

Add the following paragraph(s) immediately after paragraph 4.02.B:

C. In the preparation of Drawings and Specifications, **ENGINEER** or **ENGINEER**'s Consultants relied upon the following reports of explorations and tests of subsurface conditions at the site:

1. No reports available for this project.

SC-4.04 Underground Facilities

Add the following paragraph immediately after 4.04.A.2.d:

e. locating individual residential and commercial gas and water and fire hydrant services which are not shown or indicated in the Contract Documents.

Add the following paragraph immediately after 4.04.B.2:

3. Individual residential and commercial gas and water and fire hydrant services are not shown in the Contract Documents. These shall be considered as having been shown or indicated and will be treated as such.

SC-5.02 Licensed Sureties and Insurers

Add the following paragraph immediately after 5.02.A:

B. Surety Companies executing bonds must appear on the U.S. Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

SC-5.04 **CONTRACTOR**'s Liability Insurance

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

C. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

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

a. State:	Statutory
b. Applicable Federal (e.g., Longshoreman's):	Statutory
c. Employer's Liability	$1,000,000

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

a. General Aggregate	$2,000,000
b. Products-Completed Operations Aggregate	$1,000,000
c. Personal and Advertising Injury	$1,000,000
d. Each Occurrence (Bodily Injury and Property Damage)	$1,000,000

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

f. Excess or Umbrella Liability

(1) General Aggregate	$2,000,000
(2) Each Occurrence	$1,000,000

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

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

SC-5.06 Property Insurance

Delete paragraph 5.06.A in its entirety and insert the following in its place:

A. **CONTRACTOR** shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:

1. include the interests of **OWNER**, **CONTRACTOR**, Subcontractors, **ENGINEER**, **ENGINEER**'s Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occassioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions

3. cover materials and equipment stored at the Site or at another location that was agreed to in writing by **OWNER** prior to being

incorporated in the Work, provide that such materials and equipment have been included in an Application for Payment recommended by **ENGINEER**; and

4. allow for partial utilization of the Work by **OWNER**;

5. include testing and startup; and

6. be maintained in effect until final payment is made unless otherwise agreed to in writing by **OWNER, CONTRACTOR** and **ENGINEER** with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

CONTRACTOR shall be responsible for any deductible or self-insured retention.

The policies of insurance required to be purchased and maintained by **CONTRACTOR** in accordance with this paragraph SC-5.06 shall comply with the requirements of paragraph 5.06.C of the General Conditions.

SC-5.08 Receipt and Application of Insurance Proceeds

Delete paragraph 5.08 in its entirety and insert the following in its place:

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

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

SC-6.02 Labor; Working Hours

Add the following paragraph immediately after paragraph 6.02.B:

C. **CONTRACTOR** shall bear the expense (at one and one half times the fee schedule rate) of all inspection, testing, engineering time, and other

associated costs during any period of work exceeding forty (40) hours per week. **CONTRACTOR** is not allowed to perform work on-site more than forty (40) hours per week unless authorized by the **OWNER**.

SC-6.03 Service, Materials, and Equipment

Add the following sentence to paragraph 6.03.A:

This shall include all local and long distance phone, facsimile, and modem usage.

SC-6.04 Progress Schedule

Delete paragraph 6.04.A in its entirety and insert the following in its place:

A. The **ENGINEER** may, at his discretion, require the **CONTRACTOR** to submit a revised schedule upon his request in a format convenient to him. **CONTRACTOR** shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

SC-6.06 Concerning Subcontractors, Suppliers, and Others

Add the following new paragraphs immediately after paragraph 6.06.G:

H. The **CONTRACTOR** shall not substitute any person for a Subcontractor who is named on the Bid unless:

1. The **OWNER** objects to the Subcontractor, requests in writing a change in the Subcontractor and pays any increase in costs resulting from the change; or

2. The substitution is approved by the **OWNER** and:

a. The Subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the **CONTRACTOR** which was offered to the Subcontractor with the same terms that all other Subcontractors on the Project were offered;

b. The named Subcontractor files for bankruptcy or becomes insolvent; or

c. The named Subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance Bond and payment Bond pursuant to NRS 339.025.

I. The **CONTRACTOR** may subcontract no more than 50 percent of the total cost of the Project.

SC-6.13 Safety and Protection

Add the following paragraph immediately following 6.13.B:

C. **CONTRACTOR** shall take all reasonable means to minimize inconvenience to the public by dust, noise, diversion of storm water, or other agencies under his control.

SC-6.20 Indemnification

Delete the first sentence in paragraph 6.20.A and replace with the following:

To the fullest extent permitted by Laws and Regulations, **CONTRACTOR** shall indemnify and hold harmless **OWNER, ENGINEER, ENGINEER's** Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to 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:

Delete paragraph 6.20.B in its entirety and insert the following in its place:

B. In any and all claims against **OWNER, ENGINEER,** or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of **CONTRACTOR,** any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for **CONTRACTOR** or any such Subcontractor, Supplier, or other individual or entity under worker's compensation acts, disability acts, or other employee benefit acts.

SC-7.0 Other Work

Add the following new paragraph immediately after paragraph 7.02:

7.03 Work by Others

The **OWNER,** utilities, and others may be working within the Project area while the Work is in progress. If so, the **CONTRACTOR** shall schedule his Work in conjunction with these other organizations to minimize interference.

SC-10.05 Claims and Disputes

Delete the first sentence in A. Notice in its entirety and insert the following in its place:

A. Notice: Written notice stating the general nature of each claim, dispute, or other matter shall be delivered by the claimant to the **ENGINEER** and the other party to the Contract promptly (but in no event later than 45 days) after the start of the event giving rise thereto.

SC-14.02 Progress Payments

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

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to **OWNER** with **ENGINEER**'s recommendation, the amount recommended will (subject to provisions of paragraph 14.02.D) become due, and when due will be paid by **OWNER** to **CONTRACTOR**.

SC-14.04 Substantial Completion

Delete the second sentence and replace with the following in paragraph 14.04.A:

Promptly thereafter, **OWNER**, **CONTRACTOR**, **ENGINEER**, shall make an inspection of the Work to determine the status of completion.

SC-14.05 Partial Utilization

Delete the first sentence in paragraph 14.05.A.1 and replace with the following:

OWNER at any time may request **CONTRACTOR** in writing to permit **OWNER** to use any such part of the Work which **OWNER** believes to be ready for its intended use and substantially complete.

SC-14.06 Final Inspection

Delete the entire paragraph 14.06.A and replace with the following:

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

SC-16.0 Dispute Resolution

Add the following new paragraph immediately after paragraph 16.01:

16.02 Mediation

A. **OWNER** and **CONTRACTOR** agree that they shall submit any and all unsettled Claims or counterclaims, disputes, or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to mediation [prior to either of them initiating against the other a demand for arbitration pursuant to

paragraph SC-16.03, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The 30 day time limit within which to file a demand for arbitration as provided in paragraphs SC-16.03.B and 16.03.C shall be suspended with respect to a dispute submitted to mediation within that time limit and shall remain suspended until 10 days after the termination of the mediation.] The mediator of any dispute submitted to mediation under this agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

Add the following new paragraph immediately after paragraph 16.02:

16.03 Arbitration

A. All Claims or counterclaims, disputes, or other matters in question between **OWNER** and **CONTRACTOR** arising out of or relating to the Contract Documents or the breach thereof (except for Claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.09) not resolved under the provisions of paragraph SC-16.02 will be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the America Arbitration Association then obtaining, subject to the limitations of this paragraph SC-16.03. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforced under the prevailing law of any court having jurisdiction.

B. No demand for arbitration of any Claim or counterclaim, dispute, or other matter that is required to be referred to **ENGINEER** initially for decision in accordance with paragraph 9.09 will be made until the earlier of: (i) the date on which **ENGINEER** has rendered a written decision, or (ii) the 31st day after the parties have presented their final evidence to **ENGINEER** if a written decision has not been rendered by **ENGINEER** before that date. No demand for arbitration of any such Claim or counterclaim, dispute, or other matter will made later than 30 days after the date on which **ENGINEER** has rendered a written decision in respect thereof in accordance with paragraph 10.05; and the failure to demand arbitration within said 30 day period will result in **ENGINEER's** decision being final and binding upon **OWNER** and **CONTRACTOR**. If **ENGINEER** renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned.

C. Notice of the demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator, and a copy will be sent to **ENGINEER** for information. The demand for arbitration will be made within the30 day period specified in paragraph SC-16.03.B, and in all other cases within a reasonable time after the Claim or counterclaim, dispute, or other matter in

question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such Claim or other dispute or matter in question would be barred by the applicable statue of limitations.

D. Except as provided in paragraph SC-16.03.E, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder, or in any other manner any other individual or entity (including **ENGINEER**, and **ENGINEER's** Consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

3. the written consent of the other individual or entity sought to be included and of **OWNER** and **CONTRACTOR** has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

E. Notwithstanding paragraph SC-16.03.D, if a Claim or counterclaim, dispute, or other matter in question between **OWNER** and **CONTRACTOR** involves the Work of a Subcontractor, either **OWNER** or **CONTRACTOR** may join such Subcontractor as a party to the arbitration between **OWNER** and **CONTRACTOR** hereunder. **CONTRACTOR** shall include in all subcontracts required by paragraph 6.06.G a specific provision whereby the Subcontractor consents to being joined in an arbitration between **OWNER** and **CONTRACTOR** involving the Work of such Subcontractor. Nothing in this paragraph SC-16.03.E nor in the provisions of such subcontract consenting to joinder shall create any claim, right, or cause of action in favor of Subcontractor and against **OWNER, ENGINEER,** or **ENGINEER's** Consultants that does not otherwise exist.

F. The award rendered by the arbitrators will be final, judgement may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

SC-18.0 Control of Water

A. When water is encountered in the performance of the Work, the **CONTRACTOR**

shall furnish, install, maintain and operate all the necessary machinery, appliances, and equipment to keep excavations free from water until the Work is completed, inspected, and approved and all danger of flotation and other damages are removed.

SC-20.0 Disruption of Service

A. The **CONTRACTOR** shall coordinate any required utility shut-downs with the utility company involved, **OWNER** and Resident Project Representative and obtain their approval. The **CONTRACTOR** shall notify the utility, **OWNER** and Resident Project Representative, in writing, at least 5 days in advance of any desired utility shut-down. The **CONTRACTOR** will be required to notify each affected customer in writing in advance of the disruption of service.

B. Any Services exposed to freezing shall be adequately protected from freezing by the **CONTRACTOR** until the service is sufficiently backfilled to preclude freezing.

SC-21.0 Conflict of Interest

21.01 No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be constructed to extend to this Contract if made with a corporation for its general benefit.

21.02 No official of the **OWNER** who is authorized in such capacity and on behalf of the **OWNER** to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the **OWNER** who is authorized in such capacity and on behalf of the **OWNER** who is in any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

END OF SECTION

Work Change Directive & Change Order

Table of Contents

Item	***Number***
Work Change Directive	00940-1
Change Order	00940-3

Work Change Directive

No. _____.

Date of Issuance _____. Effective Date _____.

OWNER **Lander County**

CONTRACTOR _____.

Contract **Battle Mountain Raceway Lighting Project**

If OWNER or CONTRACTOR believes that the above change has affected Contract Price, any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

☐ Unit Price
☐ Lump Sum
☐ Cost of the Work _____.

Estimated increase (decrease) in Contract Price: $_____. If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:

Substantial Completion: _____ days;
Ready for final payment: _____ days.

Recommended:

ENGINEER

By:

Authorized:

OWNER

By:

Change Order

No. _____.

Date of Issuance _____. Effective Date _____.

OWNER **Lander County**

CONTRACTOR _____.

Contract **Battle Mountain Raceway Lighting Project**

ENGINEER **Shaw Engineering**

You are directed to make the following changes in the Contract Documents:

Description:

Reasons for Change Order:

Attachments (list documents supporting change):

Change in Contract Price:
Original Contract Price $ _____.
Net increase (decrease) from previous Change Orders No. _____ to _____. $ _____.
Contract Price prior to this Change Order $ _____.
Net increase (decrease) of this Change Order $ _____.
Contract Price with all approved Change Orders $ _____.

Change in Contract Times:
Original Contract Times Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Net change from previous Change Orders No. _____ to _____. Original Contract Times Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Contract Times prior to this Change Order Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Net increase (decrease) this Change Order Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*
Contract Times with all approved Change Orders Substantial Completion _____. Ready for Final Payment _____. *(days or dates)*

Recommended:	Approved:	Accepted:
By: _____.	By: _____.	By: _____.
ENGINEER *(authorized signature)*	OWNER *(authorized signature)*	CONTRACTOR *(authorized signature)*
Date _____.	Date _____.	Date _____.

Technical Specifications

Relevant Technical Specifications are included on the drawings.

Agreement

THIS AGREEMENT is by and between **Lander County** (hereinafter called **OWNER**) and Nelson Electric (hereinafter called **CONTRACTOR**).

OWNER and **CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - Work

1.01 **CONTRACTOR** shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 - The Project

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Battle Mountain Raceway Lighting Project

ARTICLE 3 - Engineer

3.01 The Project has been designed by **Shaw Engineering, Ltd.**, 20 Vine Street, Reno, Nevada, 89503, who is hereinafter called **ENGINEER** and who is 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 Work in accordance with the Contract Documents.

ARTICLE 4 – Contract Times

4.01 Time of the Essence

1. 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 Days to Achieve Substantial Completion and Final Payment

1. The Work will be substantially completed within 76 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 90 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

1. **CONTRACTOR** and **OWNER** recognize that time is of the essence of this Agreement and that **OWNER** will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), **CONTRACTOR** shall pay **OWNER** $200.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if

#6

CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by **OWNER**, **CONTRACTOR** shall pay **OWNER** $500.00 for each day that expires after the times specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – Contract Price

5.01 **OWNER** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the amounts determined pursuant to the paragraph below:
A. For all Work, at the prices stated in **CONTRACTOR's** Bid, attached hereto as an exhibit.

As provided in paragraph 11.03 of the General Conditions, estimated quantities for unit price items are not guaranteed, and determinations of actual quantities and classifications are to be made by **ENGINEER** as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

ARTICLE 6 – Payment Procedures

6.01 Submittal and Processing of Payments

A. **CONTRACTOR** shall submit Applications for Payment in accordance with Article 14 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 each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of 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 in the General Requirements:

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 **ENGINEER** may determine or **OWNER** may withhold, in accordance with paragraph 14.02 of the General Conditions:

   a. 90% of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by **ENGINEER**, and if the character and progress of the Work have been satisfactory to **OWNER** and **ENGINEER**, **OWNER**, on recommendation of **ENGINEER**, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

   b. 100% of cost of materials and equipment not incorporated in the Work.

2. Upon Substantial Completion, **OWNER** shall pay an amount sufficient to increase total payments to **CONTRACTOR** to 95% of the Work completed, less such amounts as **ENGINEER** shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of **ENGINEER's** estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said paragraph 14.07.

RTICLE 7 - Interest

01 The **CONTRACTOR** acknowledges that he is aware of the provisions of Nevada Revised Statute 338.160, which provides for investment of contract retainages, and the payment of interest thereon to the **CONTRACTOR** after completion of the Project. The **CONTRACTOR** agrees to waive all his rights to investment of and payment of interest on retainage, upon the understanding that the regulations of the lending agency prohibit such investment and that, without this waiver, loan and/or grant funds for this Project will not be available.

RTICLE 8 – Contractor's Representations

.01 In order to induce **OWNER** to enter into this Agreement, **CONTRACTOR** makes the following representations:

A. **CONTRACTOR** has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. **CONTRACTOR** has visited the Site 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 federal, State, and local 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 contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions.

E. **CONTRACTOR** has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by **CONTRACTOR**, including applying the specific means, methods, techniques, sequence, and procedures of construction, if any, expressly required by the Contract Documents to be employed by **CONTRACTOR**, and safety precautions and programs incident thereto.

F. **CONTRACTOR** does not consider that any 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 Documents.

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 correlated the information known to **CONTRACTOR**, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. **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**.

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

ARTICLE 9 – Contract Documents

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (Number 00520);
2. Performance Bond (Number 00610);
3. Payment Bond (Number 00615);
4. General Conditions (Number 00700);
5. Supplementary Conditions (Number 00800);
6. Project drawings consisting 9 sheets titled Battle Mountain Raceway Lighting Improvements
7. Addenda (Section 00900).
8. Exhibits to this Agreement (enumerated as follows):
   A. Notice to Proceed (number 00550);
   B. **CONTRACTOR's** Bid;
   C. Documentation submitted by **CONTRACTOR** prior to Notice of Award (pages _____ to _____, inclusive);
9. State Prevailing Wage Rates including Addenda;
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    1. Written Amendments;
    2. Work Change Directives;
    3. Change Order(s).

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 paragraph 3.05 of the General Conditions.

ARTICLE 10 - Miscellaneous

10.01 Terms

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

A. 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, moneys that may become due and moneys that are 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 partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, 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 Other Provisions

A. **CONTRACTORS** are required by law to be licensed and regulated by the Nevada's State Contractors Board. Any questions concerning a **CONTRACTOR** may be referred to the State Contractors Board, 70 Linden Street, Reno, Nevada 89502.

IN WITNESS WHEREOF, **OWNER** and **CONTRACTOR** have signed this Agreement in duplicate. One counterpart each has been delivered to **OWNER** and **CONTRACTOR**. All portions of the Contract Documents have been signed or identified by **OWNER** and **CONTRACTOR** or on their behalf.

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

OWNER:
By: _____

_____
[Corporate Seal]

Attest _____

Address for giving notices:
_____
_____
_____

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

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

CONTRACTOR:
By: Lloyd L Nelson

LLOYD L. NELSON
[Corporate Seal]

Attest Lisa M. Teglia

Addresses for giving notices:
1410 FREEPORT BLVD.
SPARKS, NV 89431

License No.: 016697
(Where applicable)

Agent for service of process: MCDONALD CARANO WILSON
100 W. LIBERTY, RENO, NV 89501

(If **CONTRACTOR** is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: LLOYD NELSON

Title: GENERAL MANAGER

Address: 1410 FREEPORT BLVD., SPARKS, NV 89431

Phone: 775-358-0643

Facsimile: 775-358-0674

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 7

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding County Commission meeting schedule for the months of November and December 2012 and other matters properly related thereto.

Public comment.

Background:

Discussion regarding the County Commission meeting schedule for the months of November and December 2012 and possible change of the upcoming meeting schedule due to holiday conflicts is brought before the Commission for consideration.

The second regular Board of County Commissioners meeting date for the month of November (November 22) falls on Thanksgiving. The second regular Board of County Commissioners meeting date for the month of December falls on December 27, 2011, and does not represent a direct conflict. However, prior to December 2011, it has been past practice that the Commission holds only one meeting during the month of December.

The November 2012 Board of County Commissioners regular meeting schedule was discussed during the September 27, 2012 Commission meeting. Scheduling the second regular meeting for Monday, November 19, 2012 was suggested. The meeting schedule for the month of December 2012 was not discussed. It has proven difficult in the past to convene a meeting of the Commission during the last two weeks of December.

Nevada Revised Statutes (NRS 244.085(4)) requires publication of notice of the change in regular meeting dates for two consecutive weeks in a newspaper of general circulation in the county.

Recommended Action:

It is recommended that the Commission set the second meeting date for the month of November 2012 for Monday, November 19, 2012, and consider whether or not to schedule a second regular meeting date for the month of December 2012, and request the Clerk's Office to publish the required notice of change in the regular meeting schedule for two consecutive weeks in the Battle Mountain Bugle.

Ag-4

Battle Mountain Raceway

Lander County, Nevada

Bidding and Contract Documents
& Project Specifications
for the

Battle Mountain Raceway Lighting Project

Public Works Project Number:
PWP-LA-2012-321

Prepared by:

SHAW
ENGINEERING

20 Vine Street
Reno, NV 89503
Phone 775.329.5559
Fax 775.329.5406
www.shawengineering.com

June 2012 **OWNER**

Bond#09014946
Premium: $4,253.00

Performance Bond

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

CONTRACTOR (Name and Address):

Nelson Electric Co., Inc.
1410 Freeport Blvd., Sparks, NV 89431

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

Fidelity and Deposit Company of Maryland
560 Mission Street, Suite 2400, San Francisco, CA 94105

OWNER (Name and Address): **Lander County**
315 South Humboldt Street
Battle Mountain, Nevada 89820

CONTRACT: Date: September 12, 2012 Amount: $418,000.00

Description (Name and Location): Battle Mountain Raceway Lighting Improvements

BOND: Date (Not earlier than Contract Date): September 12, 2012 Amount: $418,000.00

Modifications to this Bond Form: None

Surety and **CONTRACTOR**, intending to be legally bound hereby, subject to the terms printed on page 00610-2, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR as Principal

Company: Nelson Electric Co., Inc. (Corp. Seal)
Signature: Lloyd L Nelson
Name and Title: Lloyd L. Nelson
General Manager

SURETY

Company: Fidelity and Deposit Company of Maryland (Corp. Seal)
Signature: Elena M. Chiaretti
Name and Title: Elena M. Chiaretti
Attorney-in-fact (attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR as Principal

Company: _____ (Corp. Seal)
Signature: _____
Name and Title: _____

SURETY

Company: _____ (Corp. Seal)
Signature: _____
Name and Title: _____
(attach Power of Attorney)

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 Contract, which is incorporated herein by reference.

2. If the **CONTRACTOR** performs the Contract, the Surety and the **CONTRACTOR** have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

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

3.1 The **OWNER** has notified the **CONTRACTOR** and the Surety at the addresses described in paragraph 10 below, that the **OWNER** is considering declaring a **CONTRACTOR** Default and has requested and attempted to arrange a conference with the **CONTRACTOR** and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the **OWNER**, the **CONTRACTOR** and the Surety agree, the **CONTRACTOR** shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the **OWNER**'s right, if any, subsequently to declare a **CONTRACTOR** Default; and

3.2 The **OWNER** has declared a **CONTRACTOR** Default and formally terminated the **CONTRACTOR**'s right to complete the Contract. Such **CONTRACTOR** Default shall not be declared earlier than twenty days after the **CONTRACTOR** and the Surety have received notice as provided in paragraph 3.1; and

3.3 The **OWNER** has agreed to pay the Balance of the Contract Price to:

3.3.1 The Surety in accordance with the terms of the Contract;

3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. 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:

4.1 Arrange for the **CONTRACTOR**, with consent of the **OWNER**, to perform and complete the Contract; or

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

4.3 Obtain Bids or negotiated proposals from qualified contractors acceptable to the **OWNER** for a contract for performance and completion of the Contract, arrange for a Contract to be prepared for execution by the **OWNER** and the contractor selected with the **OWNER**'s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the **OWNER** the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the **OWNER** resulting from the **CONTRACTOR** Default; or

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

4.4.1 After investigation, determine the amount for which it may be liable to the **OWNER** and, as soon as practicable after the amount is determined, tender payment therefor to the **OWNER**; or

4.4.2 Deny liability in whole or in part and notify the **OWNER** citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen 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 4.4, and the **OWNER** refuses the payment tendered 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**.

6. After the **OWNER** has terminated the **CONTRACTOR**'s right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the **OWNER** shall not be greater than those of the **CONTRACTOR** under the Contract, and the responsibilities of the **OWNER** to the Surety shall not be greater than those of the **OWNER** under the Contract. To a limit of the amount of this Bond, but subject to commitment by the **OWNER** of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the **CONTRACTOR** for correction of defective Work and completion of the Contract;

6.2 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 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the **CONTRACTOR**.

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

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

9. 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 **CONTRACTOR** Default or within two years after the **CONTRACTOR** ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suits shall be applicable.

10. Notice to the Surety, the **OWNER** or the **CONTRACTOR** shall be mailed or delivered to the address shown on the signature page.

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

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the **OWNER** to the **CONTRACTOR** under the Contract after all proper adjustments have been made, including allowance to the **CONTRACTOR** of any amounts received or to be received by the **OWNER** in settlement of insurance or other Claims for damages to which the **CONTRACTOR** is entitled, reduced by all valid and proper payments made to or on behalf of the **CONTRACTOR** under the Contract.

12.2 Contract: The agreement between the **OWNER** and **CONTRACTOR** identified on the signature page, including all Contract Documents and changes thereto.

12.3 **CONTRACTOR** Default: Failure of the **CONTRACTOR**, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4 **OWNER** Default: Failure of the **OWNER** which has neither been remedied nor waived, to pay the **CONTRACTOR** as required by the Contract or to perform and complete or comply with the other terms thereof.

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **GEOFFREY DELISIO, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Elena M. CHIARETTI, of Reno, Nevada,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND,** this 25th day of July, A.D. 2012.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
Geoffrey Delisio

State of Maryland
City of Baltimore

On this 25th day of July, A.D. 2012, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **GEOFFREY DELISIO, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Constance A. Dunn, Notary Public
My Commission Expires: July 14, 2015

Bond No. 09014946

Premium: Included in performance bond

Payment Bond

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

CONTRACTOR (Name and Address):
Nelson Electric Co., Inc.
1410 Freeport Blvd., Sparks, NV 89431

SURETY:
Fidelity and Deposit Company of Maryland
560 Mission Street, Ste 2400, San Francisco, CA 94105

OWNER (Name and Address):
Lander County
315 South Humboldt Street
Battle Mountain, NV 89820

CONSTRUCTION CONTRACT
Date: 09/12/2012
Amount: $418,000.00 Four Hundred eighteen thousand and ----------XX/100 DOLLARS
Description (Name and Location): Battle Mountain Raceway Lighting Improvements

BOND
Date (Not earlier than Construction Contract Date): September 12, 2012
Amount: $418,000.00 Four Hundred eighteen thousand and ----------XX/100 DOLLARS
Modifications to this Bond: ☐ None ☒ See Page 3

CONTRACTOR AS PRINCIPAL
Company: Nelson Electric Co., Inc.
Signature: Lloyd L. Nelson Corporate Seal
Name and Title: Lloyd L. Nelson, General Manager

SURETY
Company: Fidelity and Deposit Company of Maryland Corporate Seal
Signature: Elena M. Chiaretti
Name and Title: Elena M. Chiaretti
Attorney-in-factN

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)
AGENT or BROKER:
Wells Fargo Insurance Services USA, Inc.
604 W. Moana Lane, Reno, NV 89509
775-827-2048

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

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

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 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 the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

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

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 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, 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.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

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. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

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

15 DEFINITIONS

15.1 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 Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Paragraph 4 is amended to insert sub-paragraph 4.3, which states:

4.3 Claimants have furnished to Surety proof of claim duly sworn to by Claimants with adequate supporting documentation proving the amount claimed is due and payable.

Paragraph 5 shall be amended to delete the word "or" and insert the word "and' in its place.

Paragraph 6 and its sub-paragraphs 6.1 and 6.2 shall be deleted in their entirety and replaced with the following:
When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall, within 90 days of the date when claimant finally completed its satisfactions of the conditions of Paragraph 4 notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant's sole remedy shall be the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

Paragraph 12 shall be amended to add the following paragraph:
CLAIM NOTICE for the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND INSURANCE COMPANY and/or AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY must be sent to the following address: Contract Surety Bond Claims, c/o ZURICH, 1400 American Lane, Schaumburg, IL 60196.

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

CONTRACTOR AS PRINCIPAL		SURETY:	
Company:	(Corporate Seal)	Company:	(Corporate Seal)
Signature: _____		Signature: _____	
Name and Title:			
Address:		Name and Title:	
		Address:	

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **GEOFFREY DELISIO, Vice President,** in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Elena M. CHIARETTI, of Reno, Nevada,** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings,** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND,** this 25th day of July, A.D. 2012.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: _____
Assistant Secretary
Eric D. Barnes

_____
Vice President
Geoffrey Delisio

State of Maryland
City of Baltimore

On this 25th day of July, A.D. 2012, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **GEOFFREY DELISIO, Vice President, and ERIC D. BARNES, Assistant Secretary,** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
Constance A. Dunn, Notary Public
My Commission Expires: July 14, 2015

2814

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/13/2012

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

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

PRODUCER	CONTACT NAME: Georgene McNeill	
Commercial Lines - (775) 827-1555 Wells Fargo Insurance Services USA, Inc. 604 W. Moana Lane Reno, NV 89509	PHONE (A/C, No, Ext): 775-827-2054	FAX (A/C, No): 866-612-8440
	E-MAIL ADDRESS: georgene.e.mcneill@wellsfargo.com	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Nelson Electric Company, Inc. 1410 Freeport Sparks, NV 89431	INSURER A: Zurich American Insurance Co	16535
	INSURER B: Navigators Insurance Company	42307
	INSURER C: Explorer Insurance Company	40029
	INSURER D: Hartford Fire Insurance Co.	19682
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 4842126 **REVISION NUMBER:** See below

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X Owners & Contractors GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC			GLA427743106	11/01/2011	11/01/2012	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			GLA427743106	11/01/2011	11/01/2012	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
B	UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			LA11EXC104135IV	11/01/2011	11/01/2012	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WLV500545301	01/01/2012	01/01/2013	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
D	Property & Contractors Equip			53UUMKR8441	11/01/2011	11/01/2012	See Description	

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

RE:Battle Mountain Raceway Lighting Project #PWP-LA-2012-321 - Owner, Engineer, Engineer's Consultants, and any other individuals or entities identified in the supplementary conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them are included as Additional Insured under General Liability per attached form U-GL-1175B.
Coverage is Primary and Noncontributory.
General Liability, Auto Liability and Workers Compensation Waiver of Subrogation applies per forms U-GL-925B, U-CA-320B and WC000313.

CERTIFICATE HOLDER

Lander County
315 South Humboldt Street
Battle Mountain, NV 89820

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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(This certificate replaces certificate# 4842121 issued on 9/13/2012)

Waiver Of Subrogation (Blanket) Endorsement

ZURICH

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem	Return Prem.
GLA427743106	11/01/2011	11/01/2012	11/01/2011	36-208-000	$	$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition:**

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

Additional Insured – Automatic – Owners, Lessees Or Contractors

ZURICH

Policy No.	Exp. Date of Pol.	Eff. Date of End.	Agency No.	Addl. Prem.	Return Prem.
GLA427743106	11/01/2012		88033	N/A	N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Nelson Electric Company, Inc.
Address (including ZIP Code): 1410 Freeport

Sparks, NV 89431

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

A. **Section II – Who Is An Insured** is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement.

B. The insurance provided to the additional insured person or organization applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under **SECTION I - Coverage A - Bodily Injury And Property Damage Liability** and **Section I - Coverage B - Personal And Advertising Injury Liability**, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or.
2. The acts or omissions of those acting on your behalf; and resulting directly from:
   a. Your ongoing operations performed for the additional insured, which is the subject of the written contract or written agreement; or
   b. "Your work" completed as included in the "products-completed operations hazard", performed for the additional insured, which is the subject of the written contract or written agreement.

C. However, regardless of the provisions of paragraphs A. and B. above:

1. We will not extend any insurance coverage to any additional insured person or organization:
   a. That is not provided to you in this policy; or
   b. That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
   a. The Limits of Insurance provided to you in this policy; or
   b. The Limits of Insurance you are required to provide in the written contract or written agreement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

D. The insurance provided to the additional insured person or organization does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

2. Supervisory, inspection, architectural or engineering activities.

E. The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;

2. We receive written notice of a claim or "suit" as soon as practicable; and

3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured, if the written contract or written agreement requires that this coverage be primary and non-contributory.

F. For the coverage provided by this endorsement:

1. The following paragraph is added to Paragraph **4.a.** of the Other Insurance Condition of **Section IV – Commercial General Liability Conditions:**

This insurance is primary insurance as respects our coverage to the additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory. In that event, we will not seek contribution from any other insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.

2. The following paragraph is added to Paragraph **4.b.** of the Other Insurance Condition of **Section IV – Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured by attachment of an endorsement to another policy providing coverage for the same "occurrence", claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

G. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

Any provisions in this Coverage Part not changed by the terms and conditions of this endorsement continue to apply as written.

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

Schedule

BLANKET WAIVER OF SUBROGATION
AS REQUIRED BY WRITTEN CONTRACT

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

Endorsement Effective 01/01/2012 Policy No. WLV500545301 Endorsement No.

Insured Nelson Electric Company, Inc. Premium $

Insurance Company Countersigned by

Copyright 1983 National Council on Compensation Insurance.

Waiver Of Transfer Of Rights Of Recovery Against Others To Us

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Agency No.	Addl. Prem	Return Prem.
GLA427743106	11/01/2011	11/01/2012				

This endorsement is issued by the company named in the Declarations. It changes the policy on the effective date listed above at the hour stated in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Nelson Electric Company, Inc.

Address (including ZIP code): 1410 Freeport

Sparks, NV 89431

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Truckers Coverage Form
Garage Coverage Form
Motor Carrier Coverage Form

SCHEDULE

Name of Person or Organization: ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY.

We waive any right of recovery we may have against the designated person or organization shown in the schedule because of payments we make for injury or damage caused by an "accident" or "loss" resulting from the ownership, maintenance, or use of a covered "auto" for which a Waiver of Subrogation is required in conjunction with work performed by you for the designated person or organization. The waiver applies only to the designated person or organization shown in the schedule.

Countersigned: _____ Date: _____
Authorized Representative

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 8

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding approval/disapproval of the Pre-Construction Services Agreement between Lander County and CORE for Construction Manager at Risk (CMAR) services for the pre-construction phase of the Lander County Courthouse/Administration Building project and other matters properly related thereto.

Public comment.

Background:
The Pre-Construction Services Agreement between Lander County and CORE for Construction Manager at Risk (CMAR) services for the pre-construction phase of the Lander County Courthouse/Administration Building project is presented for Commission consideration.

Recommended Action:
It is recommended that the Commission approve the Pre-Construction Services Agreement between Lander County and CORE for Construction Manager at Risk (CMAR) services for the pre-construction phase of the Lander County Courthouse/Administration Building Project incorporating any amendments or revisions as suggested by the Lander County District Attorney's Office.

DOC # 0265255
10/25/2012 04:10 PM
Official Record
Recording requested By
LANDER COUNTY CLERK
Lander County - NV
Idonna Trevino - Recorder
Fee: Page 1 of 7
RPTT: Recorded By: TO
Book- 638 Page- 0266
0265255

RECORDING REQUEST BY:

Lander County Clerk

315 South Humboldt Street

Battle Mountain, Nevada 89820

CMAR PRE-CONSTRUCTION AGREEMENT BETWEEN LANDER COUNTY & CORE CONSTRUCTION SERVICES OF NEVADA FOR THE LANDER COUNTY COURTHOUSE/ADMINISTRATION BUILDING

TITLE OF DOCUMENT

This page added to provide additional information required by NRS 111.312 Section 1-2.
This cover page must be typed or printed.

LANDER COUNTY
COURTHOUSE/ADMINISTRATION BUILDING
OWNER-CMAR PRE-CONSTRUCTION AGREEMENT

This Owner-CMAR Pre-Construction Agreement, entered into as of the following date:

Execution Date: OCTOBER 11, 2012

between the County of Lander, Nevada as Owner, hereinafter referred to as "Owner", acting by and through:

LANDER COUNTY
Board of County Commissioners
315 South Humboldt Street
Battle Mountain, Nevada 89820
(775) 635-2885

and the Construction Manager at Risk, hereinafter referred to as "CMAR":

CORE Construction Services of Nevada, Inc.
7150 Cascade Valley Court
Las Vegas, NV 89128-4055
Telephone: 702-794-0550

ARTICLE 1
In consideration of the mutual covenants and conditions provided herein, the Owner does hereby employ the CMAR to perform Pre-Construction Services, and the CMAR agrees to expeditiously perform such services for the referenced project.

Project Name: LANDER COUNTY COURTHOUSE/ADMINISTRATION BUILDING
Project Location: Battle Mountain, Nevada, Nevada State Route 305 South
Owner Contract #: To Be Determined

ARTICLE 2
For furnishing all labor, materials, equipment, tools and services, and for performing everything required by this Agreement including, but not limited to, providing the required Guaranteed Maximum Price proposal, the Owner will pay and the CMAR shall receive as full compensation therefore, a total sum not to exceed: **$ 51,250.00**

Pre-Construction Services

ARTICLE 3
Time shall be of the essence of this Agreement and the CMAR agrees to satisfactorily complete all professional services and work within the time limits established in the incorporated documents. Failure to comply with the time schedule set forth in this Agreement shall be deemed to be adequate cause for termination of this Agreement.

ARTICLE 4

The scope of the CMAR's Pre-Construction Services includes, but is not limited to the following:

1. Assistance and participation in selection of Architect and building design team.
2. Participation in regularly scheduled design progress review meetings with the Architect and the Owner. The CMAR shall provide ongoing input with respect to constructability, construction cost, construction duration, sequence of construction, and construction means and methods.
3. Development of review comments, suggestions, and cost estimates at each of the stipulated phases of design (see Baseline Project Schedule in Request for Qualifications).
4. Assistance with identifying and reconciling differences between the Architect's cost estimates and the CMAR's cost estimates.
5. Development of constructability and value engineering suggestions at each phase of design.
6. Development of potential bidders lists and coordination of input from subcontractors with regard to each of the items previously described in this section (Article 4).
7. Distribution of documents to potential bidders, coordination of pre-bid conferences and bid openings, and assistance with selection of the best bids in each category.
8. Development of a GMP Proposal based on bids obtained from all necessary subcontractors after reviewing and coordinating the bid results with the Owner.
9. Development of final CMAR constructability and value engineering suggestions (based on 100% Construction Documents).

ARTICLE 5

The Owner and the CMAR mutually agree that the following Contract Documents are incorporated into and made a part of this Agreement by reference:

1. CMAR Request for Qualifications
2. CMAR Request for Proposals
3. CMAR General Conditions of the Contract

ARTICLE 6

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS), the Nevada Administrative Code (NAC) and local law as may apply to this Agreement and to the work performed under this Agreement and agrees to comply with all such applicable laws and regulations.

ARTICLE 7

The Owner and the CMAR mutually agree that the fee described herein is for Pre-Construction services only and in no manner obligates the Owner to enter into a construction contract with the CMAR.

ARTICLE 8
Execution of this Agreement by each party shall constitute the representation by each party that he has examined the contents of all contract documents, including the CMAR General Conditions of the Contract, that he has read and understands the same, and specifically agrees to be bound thereby.

ARTICLE 9
This Agreement shall be construed and interpreted according to the laws of the State of Nevada. Any action brought by either party arising out of or related to the Agreement shall be brought in a court located in Lander County, and not elsewhere.

ARTICLE 10
In the event of a dispute between the Owner and the CMAR that cannot be resolved satisfactorily between the parties, third party mediation shall be utilized prior to pursuing legal action on the part of either the Owner or the CMAR. Any legal action brought by the Consultant or his representatives shall be made in Lander County.

ARTICLE 11
To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) caused by the negligent acts or omissions of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights
or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. The Owner and the CMAR shall each indemnify the other for any losses principally caused by the indemnifying party.

ARTICLE 12
1. Prior to proceeding with the Pre-Construction Services covered by this Agreement, the CMAR shall submit proof of general liability insurance in the amounts listed below. The insurance shall cover the entire period of Pre-Construction Services performed under this Agreement.

   (a) General Aggregate - $2,000,000
   (b) Personal and Advertising Injury - $1,000,000
   (c) Each Occurrence - $1,000,000

2. A certificate of insurance shall be filed with the Owner evidencing the required coverage. The certificate shall include a thirty day written notice to the Owner in the event of cancellation or material alteration of the coverage. The Owner shall be named as additional insured on such certificate and the certificate shall also state

that any coverage afforded the certificate holder shall apply as primary and not excess to any insurance issued in the name of the certificate holder. The CMAR shall provide his employees with worker's compensation insurance as required by Nevada Revised Statutes Chapters 616 and 617. A certificate evidencing coverage shall be filed with the Owner within ten days after execution of this Agreement and prior to commencing Pre-Construction Services under this Agreement. The Owner is not liable for the payment of any premiums, deductibles, or any assessments on any insurance policies purchased by the CMAR.

3. The Owner and the CMAR shall, within a reasonable time during performance of the Pre-Construction Services, negotiate mutually acceptable insurance requirements that will apply to a future anticipated contract between the Parties for Construction Services.

ARTICLE 13

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 14

This Agreement constitutes the entire agreement between the parties and may be modified only by a written endorsement executed by the parties.

ARTICLE 15

This Agreement may be amended or terminated by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement for convenience seven calendar days after having served the CMAR with a written notice of termination. Upon termination, for other than a breach of this Agreement by the CMAR, the Owner shall make payments to the CMAR of all fees due but unpaid for services or work completed to the satisfaction of the Owner as of the time of the notice of termination. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement. The CMAR waives any claim for overhead and profit on the services or work remaining at the time of termination.

ARTICLE 16

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the CMAR in the performance of his obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the CMAR upon completion, termination, or cancellation of this Agreement. The CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the CMAR's obligations under this Agreement, without the prior written consent of the Owner.

ARTICLE 17

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by the CMAR shall constitute a material breach of this Agreement

ARTICLE 18

The parties agree that the CMAR is an independent contractor and not a Lander County employee. CMAR's employees or contract personnel are not Lander County employees and are not entitled to benefits otherwise provided to employees of Lander County, including, but not limited to medical, dental, or other personal insurance, retirement benefits, unemployment benefits or liability or worker's compensation insurance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER

LANDER COUNTY BOARD OF COMMISSIONERS

By: Dean Bullock
DEAN BULLOCK, Chair

STATE OF NEVADA)
) ss:
COUNTY OF LANDER)

On this 25th day of October, 2012, before the undersigned, a Notary Public in and for the County of Lander, State of Nevada, personally appeared before me **DEAN BULLOCK**, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Juanita Holwerda
NOTARY PUBLIC

JUANITA HOLWERDA
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires 1-27-16
Certificate No: 06-104021-10

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CMAR

CORE CONSTRUCTION SERVICES OF NEVADA, INC.

By: Seth Maurer
Representative

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this 19TH day of OCTOBER, 2012, before the undersigned, a Notary Public in and for the County of CLARK, State of Nevada, personally appeared before me SETH MAURER, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

ROBYNE OUSMAN
Notary Public - State of Nevada
APPT. NO. 9451631
My App. Expires July 18, 2014

Robyne Ousman
NOTARY PUBLIC

CORE CONSTRUCTION

Relationships. Solutions. Value. ...Since 1937.

October 19, 2012

Gene Etcheverry, Director
Lander County Commission
315 S. Humboldt Street
Battle Mountain, NV 89820

Dear Gene,

Enclosed are two (2) "signed hard copies" of the Owner-CMAR Preconstruction Agreements; inclusive of CORE's Certificate of Insurance for the Lander County Courthouse/Administration Building project. Please return one (1) fully executed hard copy to CORE's Nevada Office located at 7150 Cascade Valley Court, Las Vegas, NV 89128 to the Attention of Seth Maurer within 7 working days from the date of this letter.

Respectfully,

Shamayne Rustebakke
Executive Assistant
CORE Construction, Inc.
602-774-3943

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09/21/2012

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

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

PRODUCER LIC #36-3066541 1-312-288-7700 Willis of Illinois, Inc. Willis Tower 233 South Wacker Drive, Suite 2000 Chicago, IL 60606	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED CORE Construction Services of Nevada, Inc. 7150 Cascade Valley Court Las Vegas, NV 89128	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: Arch Insurance Company INSURER B: Houston Casualty Company INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 29155678 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC	X	X	41PKG8864003	03/01/12	03/01/13	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 2,000,000 $ 500,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	X	X	41PKG8864003	03/01/12	03/01/13	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 2,000,000 $ $ $ $
B	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			H12XC5007700	03/01/12	03/01/13	EACH OCCURRENCE AGGREGATE $	$ 10,000,000 $ 10,000,000 $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	41WCI8863903	03/01/12	03/01/13	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

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

Precon Project #1219PC Lander County Courthouse/Administration Building, Battle Mountain, Nevada, Nevada State Route 305 South. Lander County is named as additional insured with respects to general liability. Coverage is primary & non-contributory with respects to general liability.

CERTIFICATE HOLDER

#1219PC Lander County Courthouse/
Administration Building
Lander County
Board of County Commissioners

315 S Humboldt St

Battle Mountain, NV 89820
USA

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Andrea Paris

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The ACORD name and logo are registered marks of ACORD

POLICY NUMBER: 41PKG8864003

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION YOU ARE REQUIRED TO ADD AS AN ADDITIONAL INSURED BY WRITTEN CONTRACT OR AGREEMENT. COVERAGE AFFORDED TO THESE ADDITIONAL INSURED PARTIES WILL BE PRIMARY TO, AND NON-CONTRIBUTORY WITH, ANY OTHER INSURANCE AVAILABLE TO THAT PERSON OR ORGANIZATION. THIS ENDORSEMENT DOES NOT APPLY TO PARTIES ADDED AS ADDITIONAL INSUREDS BY ANY OTHER ENDORSEMENT TO THIS POLICY.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© ISO Properties, Inc., 2004

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION YOU ARE REQUIRED TO ADD AS AN ADDITIONAL INSURED BY A WRITTEN CONTRACT OR AGREEMENT. COVERAGE AFFORDED TO THESE ADDITIONAL INSURED PARTIES WILL BE PRIMARY TO, AND NON-CONTRIBUTORY WITH, ANY OTHER INSURANCE AVAILABLE TO THAT PERSON OR ORGANIZATION. THIS ENDORSEMENT DOES NOT APPLY TO PARTIES ADDED AS ADDITIONAL INSUREDS BY ANY OTHER ENDORSEMENT TO THIS POLICY.	COMPLETED OPERATIONS AT LOCATIONS WHICH ARE THE SUBJECT OF WRITTEN CONTRACTS WITH "YOU" FOR LIABILITY ARISING OUT OF "YOUR WORK".
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

 © ISO Properties, Inc., 2004 □

SUPPLEMENT TO CERTIFICATE OF INSURANCE

DATE
09/21/2012

NAME OF INSURED: CORE Construction Services of Nevada, Inc.

SUPP (10/00)

LANDER COUNTY
COURTHOUSE/ADMINISTRATION BUILDING
OWNER-CMAR PRE-CONSTRUCTION AGREEMENT

This Owner-CMAR Pre-Construction Agreement, entered into as of the following date:

Execution Date: OCTOBER 11, 2012

between the County of Lander, Nevada as Owner, hereinafter referred to as "Owner", acting by and through:

LANDER COUNTY
Board of County Commissioners
315 South Humboldt Street
Battle Mountain, Nevada 89820
(775) 635-2885

and the Construction Manager at Risk, hereinafter referred to as "CMAR":

CORE Construction Services of Nevada, Inc.
7150 Cascade Valley Court
Las Vegas, NV 89128-4055
Telephone: 702-794-0550

ARTICLE 1
In consideration of the mutual covenants and conditions provided herein, the Owner does hereby employ the CMAR to perform Pre-Construction Services, and the CMAR agrees to expeditiously perform such services for the referenced project.

Project Name: LANDER COUNTY COURTHOUSE/ADMINISTRATION BUILDING
Project Location: Battle Mountain, Nevada, Nevada State Route 305 South
Owner Contract #: To Be Determined

ARTICLE 2
For furnishing all labor, materials, equipment, tools and services, and for performing everything required by this Agreement including, but not limited to, providing the required Guaranteed Maximum Price proposal, the Owner will pay and the CMAR shall receive as full compensation therefore, a total sum not to exceed: **$ 51,250.00**

Pre-Construction Services

ARTICLE 3
Time shall be of the essence of this Agreement and the CMAR agrees to satisfactorily complete all professional services and work within the time limits established in the incorporated documents. Failure to comply with the time schedule set forth in this Agreement shall be deemed to be adequate cause for termination of this Agreement.

ARTICLE 4

The scope of the CMAR's Pre-Construction Services includes, but is not limited to the following:

1. Assistance and participation in selection of Architect and building design team.
2. Participation in regularly scheduled design progress review meetings with the Architect and the Owner. The CMAR shall provide ongoing input with respect to constructability, construction cost, construction duration, sequence of construction, and construction means and methods.
3. Development of review comments, suggestions, and cost estimates at each of the stipulated phases of design (see Baseline Project Schedule in Request for Qualifications).
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8. Development of a GMP Proposal based on bids obtained from all necessary subcontractors after reviewing and coordinating the bid results with the Owner.
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The Owner and the CMAR mutually agree that the following Contract Documents are incorporated into and made a part of this Agreement by reference:

1. CMAR Request for Qualifications
2. CMAR Request for Proposals
3. CMAR General Conditions of the Contract

ARTICLE 6

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ARTICLE 10

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ARTICLE 12

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    (a) General Aggregate - $2,000,000
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    (c) Each Occurrence - $1,000,000

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ARTICLE 17
In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by the CMAR shall constitute a material breach of this Agreement

ARTICLE 18

The parties agree that the CMAR is an independent contractor and not a Lander County employee. CMAR's employees or contract personnel are not Lander County employees and are not entitled to benefits otherwise provided to employees of Lander County, including, but not limited to medical, dental, or other personal insurance, retirement benefits, unemployment benefits or liability or worker's compensation insurance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER

LANDER COUNTY BOARD OF COMMISSIONERS

By: _____
DEAN BULLOCK, Chair

STATE OF NEVADA)
) ss:
COUNTY OF LANDER)

On this _____ day of _____, 2012, before the undersigned, a Notary Public in and for the County of Lander, State of Nevada, personally appeared before me **DEAN BULLOCK**, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

_____
NOTARY PUBLIC

/ / / / /

/ / / / /

CMAR

CORE CONSTRUCTION SERVICES OF NEVADA, INC.

By: _____
Representative

STATE OF NEVADA)
) ss:
COUNTY OF _____)

On this _____ day of _____, 2012, before the undersigned, a Notary Public in and for the County of _____, State of Nevada, personally appeared before me _____, whose name is subscribed to the above agreement, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

_____
NOTARY PUBLIC

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 9

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding presentation by Mary Wherry, Deputy of Clinical Services, Nevada State Health Division, concerning county services provided by the State and other matters properly related thereto.

Public comment

Background:
Mary Wherry, Deputy of Clinical Services, Nevada State Health Division, will make a presentation to the Commission concerning county services provided by the State.

Recommended Action:
No specific action to be taken by the Commission was requested by the presenter or is being recommended on this item.

AGENDA REQUEST FORM

COMMISSIONER MEETING DATE: Oct. 11, 2012

NAME: Mary Wherry REPRESENTING: Nevada State Health

ADDRESS: 4150 Technology Wy C.C, NV Division

PHONE (H): _____ (W): 775-684-4018 (FAX): _____

WHICH NUMBER SHOULD WE CALL DURING NORMAL BUSINESS HOURS: Work

WHO WILL BE ATTENDING THE MEETING: Mary Wherry, Jo Malay, Joe Pollock

JOB TITLE: Deputy of Clinical Services, CHN Program Manager, EHS Program Manager

SPECIFIC REQUEST TO BE PLACED ON THE AGENDA: County Services provided by the State

WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE TO RESOLVE THIS ISSUE? none.

ARE THERE ANY COSTS ASSOCIATED WITH YOUR REQUEST: YES ___ NO X
AMOUNT: _____

HAS THIS ISSUE BEEN DISCUSSED AT A PRIOR COMMISSION MEETING? YES X NO ___
WHEN? 2 years ago

WILL YOU BE PRESENTING WRITTEN INFORMATION AT THE MEETING? YES X NO ___

HAVE YOU DISCUSSED THIS ISSUE WITH THE AFFECTED DEPT HEAD?: YES ___ NO ___
n/a

FOR REVIEW BY:

AIRPORT	___	DIST. ATTY.	___	SENIOR CTR.	___
AMBULANCE	___	EXE. DIR.	___	SHERIFF	___
ARGENTA J. P.	___	FIRE	___	SOCIAL SVC.	X
ASSESSOR	___	GOLF	___	TREASURER	___
AUSTIN J.P.	___	PARKS & REC.	___	W & S	___
CLERK	___	PUBLIC WORKS	___	OTHER	___
COMM. DEVT.	___	RECORDER	___		

THE EXECUTIVE DIRECTOR RESERVES THE RIGHT TO REJECT OR RECOMMEND TABLING ALL AGENDA REQUESTS FOR INSUFFICIENT INFORMATION.

ALL INFORMATION STATED IS CORRECT AND TRUE TO MY KNOWLEDGE.....

SRobbins DATE: 9/21/12

BOARD MEETS THE 2ND AND 4TH THURSDAY OF EACH MONTH
COMMISSION FAX (775) 635-5332

9

Community Health Nursing Program Lander County

Mary Wherry, Deputy of Clinical Services

Jo Malay, Program Manager

Phone: 775-684-4006

Services

- Children's Health
  - Vaccines for Children (VFC)
  - Well-Child Exams
  - WIC hemoglobins
  - Fluoride Varnish
- Women's Health
  - Cervical and Breast Cancer Screening
  - Mammogram and WIC referrals
  - STD/HIV testing, counseling and education
  - Reproductive Health
- Men's Health
  - Testicular Exams
  - Vasectomy Referrals
  - STD/HIV testing, counseling and education
  - Family Planning
- Preventive Health
  - Tuberculosis screening, case management, treatment
  - STD screening, education and counseling, treatment

Number of Patients Served

• Child Health Services	576
• Adult Wellness Services	264
• Tuberculosis Services	61
• STD Services	98
• Total Patients Served	1,260

Nevada State Health Division – Environmental Health Division

Overview of Regulatory Facility Types

Joe Pollock, R.E.H.S.
Public Health Engineer, Program Manager
Ph: 775-687-7537

Regulated Programs

Food Establishments
Temporary Food Establishments
Residential Septic Systems
Septic Tank Pumpers
Public Bathing Places
Recreation Vehicle Parks
Mass Gatherings
Schools/Institutions/Jails
Conservation Camps/Labor Camps
Drugs and Cosmetics
Truck Wrecks

Total Number of Food Establishments By County

County	Restaurants	Other Activities*	Total
Carson City	1	16	17
Churchill	71	105	176
Clark	73	93	166
Douglas	219	324	543
Elko	172	306	478
Esmeralda	7	15	22
Eureka	10	16	26
Humboldt	68	125	193
Lander	21	44	65
Lincoln	21	48	69
Lyon	111	185	296
Mineral	20	23	43
Nye	157	192	349
Pershing	18	31	49
Storey	28	55	83
Washoe	34	26	60
White Pine	39	60	99
Total	1069	1648	2717

**Other Activities: Bars, School Kitchens, Caterers, Markets, Mobile Food Vehicles, Bakeries, Warehouse, Food Processors*

Assessment and Fee Structure – County Reimbursement

County	Amount
Churchill	$36,936
Douglas	$122,790
Elko	$102,513
Esmeralda	$4,172
Eureka	$5,960
Humboldt	$4,316
Lander	$12,516
Lincoln	$13,112
Lyon	$61,985
Mineral	$9,536
Nye	$78,673
Pershing	$11,920
Storey	$17,584
White Pine	$25,628

Nevada State Health Division – Environmental Health Section

Overview of Activities 10/1/2011 to 10/1/2012

Cindy L. Ulch, REHS, Supervisor, Environmental Health Program

Your Lander County Battle Mountain Inspector is Ellen Kunz, REHST. Austin is covered currently by rotating Carson City based staff.

- **There were a total of 95 inspections completed in the last year:**
- **54 in restaurants, bars and caterers**
- **20 in markets, delis and processors**
- **1 in warehouses**
- **18 in schools and school kitchens**
- **1 in jails**
- **There were 26 food establishments that had at least one critical violation* and there were a total of 38 critical violations corrected on site, and 9 corrected with a compliance schedule and return visit or self attestation by the operator. When a critical violation is corrected on site it means that the inspector stays in the establishment and works with the operator until the critical violation is corrected and the risk to the public is eliminated.**
- **There have been no food borne illness outbreaks in Lander County in the last 12 months.**
- **The focus of our regulatory program is on compliance, public education, and interventions to protect the public.**
- **100% of the statutorily mandated inspections for Lander County were completed timely. This included twice per school year inspections on all of your schools and school kitchens.**

***A critical violation is one that has the potential to immediately cause illness or injury to the public. Examples of critical violations are improper food holding temperatures, improper reheating, cooling or cooking, ill employees or those using poor personal hygiene, bare hand contact with ready-to-eat food, rodent or insect infestations, unprotected exterior entrances, or unknown or illegal food sources.**

Assessment and Fee Structure – County Reimbursement

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Churchill	$36,936
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Nye	$78,673
Pershing	$11,920
Storey	$17,584
White Pine	$25,628

Nevada State Health Division – Environmental Health Division
Overview of Regulatory Facility Types

Joe Pollock, R.E.H.S.
Public Health Engineer, Program Manager
Ph: 775-687-7537

Regulated Programs

Food Establishments
Temporary Food Establishments
Residential Septic Systems
Septic Tank Pumpers
Public Bathing Places
Recreation Vehicle Parks
Mass Gatherings
Schools/Institutions/Jails
Conservation Camps/Labor Camps
Drugs and Cosmetics
Truck Wrecks

Total Number of Food Establishments By County

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Eureka	10	16	26
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Lander	21	44	65
Lincoln	21	48	69
Lyon	111	185	296
Mineral	20	23	43
Nye	157	192	349
Pershing	18	31	49
Storey	28	55	83
Washoe	34	26	60
White Pine	39	60	99
Total	1069	1648	2717

**Other Activities: Bars, School Kitchens, Caterers, Markets, Mobile Food Vehicles, Bakeries, Warehouse, Food Processors*

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 10

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding conditional acceptance of Shaw Engineering's letter of resignation and confirmation of continuing involvement of Shaw Engineering in the construction phase of the 5th Street Alleys Water and Sewer Replacement Project, the hydrogeology and exploratory well drilling phases of the Well No. 9 Project, the Austin Loneliest Highway Visitor Center Project and other matters properly related thereto.

Public comment.

Background:

The letter of resignation of Shaw Engineering as Lander County Engineer of Record and discussion regarding status of involvement of Shaw Engineering in current projects was brought before the Commission for consideration during the regular meeting held September 27, 2012. The decision to accept the resignation without continued involvement in ongoing projects is before the Commission for re-consideration.

Mr. Steve Brigman, Lander County Engineer, submitted the letter of resignation as Lander County Engineer of Record on behalf of Shaw Engineering on Wednesday, September 19, 2012. The letter states that the firm is willing to complete current assignments such as the 2012 paving projects, assisting with the construction phase of the 5th Street Alleyways water and Sewer Replacement Project and completion of the Well No. 9 project. The decision of the Commission on this item during the September 27, 2012 regular meeting was to accept the letter of resignation with no further involvement in Lander County projects.

It has since been revealed that without further involvement in certain ongoing projects, specifically; the construction phase of the 5th Street Alleys Water and Sewer Replacement Project, the hydrogeology and exploratory well drilling phases of the Well No. 9 Project and the coordination and construction oversight of the Austin Loneliest Highway Visitor Center Project, further progress would be severely hindered or halted.

Recommended Action:

It is recommended that the Commission accept the letter of resignation of Shaw Engineering as Lander County Engineer of Record **conditioned upon** completion of activities relative to the construction phase of the 5th Street Alleys Water and Sewer Replacement Project, the hydrogeology and exploratory well drilling phases of the Well No. 9 Project and the coordination and construction oversight of the Austin Loneliest Highway Visitor Center Project

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 11

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding approval/disapproval of Resolution No. 2012-21, a resolution between Nevada Department of Transportation (NDOT) and Lander County, consenting to a relinquishment and land transfer agreement that would transfer a portion of the road at US-50 at SR 305 adjacent to the Austin Cemetery to Lander County; and other matters properly related thereto.

Public comment.

Background:
Resolution No. 2012-21, a resolution between Nevada Department of Transportation (NDOT) and Lander County, consenting to a relinquishment and land transfer agreement that would transfer a portion of the road at US-50 at SR 305 adjacent to the Austin Cemetery to Lander County, is brought before the Commission for consideration.

This Resolution provides for acceptance by the County of the relinquishment and land transfer agreement of the right-of-way and transfer of land for the described portion of US Highway 50, currently held by the State of Nevada Department of Transportation (NDOT), for the purpose of maintaining the established boundary of the Austin Cemetery.

Recommended Action:
It is recommended that the Commission pass and adopt Resolution No. 2012-21, a resolution between Nevada Department of Transportation (NDOT) and Lander County, consenting to a relinquishment and land transfer agreement that would transfer a portion of the road at US-50 at SR 305 adjacent to the Austin Cemetery to Lander County.

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

BRIAN SANDOVAL
Governor

RUDY MALFABON, P.E., *Director*

October 1, 2012

In Reply Refer to:

GENE ETCHEVERRY EXECUTIVE DIRECTOR
LANDER COUNTY
315 S HUMBOLDT ST
BATTLE MOUNTAIN NV 89820

Resolution Consenting to Relinquishment and Land Transfer Agreement
Location: US-50 at SR-305
Parcel: U-050-LA-023.099 XS1
Control Section: LA-19
Surplus No.: SUR 11-20

Dear Mr. Etcheverry:

Enclosed please find an original and duplicate original of the State's document entitled "Resolution Consenting to Relinquishment and Land Transfer Agreement" with the appropriate location map labeled Exhibit "A", attached.

This consent is for the acceptance by the County for the road transfer of a portion of US-50 at SR-305, adjacent to the Austin Cemetery.

Please present this resolution at your next scheduled Board of County Commissioners meeting for review, approval and signatures. Upon your board approval please return the signed original and duplicate original documents to me at the following address:

Department of Transportation
Attn: Jessica Biggin
1263 S. Stewart St., Room 320
Carson City, NV 89712

Upon receipt of the signed documents, I will prepare the board package for presentation and approval at our Transportation Board of Directors meeting tentatively scheduled for December 10, 2012.

Thank you for your cooperation and assistance in this matter. If you have any questions or need any additional information, please do not hesitate to contact me at (775) 888-7384 or e-mail me at jbiggin@dot.state.nv.us.

Sincerely,

Jessica D. Biggin

Jessica D. Biggin
Staff Specialist

RECEIVED
OCT 04 2012
COUNTY COMMISSION

jb/jm
Enclosures
cc: H. Salazar, Manager, Right-of-Way Engineering

11

RESOLUTION NO. 2012-21

Of The Lander County Board of Commissioners

A RESOLUTION CONSENTING TO RELINQUISHMENT AND LAND TRANSFER AGREEMENT

WHEREAS, the State of Nevada, Department of Transportation, hereinafter called the Department, desires to relinquish a portion of US-50 lying within the County of Lander, State of Nevada, extending from Highway Engineer's Station "L" 105+70.30 P.O.T. to Highway Engineer's Station "L" 110+67.05 P.O.T, a distance of approximately 0.09 miles, said right-of-way is delineated and identified as Parcel U-050-LA-023.099 XS1 on EXHIBIT "A" attached hereto and made a part hereof; and

WHEREAS, the Board of County Commissioners of the County of Lander, State of Nevada, desires that the aforesaid portion of said highway be relinquished to the County of Lander; and

WHEREAS, the County of Lander has requested the relinquishment of aforesaid portion of highway for the purpose of maintaining the current boundary of the Austin Cemetery; and

WHEREAS, the County of Lander has agreed to accept the relinquishment of said right-of-way for the aforesaid portion of US-50 together with any and all revocable leases and licenses entered into between the Department and the adjoining owners for the multiple use of the right-of-way.

NOW THEREFORE BE IT RESOLVED, that the Board of County Commissioners of the County of Lander, does in consideration of the actions of the Department as set forth herein, hereby consent to the State of Nevada, Department of Transportation, Board of Directors, relinquishing to the County of Lander, that portion of US-50 lying within the County of Lander, State of Nevada, extending from Highway Engineers Station "L" 105+70.30 P.O.T. to Highway Engineer's Station "L" 110+67.05 P.O.T. a distance of approximately 0.09 miles, being all that right-of-way delineated and identified as Parcel U-050-LA-023.099 XS1 on EXHIBIT "A" attached hereto and made a part hereof.

The parties acknowledge that no relinquishment can occur until the Department of Transportation, Board of Directors approves of this relinquishment.

IN WITNESS WHEREOF the parties hereto acknowledge this resolution and property transfer agreement dated this 11th day of October, 2012.

THOSE VOTING AYE: Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

THOSE VOTING NAY:

THOSE ABSENT:

THOSE ABSTAINING:

DEAN BULLOCK, CHAIR
LANDER COUNTY BOARD OF COMMISSIONERS

ATTEST: _____
SADIE SULLIVAN
LANDER COUNTY CLERK

REVIEWED AND RECOMMENDED BY:

_____
Paul A. Saucedo, Chief Right-of-Way Agent

APPROVED FOR LEGALITY AND FORM:

_____
Dennis Gallagher, Chief
Deputy Attorney General/Chief Counsel

STATE SEAL

STATE OF NEVADA acting by and through its Department of Transportation

_____
Rudy Malfabon, P.E., Director

STATE OF NEVADA
CARSON CITY

On this _____ day of _____, 20___, personally appeared before me, the undersigned, a Notary Public in and for Carson City, State of Nevada, _____ personally known (or proved) to me to be the _____ Director of the Department of Transportation of the State of Nevada who subscribed to the above instrument for the Nevada Department of Transportation under authorization of Nevada Revised Statutes, Chapter 408.205; that he/she affirms that the seal affixed to said instrument is the seal of said Department; and that said instrument was executed for the Nevada Department of Transportation freely and voluntarily and for the uses and purposes therein mentioned.

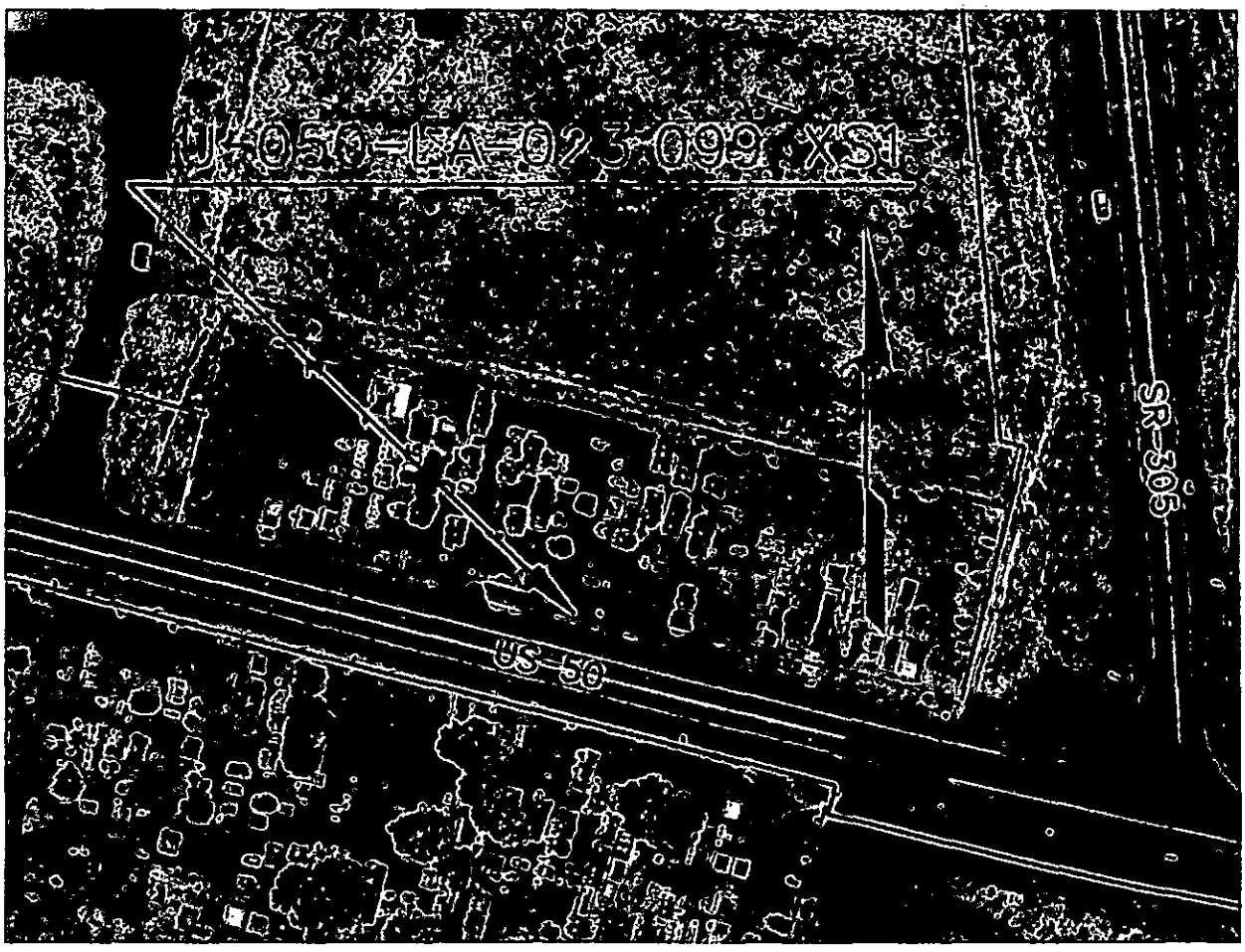
S
E
A
L

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____

R12-11

LOCATION MAP



SUR 11-20

DESCRIPTION: ALONG US-50 AT SR-305 (AUSTIN/BATTLE MOUNTAIN ROAD)

EXHIBIT A

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 12

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding presentation announcing the 2013 Community Development Block Grant (CDBG) funding cycle and call for applications to the program; and other matters properly related thereto.

Public comment.

Background:

Lander County Executive Director Gene Etcheverry will make a presentation to the Commission announcing the 2013 Community Development Block Grant (CDBG) funding cycle and call for applications to the program.

The States and Small Cities Community Development Block Grant (CDBG) Program has provided grant funding for over 2.7 Million dollars' worth of projects within Lander County over the past 30 years. The CDBG Program is federally-funded through Housing and Urban Development (HUD) with funding passed through and administered by the State of Nevada Governor's Office of Economic Development (GOED).

Applications for projects that meet one (or more) of the following CDBG eligible activities are solicited:

1) Project(s) to benefit 51 percent or more moderate- to low-income (LMI) persons
2) Project(s) to aid in the prevention or elimination of conditions of slums or blight
3) Project(s) to address a recent urgent community development need

Recommended Action:

It is recommended that the Commission accept the presentation announcing the 2013 Community Development Block Grant (CDBG) funding cycle and call for applications to the 2013 program funding cycle which meet one or more of the CDBG Program eligible activities.

Lander County Commissioners
315 South Humboldt Street
Battle Mountain, NV 89820
Tel: (775) 635-2885
Fax: (775) 635-5332

AGENDA REQUEST FORM

MEETING DATE REQUESTED: October 11, 2012

NAME: REPRESENTING:
ADDRESS: _____
PHONE (H): _____ (W) _____ FAX: _____
WHO WILL BE ATTENDING THE MEETING: Gene Etcheverry, Executive Director
JOB TITLE:

SPECIFIC REQUEST TO BE PLACED ON THE AGENDA: Discussion for possible action regarding presentation announcing the 2013 Community Development Block Grant (CDBG) funding cycle and call for applications to the program; and other matters properly related thereto.

WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE TO RESOLVE THIS ISSUE?

_____

ARE THERE ANY COSTS ASSOCIATED WITH YOUR REQUEST? ____YES __X__NO
AMOUNT: _____

HAS THIS ISSUE BEEN DISCUSSED AT A PRIOR COMMISSION MEETING? ____ YES ___NO

WILL YOU BE PRESENTING WRITTEN INFORMATION AT THE MEETING? ____ YES ___NO

HAVE YOU DISCUSSED THIS ISSUE WITH THE AFFECTED DEPT. HEAD? X YES ____NO

FOR REVIEW BY:

CLERK	_____	SHERIFF	_____	J. P.	_____
ASSESSOR	_____	SOCIAL SER.	_____	D. A.	_____
BUILDING	_____	PLANNING	_____	TREASURER	_____
AIRPORT	_____	RECORDER	_____	SWIM POOL	_____
R & B	_____	W & S	_____	CIVIC CEN	_____
PARKS	_____	GOLF	_____	FINANCE	_____
FAIR/REC	_____	EXE. DIR	_____	OTHER	_____

THE COMMISSION RESERVES THE RIGHT TO REJECT OR RECOMMEND TABLING ALL AGENDA REQUESTS FOR INSUFFICIENT INFORMATION.

ALL INFORMATION STATED IS CORRECT AND TRUE TO MY KNOWLEDGE …

_____
SIGNED DATE

12

Community Development Block Grant (CDBG)
"Summary of Past Performance"

YEAR	PROJECT	GRANT AWARD	STATUS	
1982	Austin Water System	125,680.00	Closed	
1982	Battle Mountain Water	56,320.00	Closed	
1983	Austin Water	106,238.00	Closed	
1983	Kingston Water Project	0.00	Closed	102,000 reverted
1984	Austin Water Project	33,590.00	Closed	
1987	Austin Senior Center	78,000.00	Closed	
1988	N. Battle Mt. Drain Study	30,000.00	Closed	
1988	Austin Ambulance	30,000.00	Closed	
1989	Battle Mountain Senior Center	120,000.00	Closed	
1991	Austin Courthouse Handicap Access	30,000.00	Closed	
1992	Kingston Water System	57,000.00	Closed	Date Closed 2/9/00
1993	Austin Water Upgrade	85,506.98	Closed	Deob. $1,493.02 12/94 Dat
1993	Battle Mt. Elevator	73,717.00	Closed	1996 Additional $43,717
1997	Austin Water Booster Station	99,700.00	Closed	Date Closed 1/26/01
1997	Kingston Water PER Master Plan	17,000.00	Closed	Date Closed 3/10/00
1998	Battle Mtn. Wastewater Engineering	25,000.00	Closed	Date Closed 3/20/01
1999	Battle Mountain Wastewater System 99/007	225,000.00	Closed	Date Closed 6/28/02
2000	Battle Mountain Wastewater System Design/Const 00/006	175,000.00	Closed	Date Closed 2/10/03
2001	Kingston Water System Improvements III 01/005	132,000.00	Closed	Date Closed 12/16/04
2002	Austin Historical Site Plan 02/021	20,000.00	closed	
2003	Austin Well & Booster Generators 03/009	22,750.00	Closed	Date Closed 11/20/20(
2004	Austin Museum Site Acquisition 04/008	80,000.00	Closed	Date Closed 12/21/20(
2006	Kingston Water System Rehabilitation 06/PF/007	217,000.00	closed	
2007	Austin Sewer Treatment Plant Relocation 07/PF/007	67,500.00	Closed	Date Closed 12/21/20(
2008	Austin Sewer Treatment Plant Relocation 08/PF/456	82,217.00	Closed	
2009	Austin Sewer Treatment Plant Relocation 09/PF/010	197,783.00	Closed	
		2,187,001.98		
1995	RIPCO-Super 8	0.00	Withdrawn	7/16/96 100,000.00
		0.00		
2000	Housing Rehabilitation 00/HS/003	50,000.00	Closed	Date Closed 3/8/05
2006	Housing Rehabilitation 06/HS/002	120,000.00	Closed	
2007	Housing Rehabilitation 07/HS/001	140,000.00	Closed	Date Closed 12/15/20(
2008	Housing Rehabilitation 08/HS/002	128,000.00	Closed	

Community Development Block Grant (CDBG)
"Summary of Past Performance"

		438,000.00		
1995	Gillman Springs Water	11,626.00	Closed	Deob. 3,374.00 8/98
1997	Capital Improvements Plan	19,036.01	Closed	Deob 963.99 8/99 D
1999	Battle Mtn. Industrial Site Analysis 99/PCB/014	36,228.63	Closed	Deob 3,771.37 Date
2003	Battle Mtn Detail Master Plan 03/PCB/007	55,063.00	Closed	Date Closed 12/15/20(
		121,953.64		
		0.00		
		2,746,955.62		

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 13

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding letter of resignation from Jerry Annis from the Lander County Public Land Use Advisory Planning Commission and other matters properly related thereto.

Public comment.

Background:
The letter of resignation from Jerry Annis from the Lander County Public Land Use Advisory Planning Commission is presented for Commission consideration.

Recommended Action:
It is recommended that the Commission accept the letter of resignation from Jerry Annis from the Lander County Public Land Use Advisory Planning Commission and request the Lander County Clerk to advertise the vacant position.

LANDER COUNTY

Gene Etcheverry <getcheverry@landercountynv.org>

FILED
2012 OCT -2 PM 2:49
SAUL SULLIVAN
DIST. COURT CLERK

Fw: pluac

1 message

Ray Williams < toiyabe1@peoplepc.com> Sun, Sep 30, 2012 at 7:48 PM
Reply-To: Ray Williams <toiyabe1@peoplepc.com>
To: Gene Etcheverry <getcheverry@landercountynv.org>

Note that I mentioned about Jerry Annis resignation that he sent to Frank. RayW
---- Original Message ----
From: Frank Whitman
To: Ray Williams
Sent: Friday, August 31, 2012 3:27 PM
Subject: Fwd: pluac

jerry did resign from the board.....corrie bispo of all people may join.....

Frank

Begin forwarded message:

From: Jerry Annis <jerryannis@hotmail.com>
Date: August 31, 2012 3:22:27 PM PDT
To: Frank Whitman <fbwnv@nvols.net>
Subject: RE: pluac

Thanks for the note Frank. Yes, I sent Gene Etcheverry a letter of resignation after the last article in the Bugle relating how poorly commissioner Bulloch treated BLM employees at the last commission meeting. It seems that unless the PLUAC is reminded that the Commission exists, they move forward without any input from the group that exists to advise them. That, coupled with the fact that I do not condone treating people poorly, led to my decision to leave the board.
I will continue to work towards making a positive contribution to natural resources in Lander county through the Conservation District Board. We will have a meeting sometime in October, and I will keep you posted.
Keep up the good work, and I will see you soon. Sincerely, Jerry

> From: fbwnv@nvols.net
> To: jerryannis@hotmail.com
> Subject: pluac
> Date: Thu, 30 Aug 2012 08:50:16 -0700
>
> herd you were gonna resign?.....whats up?.....our next meeting
> is sept 10th i belive. heads up, joys computer is down again.
> andlastly....what is the regular day the conservation group meets in
> b.M.
>
> thanks
>
> Frank Whitman

#13

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 14

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding appointment of Daun Bohall to the 2012-2013 Category 1 Lander County Debt Management Commission and other matters properly related thereto.

Public comment.

Background:
The letter from Mr. Daun M. Bohall requesting appointment to the Lander County Debt Management Commission is presented for Commission consideration.

Recommended Action:
It is recommended that the Commission accept the letter received from Mr. Bohall and appoint him to serve as a member of the Lander County Debt Management Commission.

October 3, 2012

RECEIVED
OCT 04 2012
LANDER CO. CLERK

Commissioners:

Please consider my request to be appointed to the Lander County Debt Management Commission.

Sincerely,

Daun M. Bohall

#14

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 15

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Correspondence/reports/potential upcoming agenda items.

Public comment.

Background:

Recommended Action:

LANDER COUNTY COMMISSION MEETING
October 11, 2012

AGENDA ITEM NO. 16

THE REQUESTED ACTION OF THE LANDER COUNTY COMMISSION IS:
Discussion for possible action regarding review of the Employment Agreement for Gene Etcheverry, the Lander County Executive Director, to determine whether it should be continued, terminated, or otherwise revised.

Public comment.

Background:

Recommended Action:

AGENDA

LANDER COUNTY COMMISSIONERS MEETING
TOWN BOARD OF BATTLE MOUNTAIN & AUSTIN
BOARD OF COUNTY HIGHWAY COMMISSIONERS

OCTOBER 11, 2012

LANDER COUNTY COURTHOUSE
COMMISSIONERS' CHAMBER
315 SOUTH HUMBOLDT STREET
BATTLE MOUNTAIN, NEVADA

Also Via Teleconference At

AUSTIN COURTHOUSE
COMMISSION OFFICE
122 MAIN STREET
AUSTIN, NEVADA

9:00 A.M. Call to Order
Pledge of Allegiance
*Discussion for possible action regarding approval of Agenda Notice.
*Discussion for possible action regarding approval and acceptance of Minutes of:
SEPTEMBER 27, 2012 – REGULAR SESSION

Commissioner Reports on meetings, conferences and seminars attended.
Staff Reports on meetings, conferences and seminars attended.
*Discussion for possible action regarding Payment of the Bills.
*Discussion for possible action regarding Payroll Change Requests.

Public Comment - For non-agendized items only. *Persons are invited to submit comments in writing and/or attend and make comments on any agenda item at the Board meeting. All public comment may be limited to three (3) minutes per person, at the discretion of the Board. Reasonable restrictions may be placed on public comments based upon time, place and manner, but public comment based upon viewpoint may not be restricted.*

FINANCE

*(1) Discussion for possible action regarding budget review, contracts, financial update and other matters properly relating thereto.

Public comment.

ROAD AND BRIDGE SOUTH

*(2) Discussion and update on Road and Bridge South projects and other matters properly related thereto.

Public comment.

ROAD AND BRIDGE NORTH

"Lander County is an Equal Opportunity Provider"

*(3) Discussion and update on Road and Bridge North projects and other matters properly related thereto.

Public comment.

PUBLIC WORKS

*(4) Discussion and update on Public Works projects and other matters properly related thereto.

Public comment.

COMMISSIONERS

*(5) Discussion for possible action regarding approval/disapproval of agreement between Lander County and Tholl Fence, Inc., in the amount of $140,501.16, for the Battle Mountain Raceway Fencing Project and other matters properly related thereto.

Public comment.

*(6) Discussion for possible action regarding approval/disapproval of agreement between Lander County and Nelson Electric, in the amount of $418,000.00, for the Battle Mountain Raceway Lighting Project and other matters properly related thereto.

Public comment.

*(7) Discussion for possible action regarding County Commission meeting schedule for the months of November and December 2012 and other matters properly related thereto.

Public comment.

*(8) Discussion for possible action regarding approval/disapproval of the Pre-Construction Services Agreement between Lander County and CORE for Construction Manager at Risk (CMAR) services for the pre-construction phase of the Lander County Courthouse/Administration Building project and other matters properly related thereto.

Public comment.

*(9) Discussion for possible action regarding presentation by Mary Wherry, Deputy of Clinical Services, Nevada State Health Division, concerning county services provided by the State and other matters properly related thereto.

Public comment.

*(10) Discussion for possible action regarding conditional acceptance of Shaw Engineering's letter of resignation and confirmation of continuing involvement of Shaw Engineering in the construction phase of the 5th Street Alleys Water and Sewer Replacement Project, the hydrogeology and exploratory well

drilling phases of the Well No. 9 Project, the Austin Loneliest Highway Visitor Center Project and other matters properly related thereto.

Public comment.

*~~(11)~~ Discussion for possible action regarding approval/disapproval of Resolution No. 2012-21, a resolution between Nevada Department of Transportation (NDOT) and Lander County, consenting to a relinquishment and land transfer agreement that would transfer a portion of the road at US-50 at SR 305 adjacent to the Austin Cemetery to Lander County; and other matters properly related thereto.

Public comment.

EXECUTIVE DIRECTOR

*~~(12)~~ Discussion for possible action regarding presentation announcing the 2013 Community Development Block Grant (CDBG) funding cycle and call for applications to the program; and other matters properly related thereto.

Public comment.

*~~(13)~~ Discussion for possible action regarding letter of resignation from Jerry Annis from the Lander County Public Land Use Advisory Planning Commission and other matters properly related thereto.

Public comment.

BOARD APPOINTMENTS

*~~(14)~~ Discussion for possible action regarding appointment of Daun Bohall to the 2012-2013 Category 1 Lander County Debt Management Commission and other matters properly related thereto.

Public comment.

COMMISSIONERS

*~~(15)~~ Correspondence/reports/potential upcoming agenda items.

Public comment.

12:00 P.M. Recess for Lunch

1:30 P.M. ***COMMISSIONERS***

*(16) Discussion for possible action regarding review of the Employment Agreement for Gene Etcheverry, the Lander County Executive Director, to determine whether it should be continued, terminated, or otherwise revised.

Public comment.

Public Comment – For non-agendized items only. *Persons are invited to submit comments in writing and/or attend and make comments on any agenda item at the Board meeting. All public comment may be limited to three (3) minutes per person, at the discretion of the Board.*

Reasonable restrictions may be placed on public comments based upon time, place and manner, but public comment based upon viewpoint may not be restricted.

ADJOURN

*Denotes discussion/action item with information provided at the meeting. Action may be taken according to the "Nevada Open Meeting Law Manual" via a telephone conference call in which a quorum of the Board members is simultaneously linked to one another telephonically.

NOTE: TIMES ARE APPROXIMATE

This is the tentative schedule for the meeting. The Board reserves the right to take items out of order to accomplish business in the most efficient manner. The Board may combine two or more agenda items for consideration. The Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

Notice to persons with disabilities: Members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the County Clerk in writing at the Courthouse, 315 S. Humboldt Street, Battle Mountain, Nevada 89820, or call (775) 635-5738 at least one day in advance of the meeting.

AFFIDAVIT OF POSTING

State of Nevada)
) ss.
County of Lander)

Cathy Myers, Deputy Clerk, of said Lander County, Nevada, being duly sworn, says, that on the 5th day of October 2012, she posted a notice, of which the attached is a copy, at the following places: 1) Battle Mountain Civic Center, 2) Battle Mountain Post Office, 3) Lander County Courthouse and 4) Swackhamer's Plaza Bulletin Board, in said Lander County, where proceedings are pending.

CATHY MYERS, DEPUTY CLERK Cathy Myers

Subscribed and sworn to before me this 5th day of October 2012.

WITNESS Mary Ann Lacy

Payment of Bills

October 11, 2012

ROGENE HILL
Lander County Finance Director

ACKNOWLEDGEMENT OF REVIEW & AUTHORIZATION — DATE

Dean Bullock — Chairman — 10/11/12
Bill Sa — Commissioner — 10-11-12
Doug R. Mason — Commissioner — 10/11/12
Ray H. Mullins Jr — Commissioner — 10/11/12
Commissioner

LANDER COUNTY COMMISSION MEETING

October 11, 2012

APPROVE / DISAPPROVE

SUBMITTED EXPENDITURES IN THE AMOUNT OF $ 1,565,335.29

From Check #42152 thru #42250

315 South Humboldt Street ⋖ ⋗ Battle Mountain NV 89820
Phone: (775) 635-2885 ⋖ ⋗ Fax: (775) 635-5332

COUNTY ~~OF~~ LANDER

RIVERTON ELKO SUPERSTORE

DATE	INVOICE	AMOUNT	REMARKS
09/27/12	2012 CHEVY EQUINOX	34,025.08	9/10/12/ ASSESSOR CAR

CHECK NO 42119 $34,025.08 **

COUNTY OF LANDER
315 SOUTH HUMBOLDT STREET
BATTLE MOUNTAIN, NV 89820
(775) 635-2573

WELLS FARGO BANK
BATTLE MOUNTAIN, NV 89820
GENERAL ACCOUNT

No. 042119

94-7074
3212

VOID IF NOT CASHED WITHIN 90 DAYS

PAY TO THE ORDER OF

RIVERTON ELKO SUPERSTORE

DATE	CHECK NO.	AMOUNT
09/27/12 **VOID**	42119 **VOID**	$34,025.08 **VOID**

VOID****34,025DOLLARS AND08CENTS***

RIVERTON ELKO SUPERSTORE
3750 IDAHO STREET

ELKO NV 89801

NON-NEGOTIABLE

	Total	**34,025.08**

Charge to Account # 029-000-54010 FA-24

Vender # _____

APPROVED:

Elected Official or County Manager Signature

Department Head or other Authorized Signature

FINANCE DEPARTMENT ONLY
Entered Computer _____

RECEIVED
SEP 11 2012
L.C. FINANCE

ROGENE HILL
Lander County Finance Director

ACKNOWLEDGEMENT OF REVIEW & AUTHORIZATION — DATE

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

LANDER COUNTY COMMISSION MEETING

October 11, 2012

APPROVE / DISAPPROVE

SUBMITTED EXPENDITURES IN THE AMOUNT OF $ 1,565,335.29

From Check #42152 thru #42250

315 South Humboldt Street ≺ ≻ Battle Mountain NV 89820
Phone: (775) 635-2885 ≺ ≻ Fax: (775) 635-5332

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
42152	ADVANCED DATA SYSTEMS INC						
		10/1/12/COMP ESPENSE,		10/11/12	71722	109.49	
							109.49
42153	AMPED-OUT-ELECTRICAL, LLC						
		9/14/12/ NEWELECGATEOPENR		10/11/12	71724	1,291.82	
		10/4/12AG EXT OFF		10/11/12	71727	189.37	
							1,481.19
42154	ATLAS TOWING & RECOVERY						
		9/20/12/ 207 FORD/SEWER		10/11/12	71653	300.00	
		9/27/12/ CAR WASHS,R&B		10/11/12	71653	13.25	
							313.25
42155	B M AUTO SUPPLY,INC						
		9/5/12/ALTERNATOR/VFD		10/11/12	71655	315.00	
		9/13/12/CLUTCHSET A R&B		10/11/12	71655	483.65	
		9/19/12 PIN,TOWELS,A R&B		10/11/12	71655	59.92	
		9/19/12/COUPLER,FIL,ARB		10/11/12	71655	23.60	
		9/20/12/FILTERS,AR&B		10/11/12	71655	32.90	
		9/21/12/TIEDOWN, W&S		10/11/12	71655	38.60	
		9/21/12/BUTT CONN		10/11/12	71655	9.95	
		9/24/12/CUTOFFWHEEL,R&B		10/11/12	71655	16.99	
		9/24/12/ OIL,AR&B		10/11/12	71655	224.85	
		9/24/12/AIRCRAFT,A R&B		10/11/12	71655	10.80	
		9/24/12/TOOLBOX,DASHMAT		10/11/12	71655	347.87	
		9/25/12/FILT,R&B		10/11/12	71655	48.99	
		9/25/12/RAGS,R&B		10/11/12	71655	22.99	
		9/25/12/OIL		10/11/12	71655	58.68	
		9/25/12/OIL FIL/R&B		10/11/12	71655	17.25	
		9/25/12/ FITLTERS ARB		10/11/12	71655	181.44	
		9/25/12/SUPPLIES/LNDFIL		10/11/12	71655	26.36	
		9/25/12/ OIL A R&B		10/11/12	71655	850.00	
		9/25/12/WEED KILLER AR&B		10/11/12	71655	399.95	
		9/25/12/WEED KILLER AR&B		10/11/12	71655	416.93	
		9/26/12/FUEL FIL,A R&B		10/11/12	71655	12.39	
		9/26/12/HOSE,A R&B		10/11/12	71655	36.49	
		9/26/12/BALL MOUNT/R&B		10/11/12	71655	28.42	
		9/27/12/FILS,A R&B		10/11/12	71655	82.50	
		9/27/12/SCOCKET/		10/11/12	71655	56.71	
		9/27/12/RECEP.		10/11/12	71655	27.72	
		9/27/12/JB WELD/R&B		10/11/12	71655	10.16	
		9/27/12/OIL FIL		10/11/12	71655	18.49	
		9/28/12/AIR FIL		10/11/12	71655	28.94	
		9/28/12HAND TRUCK		10/11/12	71655	216.70	
		9/28/12RAIN X		10/11/12	71655	83.28	
		9/28/12/WIPER,HOLSTER,BLD		10/11/12	71655	34.12	
		10/02/12/HITCH KIT/W&S		10/11/12	71655	198.18	
							4,420.82
42156	B M CLINIC						
		8/21/12/ M JOHNSON		10/11/12	71656	105.00	
		8/21/12/PHYS LOWE		10/11/12	71656	105.00	
		8/20/12/ PHYS ,J ROCHESTE		10/11/12	71656	105.00	
		8/6/12, PHYS EXM,A RODRIG		10/11/12	71656	105.00	
		8/28/12/ J JONES		10/11/12	71656	105.00	
		8/20/12/ PHYS WOOD		10/11/12	71656	105.00	
		8/29/12/ A DAY		10/11/12	71656	105.00	
							735.00
42157	B.M. FAMILY RESOURCE CTR						

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
		6/10/12/CPR/AED/TRNG/POOL		10/11/12	71657	525.00	
							525.00
42158	BELL FIRE INC.						
		9/25/12/EXTINGSERVC R&B		10/11/12	71658	192.52	
							192.52
42159	CYNTHIA BENSON						
		9/20-21/12TRNG CARSON		10/11/12	71659	56.00	
							56.00
42160	JANE BIANCHI						
		9/20-21/12CARSONTRNG,FIN		10/11/12	71716	56.00	
							56.00
42161	TINA MARIE BISIAUX						
		9/25/12/DRG TESTING,DRGCT		10/11/12	71660	80.00	
							80.00
42162	BONANZA PRODUCE CO						
		9/6/12/PRODUCE,SR CTR		10/11/12	71661	27.40	
		9/6/12/PRODUCE,SR CTR		10/11/12	71661	28.55	
		9/20/12/PRODUCE SR CTR		10/11/12	71661	20.06	
		9/20/12/PRODUCE SR CTR		10/11/12	71661	39.64	
							115.65
42163	STACY BROOKS						
		9/20/12/POBXRENT SR CTR		10/11/12	71662	44.00	
		SEPT 2012,FOOD SR CTR		10/11/12	71662	33.37	
		27123,SUPPLIES SR CTR		10/11/12	71662	7.48	
		9/2012 POSTAGE SR CTR		10/11/12	71662	7.15	
							92.00
42164	BURNS FUNERAL HOME						
		INDIGENT CREMATION,		10/11/12	71663	973.00	
							973.00
42165	CAPITAL CONTROL SYSTEMS						
		9/21/12/COMM MAINT,SO		10/11/12	71742	2,808.40	
							2,808.40
42166	CARSON DODGE CHRYSLER INC						
		7/20/12/REPRSDODGEDURANGO		10/11/12	71743	1,626.50	
							1,626.50
42167	CASHMAN EQUIPMENT						
		9/27/12/TRK PRTS, A R&B		10/11/12	71664	194.28	
		10/2/12/TRACKLOADER,R&B		10/11/12	71664	73,048.00	
							73,242.28
42168	ROBERTO CHAVIRA JR.						
		9/26/12,RMVL TREES,ELQST		10/11/12	71665	2,280.00	
							2,280.00
42169	DAVID J. CORMANY						
		9/24/12/MILLS		10/11/12	71666	515.29	
		9/24/12/ FARNSWORTH		10/11/12	71666	373.69	
		9/24/12/DORMAN		10/11/12	71666	450.07	
		9/25/12/PLNS RETURNED		10/11/12	71666	8.15	
							1,347.20
42170	COURSON EQUIPMENT CO. INC						
		9/27/12/UNION,HOSE,R&B		10/11/12	71667	120.60	
							120.60
42171	CRIMSON IMAGING SUPPLIES						
		9/19/12/INKCART.R&B		10/11/12	71668	450.00	
							450.00
42172	DAKOTA DIESEL REPAIR						
		8/21/12/REPR AC BUS,SRCTR		10/11/12	71669	112.50	

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
							112.50
42173	DEEP SURPLUS						
		9/20/12/CAT 5 CABLE		10/11/12	71750	521.08	
							521.08
42174	DELBERT L. CORNELLA						
		10/3/12/ LIB LIGHTS		10/11/12	71717	574.73	
		10/3/12/EXT OFF MENSRM		10/11/12	71717	37.41	
		10/3/12/EXT OFF,BULBS		10/11/12	71717	60.32	
		10/3/12/CRT HSE TOILET		10/11/12	71717	74.09	
		10/3/12/LRN CTR BULBS		10/11/12	71717	105.66	
		10/3/12/GLF CRS TOILET		10/11/12	71717	74.63	
		10/3/12/GLF CRS TOILET		10/11/12	71717	180.86	
		10/3/12/LEAK PRESCHOOL		10/11/12	71717	3,989.79	
		10/3/12/JUV OFFICE DOOR		10/11/12	71717	65.00	
		10/3/12/ SR CTR BULBS		10/11/12	71717	120.65	
		10/3/12/AA OFF TOILET		10/11/12	71717	126.48	
							5,409.62
42175	NV DEPT. OF PUBLIC SAFETY						
		10/1/12/PSI,SO		10/11/12	71744	345.50	
							345.50
42176	DRAKE ROSE & ASSOCIATES,						
		9/30/12 PRO SERVICE		10/11/12	71753	24,140.00	
		10/03/12 PROF SERVC		10/11/12	71753	3,120.00	
							27,260.00
42177	ZACHARY DURICK						
		10/28/12/ EMD TRNG,SO		10/11/12	71751	380.70	
							380.70
42178	ELKO COUNTY LIBRARY						
		10/1/12 2NDQRT/LIB		10/11/12	71670	26,856.75	
							26,856.75
42179	ENGS MOTOR TRUCK CO.						
		9/11/12/ BRK CLNR,R&B		10/11/12	71671	59.76	
		9/12/12/ HEATSHRINK,R&B		10/11/12	71671	40.67	
		9/17/12/CONNECTORS,TUBING		10/11/12	71671	370.00	
		9/18/12/SHOE KIT, R&B		10/11/12	71671	86.50	
		9/24/12/ HOSE,R&B		10/11/12	71671	144.80	
		9/25/12/SHIFT BOOT		10/11/12	71671	28.97	
							730.70
42180	ETCHEVERRYS FOOD TOWN						
		9/1/12/ FOOD SUPPLIES,SR		10/11/12	71672	22.96	
		9/1/12/ FOOD SUPPLIES,SR		10/11/12	71672	15.31	
		9/26/12/SUPPLIES, W&S		10/11/12	71672	21.95	
							60.22
42181	FERGUSON ENTERPRISES INC						
		9/19/12/COUPLRS,GRIPBALL		10/11/12	71673	3,811.48	
		9/20/12/REP KIT,PARKS		10/11/12	71673	73.01	
		9/20/12/WIDE COUPLRS,W&S		10/11/12	71673	1,742.14	
							5,626.63
42182	FULL IDENTITY.COM						
		10/4/12/ID CARD,DA		10/11/12	71728	17.50	
							17.50
42183	GEM ST. PAPER & SUPPLY CO						
		7/18/12/CREDIT,SR CTR		10/11/12	71674	9.95-	
		7/18/12/CREDIT,SR CTR		10/11/12	71674	6.63-	
		9/13/12 KIT SUPP, SR CTR3		10/11/12	71674	79.74	
		9/13/12 KIT SUPP, SR CTR3		10/11/12	71674	53.16	

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
		9/20/12/KIT SUPP, SR CTR3		10/11/12	71674	39.54	
		9/20/12/KIT SUPP, SR CTR3		10/11/12	71674	26.36	
		9/27/12/ KIT SUPP, SR CTR		10/11/12	71674	46.72	
		9/27/12/ KIT SUPP, SR CTR		10/11/12	71674	31.14	
							260.08
42184	GREYHOUND LINES, INC						
		9/17/12/INDIGENT YR FEES		10/11/12	71675	112.00	
		9/17/12/INDIGENT SERVC		10/11/12	71675	65.00	
							177.00
42185	H.E. HUNEWILL CONST.CO.,						
		10/3/12/FY12-13 OVERLAY		10/11/12	71723	1,235,002.56	
							1,235,002.56
42186	ISELA HANEY						
		10/2/12/WESTHILLSTRANSPRT		10/11/12	71726	225.00	
							225.00
42187	RICHARD HARDIN						
		CONCRETE WORK, A R&B		10/11/12	71739	412.50	
		CONCRETE WORK, A R&B		10/11/12	71739	412.50	
							825.00
42188	THEODORE C. HERRERA						
		PUBLIC DEFENDER		10/11/12	71729	3,541.50	
							3,541.50
42189	HIGH DESERT ENGINEERING						
		10/2/12//SURVEY,AUSTIN		10/11/12	71730	1,585.00	
							1,585.00
42190	HUGHES NETWORK SYSTEMS,						
		9/20/12/ INTERNET,A R&B		10/11/12	71725	83.73	
							83.73
42191	INLAND SUPPLY CO INC						
		9/21/12/GLSS CLNR,SO		10/11/12	71676	148.10	
		9/21/12/AIR FRSHNR,R&B		10/11/12	71676	60.12	
		9/20/12/FLOORCLNR,,R&B		10/11/12	71676	14.82	
		9/24/12/CARPTCLNSUPP,SO		10/11/12	71676	80.00	
		9/25/12/ SUPPLIES/R&B		10/11/12	71676	121.05	
		9/28/12/POWERSPRAYER SO		10/11/12	71676	4.30	
							428.39
42192	IRON MOUNTAIN						
		9/30/12/ RECORDER		10/11/12	71731	150.12	
							150.12
42193	J W WELDING SUPPLY						
		9/30/12/ OXYG, AUST AMBUL		10/11/12	71718	119.25	
							119.25
42194	J-U-B ENGINEERS, INC.						
		10/1/12 BM APRON RECONST		10/11/12	71719	4,201.37	
							4,201.37
42195	JOHN DAVIS TRUCKING,INC.						
		9/24/12/ SAND, PARKS		10/11/12	71677	350.00	
							350.00
42196	JNA CONSULTING						
		10/2/12/DEBT MANAGEMENT		10/11/12	71754	600.00	
							600.00
42197	JAY C WINROD						
		9/6/12/CLNSUPPLIES/AR&B		10/11/12	71679	15.99	
		9/6/12/CLN SUPP,SR CTR		10/11/12	71679	36.92	
		9/13/12/ TRAPS, A R&B		10/11/12	71679	19.94	
		9/24/12/SAWBLDS,HICHPINS		10/11/12	71679	152.48	

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
		9/25/12/REDIMIX,RAKE		10/11/12	71679	188.86	
		9/25/12/EXTCORD,SQUARE,AR		10/11/12	71679	68.43	
		9/25/12GALVBUSHING,HEXSET		10/11/12	71679	120.19	
		9/25/12/RATCHET STRP,BITS		10/11/12	71679	131.05	
		9/25/12SCREWEXTRCR,SUPP,A		10/11/12	71679	155.63	
		10/16/12GALV PRTS,ARB		10/11/12	71679	87.77	
		10/16/12/GALVPRTS,BALVALV		10/11/12	71679	96.62	
		9/27/12/GALV PRTS,SUPPL		10/11/12	71679	59.72	
		9/27/12/GALV PRTS,SUPPL		10/11/12	71679	119.19	
		9/27/12AXE,SHOVEL, AR&B		10/11/12	71679	69.47	
							1,322.26
42198	JOSE JESUS LEON QUINTANA						
		9/21/12/ CLNUP,BLDG		10/11/12	71678	800.00	
							800.00
42199	MELISSA LEWIS						
		10/2/12/ TRANSPORT,		10/11/12	71720	225.00	
							225.00
42200	LEXISNEXIS RISK DATA MGMT						
		9/30/12/ RESEARCH,A JC		10/11/12	71749	100.00	
							100.00
42201	MILLS ENTERPRISES, INC.						
		9/5/12 MEDS INMATE		10/11/12	71745	48.56	
		9/6/12/MEDS INMATE		10/11/12	71745	10.00	
		9/10/12/MED INMATE		10/11/12	71745	29.71	
		9/11/12/MEDS INMATE		10/11/12	71745	18.00	
		9/11/12 MEDS INMATE		10/11/12	71745	31.00	
		9/18/12/MEDS INMATE		10/11/12	71745	74.82	
		9/18/12/MEDS INMATE		10/11/12	71745	24.62	
		9/20/12/MEDS INMATE		10/11/12	71745	18.00	
		9/22/12 MEDS INMATE		10/11/12	71745	13.82	
		9/22/12/MEDS INMATE		10/11/12	71745	24.62	
		9/24/12/MEDS INMATE		10/11/12	71745	10.00	
		9/25/12/MEDS INMATE		10/11/12	71745	28.89	
		9/29/12/MEDS INMATE		10/11/12	71745	10.93	
		9/26/12 CREDIT		10/11/12	71745	30.75-	
		9/26/12 CREDIT		10/11/12	71745	4.20-	
							308.02
42202	MUNICIPAL CODE CORP.						
		9/21/12/SUPPLEMENTCODEPGS		10/11/12	71680	429.30	
							429.30
42203	NACO						
		ID 320150/DUES/CLERK		10/11/12	71683	400.00	
							400.00
42204	NADDI						
		9/25/12/RX DROP BOX,SO		10/11/12	71684	800.00	
							800.00
42205	NEVADA BLUE LTD.						
		9/5/12/SUPPLIES/RECORDER		10/11/12	71732	136.79	
							136.79
42206	NEWMAN TRAFFIC SIGNS						
		9/27/12/EC FLIM,R&B		10/11/12	71681	60.87	
		9/17/12/SIGHNS,R&B		10/11/12	71681	192.52	
							253.39
42207	NORTHEAST WISCONSIN TECH						
		8/19/12 RECERTLOWECAMPQUI		10/11/12	71740	525.00	
							525.00

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
42208	NV FOOD DISTRIBUTION PRGM						
		9/17/12/RAW FOOD,SR CTR		10/11/12	71682	9.00	
		9/17/12/RAW FOOD,SR CTR		10/11/12	71682	6.00	
							15.00
42209	O.P.I.						
		8/4/12/COPIES/SO AUST		10/11/12	71685	32.59	
		8/4/12/COPIES/SO AUST		10/11/12	71685	32.59	
		7/5/12/ COPIES,SO ADMIN		10/11/12	71685	23.99	
		7/19/12 COPIES/ACJ		10/11/12	71685	64.81	
		7/23/12/ COPIES/TREAS		10/11/12	71685	91.39	
		9/18/12/COPIES A R&B		10/11/12	71685	23.99	
		9/24/12/COPIER,FIN		10/11/12	71685	10,857.00	
		9/26/12/COPIES A COMM		10/11/12	71741	29.99	
		9/26/12/COPIES A COMM		10/11/12	71741	29.99	
							11,186.34
42210	KIMBERLY PARKER						
		10/28/12 EMD TRNG,SO		10/11/12	71752	380.70	
							380.70
42211	SMS COMPUTING, INC.						
		9/17/12/MAINGEAR PC,ASSES		10/11/12	71686	4,000.00	
							4,000.00
42212	PITNEY BOWES						
		10/2/12/RENTAL,DA		10/11/12	71689	180.00	
							180.00
42213	PITNEY BOWES GLOBAL						
		9/13/12/RENTAL,TREAS		10/11/12	71688	330.00	
							330.00
42214	PRINT SOLUTIONS, INC.						
		9/25/12/BILL FORMS,SEWER		10/11/12	71690	952.34	
							952.34
42215	PUBLIC AGENCY TRAINING						
		9/28/12/CAMPBELL,G,TRNG		10/11/12	71746	450.00	
							450.00
42216	QUILL CORP						
		9/13/12/FILES/ BLDG		10/11/12	71691	43.19	
		9/13/12/STAMP,DA		10/11/12	71691	30.99	
		9/17/12/TABS CLERK		10/11/12	71691	37.16	
		9/19/12/FILES, BLDG		10/11/12	71691	43.19	
		9/19/12/BULLETIN BOARD/CL		10/11/12	71691	64.99	
		9/19/12/DVD SUPPLIES,R&B		10/11/12	71691	40.98	
		9/19/12/SHREDDER/CLK		10/11/12	71691	199.99	
		9/19/12/FILES, BLDG		10/11/12	71691	43.19	
		9/20/12/ MULTIFOLD/BLDG		10/11/12	71691	89.97	
		9/19/12/CASSETTES,COMM		10/11/12	71691	6.45	
		9/26/12/HPINKSUPPLIES,R&B		10/11/12	71691	114.93	
							715.03
42217	R&R PRODUCTS, INC.						
		9/18/12/SPLICE KIT/GLF		10/11/12	71692	99.55	
							99.55
42218	RELIABLE OFFICE SUPPLIES						
		9/14/12/ FEES,POOL		10/11/12	71693	3.40	
							3.40
42219	RESERVE ACCOUNT						
		POSTAGE FOR TREASURERS		10/11/12	71694	8,000.00	
							8,000.00
42220	GUY ROCK						

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
		9/24/12/ INK WALMART,		10/11/12	71695	46.94	
		10/1/12/INSPECTIONS		10/11/12	71695	218.67	
							265.61
42221	ROYAL HARDWARE						
		9/8/12/GLVS,MOSQ CTRL		10/11/12	71696	31.09	
		9/14/12/STRAP,PVC,BLDG		10/11/12	71696	2.83	
		9/15/12/LVS,MOSQ CTRL		10/11/12	71696	25.89	
		9/20/12/ADAPTR,UNION,SO		10/11/12	71696	23.98	
		9/20/12/CPLR,SO		10/11/12	71696	2.29	
		9/22/12/SPRAYER,SUPP		10/11/12	71696	5.28	
							91.36
42222	S AND G ELECTRICAL MOTOR						
		9/21/12/ SOFT START PRT		10/11/12	71697	4,750.00	
							4,750.00
42223	SALT LAKE WHOLESALE						
		10/1/12/AMMO SO		10/11/12	71747	2,146.10	
							2,146.10
42224	WILLIAM E. SCHAEFFER						
		CONTRACT PYMNT		10/11/12	71733	1,125.00	
							1,125.00
42225	SIERRA PACIFIC TURF						
		9/27/12/SWINGJOINT,GLF		10/11/12	71699	75.00	
		9/27/12/ROTORS/GLF		10/11/12	71699	321.65	
		8/27/12/ CREDIT		10/11/12	71699	193.21-	
							203.44
42226	DESMOND SKEATH						
		PARKS CONTRACT PMT		10/11/12	71734	1,191.50	
							1,191.50
42227	DESMOND SKEATH						
		9/24/12/NEW DECK CRTHSE		10/11/12	71735	1,400.00	
		9/24/12/REPRS SRCTR DECK		10/11/12	71735	388.00	
							1,788.00
42228	SNYDER MECHANICAL, INC						
		9/19/12REPLC AC&HEAT,COLL		10/11/12	71700	9,329.00	
							9,329.00
42229	SPB UTILITY SERVICE INC						
		9/28/12/LAB CHRG/WATER		10/11/12	71698	2,594.00	
							2,594.00
42230	ST OF NEVADA						
		10/1/12 L.C. RETIREES		10/11/12	71721	5,915.43	
							5,915.43
42231	ST OF NEVADA						
		9/14/12/ NEWMNT PHOENIX		10/11/12	71704	50.00	
		9/14/12/ PINION EXPLOR		10/11/12	71704	50.00	
		9/29/12/NEWMNT 625WHUMBOL		10/11/12	71704	50.00	
							150.00
42232	ST OF NV DEPT OF PUBLIC						
		9/13/12,A KENNEDYFRNGPRTS		10/11/12	71738	37.50	
							37.50
42233	STANTEC CONSULTING						
		9/28/12/PRO SERVC,AUSTVIS		10/11/12	71701	6,362.75	
							6,362.75
42234	SYSCO						
		9/28/12/FOOD		10/11/12	71703	117.72-	
		9/28/12/FOOD		10/11/12	71703	78.48-	
		9/12/12/FOOD		10/11/12	71703	7.18-	

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
		9/12/12/FOOD		10/11/12	71703	4.79-	
		9/12/12/FOOD		10/11/12	71703	4.79-	
		9/12/12/FOOD		10/11/12	71703	7.18-	
		9/12/12/FOOD		10/11/12	71703	334.28	
		9/12/12/FOOD		10/11/12	71703	222.85	
		9/19/12/FOOD		10/11/12	71703	280.39	
		9/19/12/FOOD		10/11/12	71703	186.93	
		9/26/12/FOOD SR CTR		10/11/12	71703	472.98	
		9/26/12/FOOD SR CTR		10/11/12	71703	315.32	
		9/26/12/SUPP SR CTR		10/11/12	71703	28.26	
		9/26/12/SUPP SR CTR		10/11/12	71703	18.84	
							1,639.71
42235	SYSCO FOOD SERVICES						
		9/6/12/ FOOD		10/11/12	71702	45.93	
		9/13/12/ FOOD		10/11/12	71702	22.29	
		9/6/12/FOOD SR CTR		10/11/12	71702	77.65	
		9/6/12/FOOD SR CTR		10/11/12	71702	157.10	
		9/13/12/FOODSR CTR		10/11/12	71702	50.93	
		9/13/12/ FOOD		10/11/12	71702	22.29	
		9/20/12/FOODSR CTR		10/11/12	71702	146.56	
		9/20/12/FOODSR CTR		10/11/12	71702	143.58	
		9/20/12/FOODSR CTR		10/11/12	71702	50.93	
							717.26
42236	T & M LAWN CARE						
		PARKS MAINTENANCE		10/11/12	71736	7,550.88	
							7,550.88
42237	THE FURMAN GROUP, INC.						
		9/28/12/PROF SERVC		10/11/12	71705	7,810.00	
							7,810.00
42238	THOMPSON FAMILY DENTAL						
		10/3/12DENTALINMATE,SO		10/11/12	71748	852.00	
							852.00
42239	TIRE FACTORY						
		9/21/12/MNTTIRES,R&B		10/11/12	71706	90.00	
		9/21/12/ FLAT,A R&B		10/11/12	71706	90.00	
		9/20/12/REPRS TO CHEVK350		10/11/12	71706	2,676.26	
		9/26/12/TIRES, R&B		10/11/12	71706	1,209.18	
		9/28/12/REPRS DODGE,SO		10/11/12	71706	4,719.98	
							8,785.42
42240	PETERBILT TRUCK PARTS &						
		9/21/12/SOCKETS,R&B		10/11/12	71687	463.22	
		9/24/12 CREDIT SOCKETS,RB		10/11/12	71687	224.46-	
							238.76
42241	USA BLUE BOOK						
		9/14/12/DIPPER		10/11/12	71707	132.28	
		9/24/12/RECVR/TRANSMITTER		10/11/12	71707	6,576.12	
							6,708.40
42242	VAISALA INC.						
		10/1/12/ AIRPORT AWOS FEE		10/11/12	71708	1,100.00	
		10/1/12/ AIRPORT AWOS FEE		10/11/12	71708	1,100.00	
							2,200.00
42243	VIPER GLASS LLC						
		9/27/12/WINDSHIELD/BLDG		10/11/12	71710	160.31	
							160.31
42244	VOHNE LICHE KENNELS, INC.						
		9/25/12/DOG AND CLASS,SO		10/11/12	71709	10,329.00	

CHECK NUMBER	VENDOR	INVOICE DESCRIPTION	P/O #	DATE	TRANS#	AMOUNT	CHECK TOTAL
							10,329.00
42245	WASHOE COUNTY BAR ASSOC						
		9/24/12 ADV,DA		10/11/12	71711	79.50	
		10/2/12 MEMBER APP,DA		10/11/12	71711	80.00	
							159.50
42246	WASHOE COUNTY CORONER						
		9/1/12//TOXICOLOGY,GREEN		10/11/12	71713	155.00	
		9/1/12/ CONSULT,HOOPER		10/11/12	71713	200.00	
							355.00
42247	WESTERN NEVADA SUPPLY CO						
		9/27/12/PVC PRTS,WATER		10/11/12	71712	5,330.06	
		8/8/12/BOX LID,GLF CRS		10/11/12	71712	6.78	
							5,336.84
42248	WINNEMUCCA PUB. CO., INC.						
		9/05/12/ DA ADV		10/11/12	71714	127.92	
		8/22/12 4X4 TAX DUE		10/11/12	71714	144.00	
		9/26/12/PH ADV,COMMDEVEL		10/11/12	71714	61.35	
		9/26/12/PUB NOTICE/		10/11/12	71714	78.56	
							411.83
42249	WITMER PUBLIC SAFETY						
		10/2/12/ BADGE,DA		10/11/12	71737	175.97	
							175.97
42250	YESCO LLC						
		9/11/12/ CIVIC SIGN,		10/11/12	71715	38,447.50	
							38,447.50
	CHECKS TOTAL						1,565,335.29

COMMISSIONERS' REPORT October 11, 2012

CORRESPONDENCE **October 11, 2012**

1. US Fish & Wildlife Service, Nevada Fish & Wildlife Office, postcard announcing that the Endangered Species Act protection not warranted for Spring Mountains acastus checkerspot butterfly.

2. US Fish & Wildlife Service, Nevada Fish & Wildlife Office, postcard announcing that the Service proposes to protect the Mt. Charleston blue butterfly and five similar butterflies under the Endangered Species Act.

3. Kevin E. Sullivan, Nevada Division of Environmental Protection, to Brian Musser, Barrick Cortez Inc., letter regarding 2012 1st Biannual Groundwater Monitoring and LNAPL Recovery Report, Barrick Cortez Inc. Mill #1 Facility, Crescent Valley, NV, NDEP Facility ID #5-000020, Petroleum Fund #93-126.

4. Luis Rodriguez, P.E., Federal Emergency Management Agency, to Dean Bullock, Chair, Lander County Board of Commissioners, letter regarding proposed flood hazard determinations for Lander County and notification concerning the appeal process.

5. June Manhire, Chairman, Kingston Town Water Utility, to Bert Ramos, Lander County Road and Bridge South, letter expressing gratitude for timely response by southern road and bridge department to recent flash flooding in Kingston.

6. Timothy Haener, Executive Vice President, J-U-B Engineers, Inc., to Gene Etcheverry, Lander County Executive Director, letter of interest regarding Lander County Engineer position.

7. Toni M. Parks, MBA, to Lander County Commissioners & Lander County Sewer and Water District #2, letter addressing concerns.

Correspondence #1
10/11/2012

September 27, 2012

Endangered Species Act protection not warranted for Spring Mountains acastus checkerspot butterfly

The U.S. Fish and Wildlife Service (Service) has determined that the Spring Mountains acastus checkerspot butterfly (*Chlosyne acastus robusta*) does not warrant protection under the Endangered Species Act of 1973, as amended (ESA). The Service's decision will be published in the Federal Register on Thursday, September 27, 2012. The Service completed a comprehensive review, known as a 12-month finding, and found that the best scientific and commercial data available indicates the Spring Mountains acastus checkerspot butterfly is not warranted for listing as threatened or endangered.

This finding was prepared in response to a petition the Service received on September 18, 2009, from Bruce M. Boyd, asking the Service to list the Spring Mountains acastus checkerspot butterfly as an endangered species under emergency listing provisions of the ESA. The Service determined that an emergency listing action was not warranted; however, the ensuing 90-day finding determined that the butterfly might warrant protection under the ESA and the in-depth 12-month status review was conducted.

Even though listing the butterfly at this time is not warranted, we will continue to monitor the subspecies' status. Additionally, the Service asks the public to submit any new information that becomes available concerning the threats to the Spring Mountains acastus checkerspot butterfly or its habitat at any time.

The finding is available on the Internet at http://www.regulations.gov (Docket Number FWS-R8-ES-2010-0077) and at http://www.fws.gov/nevada/. Supporting documents used in preparing this finding are available for inspection, by appointment, during normal business hours at the Service's Nevada Fish and Wildlife Office at 4701 North Torrey Pines Drive, Las Vegas, NV 89130, telephone (702) 515-5230, facsimile (702) 515-5231. New information, materials, comments, or questions concerning this finding should be sent to the above address.

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COUNTY COMMISSION

Correspondence #2
10/11/2012

September 27, 2012

Service proposes to protect Mt. Charleston blue butterfly, five similar butterflies under ESA

Current evidence suggests that the Mt. Charleston blue butterfly is in danger of becoming extinct in the foreseeable future, the U.S. Fish and Wildlife Service announced today. As a result, the Service proposes to protect the species under the Endangered Species Act, and is seeking new information from the public and the scientific community that will assist the agency in making a final determination.

The five butterflies the Service is recommending for listing as threatened (based on similarity of appearance to and occurring within the habitat of the Mt. Charleston blue) are the Lupine blue butterfly (*Plebejus lupini texanus*), Reakirt's blue butterfly (*Echinargus isola*), Spring Mountains icarioides blue butterfly (*Plebejus icarioides austinorum*), and two Spring Mountains dark blue butterflies (*Euphilotes ancilla cryptica* & *Euphilotes ancilla purpura*). Only populations of these butterflies that occur within the Mt. Charleston blue's habitat are proposed for listing as threatened.

Today's decision is part of the Service's efforts to implement a court-approved work plan that resolves a series of lawsuits concerning the agency's ESA Listing Program. The intent of the agreement is to significantly reduce litigation-driven workloads and allow the agency to focus its resources on the species most in need of the ESA's protections over the next five years.

Comments and information may be submitted by the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments. U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2012-0069; *Division of* Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Comments must be received or on or before November 26, 2012.

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OCT 0 2 2012

COUNTY COMMISSION

Correspondence #3
10/11/2012

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
protecting the future for generations

STATE OF NEVADA
Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

September 24, 2012

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COUNTY COMMISSION

Mr. Brian Musser
Barrick Cortez Inc.
HC66 Box 1250
Crescent Valley, NV 89821-1250

Subject: 2012 First Biannual Groundwater Monitoring and LNAPL Recovery Report
Barrick Cortez Inc. Mill #1 Facility, Crescent Valley, NV
NDEP Facility ID # 5-000020, Petroleum Fund #93-126

Dear Mr. Musser:

The Nevada Division of Environmental Protection (NDEP) has received your *First Biannual 2012 Groundwater Level Monitoring and LNAPL Recovery Report* for the Cortez Gold Mines Mill #1, prepared on your behalf by Jeremy Boucher C.E.M. of Broadbent & Associates, Inc. (BAI), dated September 6, 2012.

During the first biannual monitoring Barrick Cortez employees completed the groundwater level monitoring and free product recovery on a monthly basis. The groundwater elevation decreased by an average of 0.4 feet across the site during the quarter. Groundwater gradient was to the southwest between 0.013 ft/ft to 0.015 ft/ft. Three of thirteen wells monitored contained free product, they were CGM10 (2.07 – 3.19 feet – 25.9 gallons recovered), VEW5 (sheen to 0.16 feet – 0.07 gallons recovered) and VEW7 (0.74 to 2.44 feet – 12.8 gallons recovered). A total of 38.8 gallons of free product was recovered during the quarter from the three wells. An LNAPL baildown and recovery test was conducted on wells CGM10 and VEW7 with the results indicating limited recoverability based on the calculated LNAPL transmissivity which is two orders of magnitude less than the recommended range.

The apparent thickness of free product in each well during the quarter was CGM10 (2.25 to 4.12), VEW5 (0.01 to 0.76) and VEW7 (1.34 to 4.94). Free product was not bailed in the third quarter 2011 so no comparison was performed between the third and fourth quarter. Since 1997 a total of 3,817.5 gallons of free product has been recovered from the site.

Benzene concentrations above the state action level were detected in the groundwater sample collected on May 2012 from well CGM2 at 390 µg/l as compared to 130 µg/l in November 2011. Since semi-annual sampling began in June 2009, toluene, ethylbenzene, total xylenes and MTBE were not detected above State action levels.

Recommendations:

Discontinue LNAPL recovery activities beginning September 2012
Conduct annual groundwater monitoring and sampling activity until evaluation of corrective action exemption (NAC 445A.22725) is complete.

NDEP Comments:

- The two wells (CGM10 and VEW7) contain free product over the 0.5 inch action level.
- There is a potential for the free phase gasoline product to continue to partition into the groundwater and affect the down gradient groundwater quality at the site.

901 S. Stewart Street, Suite 4001 • Carson City, Nevada 89701 • p: 775.687.4670 • f: 775.687.5856 • ndep.nv.gov

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The NDEP concurs with the data submitted in the *First Semiannual 2012 Groundwater Level Monitoring and LNAPL Recovery Report* however NDEP does not agree with annual monitoring and sampling at this time.

NDEP Requirements:

Biannually monitor depth to water and free product in wells IW-6, CGM1, CGM2, CGM3, CGM4, CGM10, CGM12, CGM13, CGM15A, CGM16, VEW5, VEW7 and VEW8. Recover free product for all monitored wells that exceed the 0.5 inch free product action level in accordance with Section 4 of adopted regulation R189-08. Semiannual free product collection reporting is due by the last day of the month following the sampling event.

Continue with the biannual sampling (2nd and 4th Quarter) for BTEX and MTBE in wells IW6, VEW5 (if no free product), CGM1, CGM2, CGM3, CGM4, and CGM16. The November fall biannual monitoring and sampling report will be due by January 31st. The May, spring, biannual report will be due July 31st.

Continue evaluation of corrective action exemption (NAC 445A.22725).

If you have any questions, please do not hesitate to contact me at (775) 687-9376 or at kevins@ndep.nv.gov.

Sincerely,

Kevin E. Sullivan
UST/LUST Supervisor
Bureau of Corrective Actions

ec: Todd Croft, NDEP, Supervisor, Bureau of Corrective Actions
Lisa Kreskey, NDEP, Bureau of Mine Regulation and Reclamation
Jeremy Boucher, C.E.M. Broadbent and Assoc., Inc., jboucher@broadbentinc.com

cc: Chuck Chapin, Chairman, Lander County Board of Commissioners, 315 South Humboldt Street, Battle Mountain, NV 89820
Jacob Edgar, Public Works Foreman, 315 South Humboldt Street, Battle Mountain, NV 89820
Doug Furtado, District Manager, Battle Mountain Field Office, Bureau of Land Management, 50 Bastian Rd., Battle Mountain, NV 89820

Correspondence #4
10/11/2012

Federal Emergency Management Agency

Washington, D.C. 20472

SEP 26 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO:
Case No.: 10-09-0008S

The Honorable Dean Bullock
Chairman, Lander County Board of Commissioners
315 South Humboldt Street
Battle Mountain, Nevada 89820

Community: Lander County, Nevada, (All Jurisdictions)
Community No.: 320013

APPEAL START

RECEIVED
OCT 02 2012
COUNTY COMMISSION

Dear Commissioner Bullock:

On April 26, 2012, the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) provided your community with Preliminary copies of the Flood Insurance Rate Map (FIRM) panels and Flood Insurance Study (FIS) report for Lander County, Nevada (All Jurisdictions). FEMA has posted digital copies of these FIRM panels and FIS report materials to the following Website: http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=81&choProj=220. The Preliminary FIRM and FIS report include proposed flood hazard information for certain locations in Lander County. The proposed flood hazard information may include addition or modification of Special Flood Hazard Areas, the areas that would be inundated by the base (1-percent-annual-chance) flood; base flood elevations or depths; zone designations; or regulatory floodways.

We have published a notice of the proposed flood hazard determinations in the FEDERAL REGISTER and will publish a public notification concerning the appeal process (explained below) in the *Battle Mountain Bugle* on or about October 3, 2012 and October 10, 2012. We will also publish a separate notice of the flood hazard determinations on the "Flood Hazard Determinations on the Web" portion of the FEMA Website (www.fema.gov/plan/prevent/fhm/bfe). We have enclosed copies of the notice published in the FEDERAL REGISTER and the newspaper notice for your information.

These proposed flood hazard determinations, if finalized, will become the basis for the floodplain management measures that your community must adopt or show evidence of having in effect to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). However, before any new or modified flood hazard information is effective for floodplain management purposes, FEMA will provide community officials and citizens an opportunity to appeal the proposed flood hazard information presented on the preliminary FIRM panels and FIS report posted to the above-referenced Website.

Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93-234) is intended to ensure an equitable balancing of all interests involved in the setting of flood hazard determinations. The legislation provides for an explicit process of notification and appeals for your community and for private persons prior to this office making the flood hazard determinations final. The appeal procedure is outlined below for your information and in the enclosed document titled *Criteria for Appeals of Flood Insurance Rate Maps*.

During the 90-day appeal period following the second publication of the public notification in the above-

named newspaper, any owner or lessee of real property in your community who believes his or her property rights will be adversely affected by the proposed flood hazard determinations may appeal to you, or to an agency that you publicly designate. It is important to note, however, that the sole basis for such appeals is the possession of knowledge or information indicating that the proposed flood hazard determinations are scientifically or technically incorrect. The appeal data must be submitted to FEMA during the 90-day appeal period. Only appeals of the proposed flood hazard determinations supported by scientific or technical data can be considered before FEMA makes its final flood hazard determination at the end of the 90-day appeal period. Note that the 90-day appeal period is statutory and cannot be extended. However, FEMA also will consider comments and inquiries regarding data other than the proposed flood hazard determinations (e.g., incorrect street names, typographical errors, omissions) that are submitted during the appeal period, and will incorporate any appropriate changes to the FIRM panels and FIS report before they become effective.

If your community cannot submit scientific or technical data before the end of the 90-day appeal period, you may nevertheless submit data at any time. If warranted, FEMA will revise the FIRM panels and FIS report after the effective date. This means that the FIRM panels would be issued with the flood hazard information presently indicated, and flood insurance purchase requirements would be enforced accordingly, until such time as a revision could be made.

Any interested party who wishes to appeal should present the data that intend to negate or contradict our findings to you, or to an agency that you publicly delegate, in such form as you may specify. We ask that you review and consolidate any appeal data you may receive and issue a written opinion stating whether the evidence provided is sufficient to justify an official appeal by your community in its own name or on behalf of the interested parties. Whether or not your community decides to appeal, you must send copies of individual appeals and supporting data, if any, to:

Eric Simmons, Engineer
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, California 94607

If we do not receive an appeal or other formal comment from your community in its own name within 90 days of the second date of public notification, we will consolidate and review on their own merits such appeal data and comments from individuals that you may forward to us, and we will make such modifications to the proposed flood hazard information presented on the FIRM panels and in the FIS report as may be appropriate. If your community decides to appeal in its own name, all individuals' appeal data must be consolidated into one appeal by you, because, in this event, we are required to deal only with the local government as representative of all local interests. We will send our final decision in writing to you, and we will send copies to the community floodplain administrator, each individual appellant, and the State NFIP Coordinator.

All appeal submittals will be resolved by consultation with officials of the local government involved, by an administrative hearing, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice. Use of a Scientific Resolution Panel (SRP) is also available to your community in support of the appeal resolution process when conflicting scientific or technical data are submitted during the appeal period. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. An SRP is an option after FEMA and community officials have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Please refer to the enclosed "Scientific Resolution Panels" fact sheet for

additional information on this resource available to your community.

FEMA will make the reports and other information used in making the final determination available for public inspection. Until the conflict of data is resolved and the FIRM panels becomes effective, flood insurance available within your community will continue to be available under the effective NFIP map, dated September 28, 1990, and no person shall be denied the right to purchase the applicable level of insurance at chargeable rates.

The decision by your community to appeal, or a copy of its decision not to appeal, should be filed with this office no later than 90 days following the second publication of the flood hazard determination notice in the above-named newspaper. Your community may find it appropriate to call further attention to the proposed flood hazard determinations and to the appeal procedure by using a press release or other public notice.

If warranted by substantive changes, during the appeal period we will send you Revised Preliminary copies of the FIRM panels and FIS report. At the end of the 90-day appeal period and following the resolution of any appeals and comments, we will send you a Letter of Final Determination, which will finalize the flood hazard information presented on the FIRM and FIS report and will establish an effective date.

If you have any questions regarding participation in the NFIP, we encourage you to contact the FEMA Region IX Natural Hazards Program Specialist, Michael Hornick, in Oakland, California either by telephone to (510) 627-7260 or in writing to 1111 Broadway, Suite 1200, Oakland, California 94607.

If you have any questions regarding the proposed flood hazard determinations, FIRM panels, or FIS report for your community, please call our FEMA Information eXchange (FMIX), toll free, at 1-877-FEMA MAP (1-877-336-2627) or e-mail the FMIX staff at FEMAMapSpecialist@riskmapcds.com.

Sincerely,

Luis Rodriguez, P.E., Chief
Engineering Management Branch
Federal Insurance and Mitigation Administration

List of Enclosures:

Newspaper Notice
Proposed Flood Hazard Determinations FEDERAL REGISTER Notice
Criteria for Appeals of Flood Insurance Rate Maps
"Scientific Resolution Panels" Fact Sheet

cc: Community Map Repository
Joe Lindsey, Lander County Floodplain Administrator

DEPARTMENT OF HOMELAND SECURITY

FEDERAL EMERGENCY MANAGEMENT AGENCY

Proposed Flood Hazard Determinations for Lander County, Nevada

The Department of Homeland Security's Federal Emergency Management Agency has issued a preliminary Flood Insurance Rate Map (FIRM), and where applicable, Flood Insurance Study (FIS) report, reflecting proposed flood hazard determinations within Lander County, Nevada. These flood hazard determinations may include the addition or modification of Base Flood Elevations, base flood depths, Special Flood Hazard Area boundaries or zone designations, or the regulatory floodway. Technical information or comments are solicited on the proposed flood hazard determinations shown on the preliminary FIRM and/or FIS report for Lander County, Nevada. These flood hazard determinations are the basis for the floodplain management measures that your community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program. However, before these determinations are effective for floodplain management purposes, you will be provided an opportunity to appeal the proposed information. For information on the statutory 90-day period provided for appeals, as well as a complete listing of the communities affected and the locations where copies of the FIRM are available for review, please visit FEMA's website at www.fema.gov/plan/prevent/fhm/bfe, or call the FEMA Map Information eXchange (FMIX) toll free at 1-877-FEMA MAP (1-877-336-2627).

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bexar	Unincorporated areas of Bexar County (12–06–1691X).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County, Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	August 9, 2012	480035
Dallas	City of Duncanville (11–06–3271P).	The Honorable David L. Green, Mayor, City of Duncanville, 203 East Wheatland Road, Duncanville, TX 75116.	City Hall, 203 East Wheatland Road, Duncanville, TX 75116.	*http://www.rampp-team.com/lomrs.htm.*	June 18, 2012	480173
Galveston	City of Galveston (11–06–3812P).	The Honorable Joe Jaworski, Mayor, City of Galveston, 823 Rosenberg Street, Galveston, TX 77553.	City Hall, 823 Rosenberg Street, Galveston, TX 77553.	*http://www.rampp-team.com/lomrs.htm.*	August 10, 2012	485469
Utah: Davis	City of Layton (12–08–0084P).	The Honorable Steve Curtis, Mayor, City of Layton, 437 North Wasatch Drive, Layton, UT 84041.	Planning Division, 437 North Wasatch Drive, Layton, UT 84041.	*http://www.bakeraecom.com/index.php/utah/davis/.*	August 13, 2012	490047
Virginia:						
City of Richmond.	City of Richmond (11–03–1762P).	The Honorable Dwight C. Jones, Mayor, City of Richmond, 900 East Broad Street, Suite 201, Richmond, VA 23219.	Department of Public Works, 900 East Broad Street, Room 704, Richmond, VA 23219.	*http://www.rampp-team.com/lomrs.htm.*	August 8, 2012	510129
Giles	Town of Narrows (11–03–1175P).	The Honorable H. Clayton Davis, Mayor, Town of Narrows, P.O. Box 440, Narrows, VA 24124.	Town Hall, 131 Center Street, Narrows, VA 24124.	*http://www.rampp-team.com/lomrs.htm.*	August 23, 2012	510068
Giles	Unincorporated areas of Giles County (11–03–1175P).	The Honorable Christopher P. McKlarney, Giles County Administrator, 315 North Main Street, Pearisburg, VA 24134.	Giles County Engineering and GIS Departments, 315 North Main Street, Pearisburg, VA 24134.	*http://www.rampp-team.com/lomrs.htm.*	August 23, 2012	510067

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 23, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22503 Filed 9–12–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003: Internal Agency Docket No. FEMA–B–1265]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 12, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1265, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange

(FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Sonoma County, California, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=49&choProj=372*	
City of Petaluma	Community Development Department, 11 English Street, Petaluma, CA 95952.
Unincorporated Areas of Sonoma County	Sonoma County Permit and Resource Management, 2550 Ventura Avenue, Santa Rosa, CA 95403.
Lander County, Nevada (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=81&choProj=220*	
Unincorporated Areas of Lander County	Lander County Planning Department, 825 North Second Street, Battle Mountain, NV 89820.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance".)

Dated: August 23, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–22504 Filed 9–12–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–29]

Notice of Proposed Information Collection: Comment Request; Revitalization Area Designation and Management

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

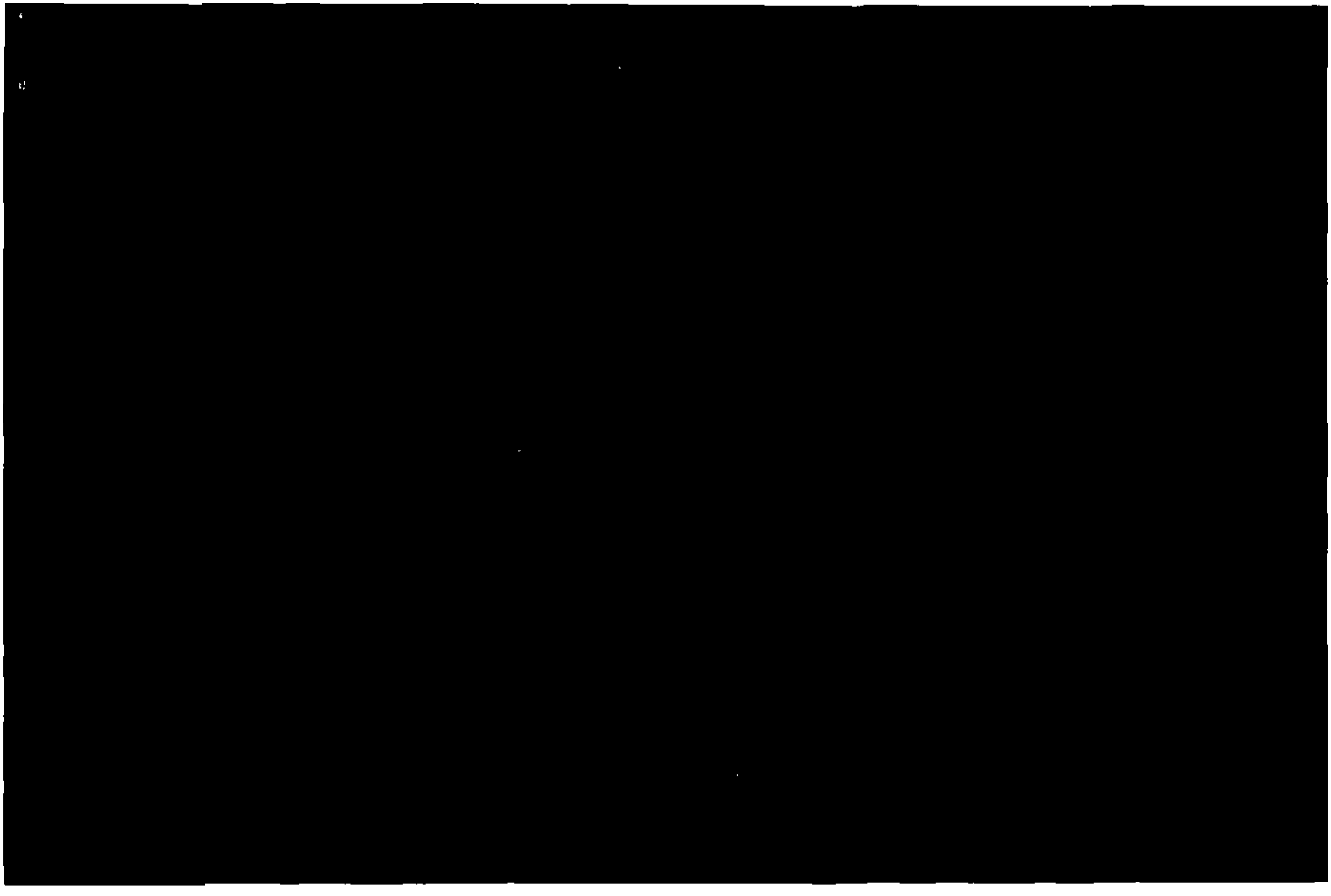
DATES: *Comments Due Date:* November 13, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the



Criteria for Appeals of Flood Insurance Rate Maps

November 30, 2011

FEMA

This document outlines the criteria for appealing proposed changes in flood hazard information on Flood Insurance Rate Maps (FIRMs) during the appeal period. The Department of Homeland Security's Federal Emergency Management Agency (FEMA) applies rigorous standards in developing and updating flood hazard information and provides communities with an opportunity to review the updated flood hazard information presented on new or revised FIRMs before they become final.

1. Background

The regulatory requirements related to appeals are found in Part 67 of the National Flood Insurance Program (NFIP) regulations. Additional FEMA procedural details are provided in Procedure Memorandum No. 57, *Expanded Appeals Process*, dated November 30, 2011. Detailed information on appeals can also be found in *Appeals, Revisions, and Amendments to National Flood Insurance Program Maps—A Guide for Community Officials* and FEMA's *Document Control Procedures Manual.* All referenced documents are accessible through the "Guidance Documents and Other Published Resources" webpage, located at: http://www.fema.gov/plan/prevent/fhm/frm_docs.shtm.

As outlined in these documents, an appeal period is provided for all new or modified flood hazard information shown on a FIRM, including additions or modifications of any Base (1-percent-annual-chance) Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway. SFHAs are areas subject to inundation by the base (1-percent-annual-chance) flood and include the following SFHA zone designations: A, AO, AH, A1-A30, AE, A99, AR, AR/A1-A30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-V30, VE, and V. Therefore, a statutory 90-day appeal period is required when a flood study, Physical Map Revision (PMR), or Letter of Map Revision (LOMR) is proposed in which:

- New BFEs or base flood depths are proposed or currently effective BFEs or base flood depths are modified;
- New SFHAs are proposed or the boundaries of currently effective SFHAs are modified;
- New SFHA zone designations are proposed or currently effective SFHA zone designations are modified; and
- New regulatory floodways are proposed or the boundaries of currently effective floodways are modified.

Clarification on the necessity for an appeal period is provided for certain specific circumstances outlined below:

- Edge matching of effective floodplain boundaries or information. This usually occurs in first-time countywide flood mapping projects when effective BFEs, base flood depths,

SFHAs, or floodways are extended to an adjacent community that previously had differing or no BFEs, base flood depths, SFHAs, or floodways shown on their effective FIRM in order to fix a map panel to map panel mismatch. In these instances, **an appeal period is required** because BFEs, base flood depths, SFHAs, or floodways are changing or being shown for the first time in the area.

- Redelineation of effective floodplain boundaries. This occurs when an effective SFHA boundary is redrawn on the FIRM using new or updated topography to more accurately represent the risk of flooding. In these instances **an appeal period is required** because the SFHA boundary is changing. However, the appeal period will only apply to the updated SFHA boundary delineations, not the methodology used to originally establish BFEs/flood depths (since this will not have changed).

- Revisions to SFHA zone designations. A revision to an SFHA zone designation may occur with or without a BFE and/or boundary change. For example, when a Zone VE floodplain is changed to a Zone AE designation to reflect the updated location of a Primary Frontal Dune (PFD), the BFE and SFHA boundary may not necessarily change. For any change in SFHA zone designation, including the *removal* of an SFHA designation from a FIRM, **an appeal period is required**.

- Regulatory floodway boundaries. When the effective floodway boundary is redrawn on the FIRM to more accurately represent the extent of the encroachment, **an appeal period is required**.

- MT-1 cases. When the SFHA or floodway boundary is amended due to the issuance of a Letter of Map Amendment (LOMA), Letter of Map Revision based on Fill (LOMR-F), Letter of Map Revision – Floodway, or other MT-1 case, **an appeal period is not required.**

- Annexation of effective floodplain boundaries. When a new or revised FIRM shows new community boundaries which include effective BFEs, base flood depths, SFHAs, or floodways, **an appeal period is not required,** provided no BFE, base flood depth, SFHA, or floodway changes apply.

  However, in cases where the flood hazard information in the annexed area has never received due process (for example, if the area is shown for information only on all FIRMs depicting the area), **an appeal period is required**.

- Reissuance of effective LOMRs: When a LOMR is reissued after not being incorporated into a revised FIRM, **an appeal period is not required**.

- Updates that do not impact flood hazard data: When flood studies, PMRs, or LOMRs result in changes to FIRMs that do not impact BFEs, base flood depths, SFHAs, or floodways, **an appeal period is not required**.

- Datum Conversions: **An appeal period is not required** specifically for a datum conversion (e.g., a conversion from NGVD 29 to NAVD 88).

1.1. Additional Procedures for LOMRs

Beginning with LOMRs issued on or after December 1, 2011, the following procedures will apply:

In order to provide sufficient due process rights for changes due to LOMRs, any LOMR in a compliant community that requires an appeal period will become effective 120 days from the second newspaper publication date, following FEMA's current policy. This allows time to collect appeals, as well as provides for newspaper publication schedule conflicts. LOMRs in non-compliant communities or in communities that require adoption of the LOMR will become effective following the six month compliance period.

Evidence of public notice or property owner notification of the changes due to a LOMR will continue to be requested during the review of the LOMR request. This will help to ensure that the affected population is aware of the flood hazard changes in the area and the resultant LOMR. However, evidence of property owner acceptance of the changes due to a LOMR will no longer be requested. Because all LOMRs that require an appeal period will become effective 120 days from the second newspaper publication date, the receipt of such acceptance will have no effect on the effective date of the LOMR; therefore, there is no need for the requester to pursue acceptance.

2. Appeal Eligibility Requirements

Areas that are eligible for appeal include:

- Areas showing new or revised BFEs or base flood depths
- Areas showing new or revised SFHA boundaries (including both increases and decreases in the extent of the SFHA)
- Areas where there is a change in SFHA zone designation
- Areas showing new or revised regulatory floodway boundaries (including both increases and decreases in the extent of the regulatory floodway).

The area of concern must be within the scope of the new or modified BFEs, base flood depths, SFHA boundaries, SFHA zone designations, and/or regulatory floodway boundary changes and

be supported by scientific and/or technical data. The criteria for data submittals are outlined in Title 44, Chapter 1, Code of Federal Regulations, Section 67.6(b) and in this document.

The statutory 90-day appeal period cannot be extended. FEMA may provide an additional 30 days for a community after the 90-day appeal period has ended to submit supporting and clarifying data for an appeal received during the appeal period. No appeals will be accepted after the 90-day appeal period.

Challenges that do not relate to new or modified BFEs, base flood depths, SFHA boundaries, SFHA zone designations, or floodways are not considered appeals. Challenges received by FEMA during the appeal period that do not address these items will be considered comments. Comments include, but are not limited to the following:

- The impacts of changes that have occurred in the floodplain that should have previously been submitted to FEMA in accordance with 44 Code of Federal Regulations, Section 65.3;
- Corporate limit revisions;
- Road name errors and revisions;
- Requests that changes effected by a LOMA, LOMR-F, or LOMR be incorporated;
- Base map errors; and
- Other possible omissions or potential improvements to the mapping.

Any significant problems identified by community officials or residents (at formal meetings or otherwise) will be addressed appropriately.

3. Supporting Data and Documentation Required for Appeals

The BFEs and base flood depths presented in Flood Insurance Study (FIS) reports and shown on FIRMs are typically the result of coastal, hydrologic and hydraulic engineering methodologies. Floodway configurations, generally developed as part of the hydraulic analyses, are adopted by communities as a regulatory tool for floodplain management and are delineated on FIRMs along with SFHAs.

Because numerous methodologies have been developed for estimating flood discharges and flood elevations/depths, and other flood hazard information under a variety of conditions, FEMA contractors, mapping partners, and others whose data and documentation FEMA approves and uses, such as communities, regional entities and State agencies participating in the Cooperating Technical Partners (CTP) Program, use their professional judgment in selecting methodologies that are appropriate for the conditions along a particular segment of a particular flooding source.

For FEMA contracted flood studies and PMRs the approach to be used will usually be discussed with community officials at the beginning of the flood study or PMR mapping process.

Because the methodologies are the result of attempts to reduce complex physical processes to mathematical models, the methodologies include simplifying assumptions. Usually, the methodologies are used with data developed specifically for the flood study, PMR, or LOMR. Therefore, the results of the methodologies are affected by the amount of data collected and the precision of any measurements made.

Because of the judgments and assumptions that must be made and the limits imposed by cost considerations, the correctness of the BFEs, base flood depths and other flood hazard information is often a matter of degree, rather than absolute. For that reason, appellants who contend that the BFEs, base flood depths, or other flood hazard information is incorrect because better methodologies could have been used, better assumptions could have been made, or better data could have been used, must provide alternative analyses that incorporate such methodologies, assumptions, or data and that quantify their effect on the BFEs, base flood depths or other flood hazard information. FEMA will review the alternative analyses and determine whether they are superior to those used for the flood study, PMR, or LOMR and whether changes to the FIS report and/or FIRM, or LOMR are warranted as a result.

Unless appeals are based on indisputable mathematical or measurement errors or the effects of natural physical changes that have occurred in the floodplain, they must be accompanied by all data that FEMA needs to revise the preliminary version of the FIS report and FIRMs. Therefore, appellants should be prepared to perform coastal, hydrologic and hydraulic analyses, to plot new and/or revised Flood Profiles, and to delineate revised SFHA zone and regulatory floodway boundaries as necessary.

An appeal must be based on data that show the new or modified BFEs, base flood depths, SFHA boundaries, SFHA zone designations, or floodways to be scientifically or technically incorrect. All analyses and data submitted by appellants must be certified by a Registered Professional Engineer or Licensed Land Surveyor, as appropriate. The data and documentation that must be submitted in support of the various types of appeals are discussed in the subsections that follow.

3.1. Appealing BFEs, Base Flood Depths, SFHA Zone Designations, or Regulatory Floodways

Scientifically incorrect BFEs, base flood depths, SFHA zone designations, or regulatory floodways:

Proposed BFEs, base flood depths, SFHA zone designations, or regulatory floodways are said to be scientifically incorrect if the methodology used in the determination of the BFEs,

base flood depths, SFHA zone designations, or regulatory floodways is inappropriate or incorrect, or if the assumptions made as part of the methodology are inappropriate or incorrect. An appeal that is based on the proposed BFEs, base flood depths, SFHA zone designations, or regulatory floodways being scientifically incorrect would, therefore, contend that the use of a different methodology or different assumptions would produce more accurate results. A list of National Flood Insurance Program-accepted hydrologic, hydraulic and coastal models is available on FEMA's website at http://www.fema.gov/plan/prevent/fhm/en_modl.shtm. To show that an inappropriate or incorrect coastal, hydraulic or hydrologic methodology has been used, an appellant must submit the following data, as applicable:

- New hydrologic analysis based on alternative methodology and if applicable, updated hydraulic/floodway or coastal analyses based on the updated discharge values;
- New hydraulic/floodway analysis based on alternative methodology and original flood discharge values (if the appeal does not involve the hydrologic analysis);
- New coastal analyses based on alternative methodology and original stillwater elevations (if the appeal does not involve the hydrologic analysis);
- Explanation for superiority of alternative methodology;
- As applicable, revised Summary of Discharges Table, Flood Profiles, Transect Data Table, Summary of Stillwater Elevations Table, and Floodway Data Table (FDT); and
- Revised SFHA zone boundaries and, if applicable, regulatory floodway boundary delineations.

Technically Incorrect BFEs, Base Flood Depths, SFHA Zone Designations, or Regulatory Floodways:

The proposed BFEs, base flood depths, SFHA zone designation or regulatory floodways are said to be technically incorrect if at least one of the following is true.

- **The methodology was not applied correctly.**
    - To show that a hydrologic methodology was not applied correctly, an appellant must submit the following:
        - New hydrologic analysis in which the original methodology has been applied differently;
        - Explanation for superiority of new application;
        - New hydraulic/floodway or coastal analysis based on flood discharge values from new hydrologic analysis;

- Revised Summary of Discharges Table and/or Flood Profiles and, if applicable, FDT; and
- Revised SFHA zone boundary and, if applicable, regulatory floodway boundary delineations.

- To show that a hydraulic methodology was not applied correctly, an appellant must submit the following information. (*Please note that an appeal to a floodway configuration cannot be solely based on surcharge values.)*
  - New hydraulic/floodway analysis, based on original flood discharge values, in which the original methodology has been applied differently;
  - As applicable, revised Flood Profiles, FDT and other FIS report tables as needed; and
  - Revised SFHA zone boundary and, if applicable, regulatory floodway boundary delineations.
- To show that a coastal methodology was not applied correctly, an appellant must submit the following:
  - New coastal analysis, based on the original stillwater elevations, in which the original methodology has been applied differently;
  - Revised SFHA zone boundary and, all applicable FIS report tables, including the Transect Data Table.

- **The methodology was based on insufficient or poor-quality data.**
  - To show that insufficient or poor-quality hydrologic data were used, an appellant must submit the following:
    - Data believed to be better than those used in original hydrologic analysis;
    - Documentation for source of data;
    - Explanation for improvement resulting from use of new data;
    - New hydrologic analysis based on better data;
    - New hydraulic/floodway or coastal analysis based on flood discharge values resulting from new hydrologic analysis;
    - Revised Summary of Discharges Table, Flood Profiles and, if applicable, FDT; and
    - Revised SFHA zone boundary and, if applicable, regulatory floodway boundary delineations.
  - To show that insufficient or poor-quality hydraulic data were used, an appellant must submit the following:

- Data believed to be better than those used in original hydraulic analysis;
- Documentation for source of new data;
- Explanation for improvement resulting from use of new data;
- New hydraulic analysis based on better data and original flood discharge values;
- Revised Flood Profiles and, if applicable, FDT; and
- Revised SFHA zone boundary and, if applicable, regulatory floodway boundary delineations.

o To show that insufficient or poor-quality coastal analysis data were used, an appellant must submit the following:

- Data believed to be better than those used in original coastal analysis;
- Documentation for source of new data;
- Explanation for improvement resulting from use of new data;
- New coastal analysis based on better data and original stillwater elevation values; and
- Revised SFHA zone boundary and, all applicable FIS report tables, including the Transect Data Table.

- **The application of the methodology included indisputable mathematical or measurement errors.**

o To show that a mathematical error was made, an appellant must identify the error. FEMA will perform any required calculations and make the necessary changes to the FIS report and FIRM.

o To show that a measurement error (e.g., an incorrect surveyed elevation used in the flood study, PMR, or LOMR) was made, appellants must identify the error and provide the correct measurement. Any new survey data provided must be certified by a Registered Professional Engineer or Licensed Land Surveyor. FEMA will perform any required calculations and make the necessary changes to the FIS report and FIRM.

- **The methodology did not account for the effects of natural physical changes that have occurred in the floodplain.**

o For appeals based on the effects of natural physical changes that have occurred in the base floodplain, appellants must identify the changes that have occurred and provide the data FEMA needs to perform a revised analysis. The data may include new stream channel and floodplain cross sections or coastal transects.

3.2. Appeals to SFHA Boundaries

The supporting data required for changes to SFHA zone boundaries will vary, depending on whether the boundaries are for flooding sources studied by detailed methods or flooding sources studied by approximate methods, as discussed below.

Flooding sources studied by detailed methods

Usually, detailed SFHA zone boundaries are delineated using topographic data and the BFEs and base flood depths resulting from the hydraulic analysis performed for the flood study, PMR, or LOMR. If topographic data are more detailed than those used by FEMA or show more recent topographic conditions, appellants should submit that data and the revised SFHA zone boundaries for FEMA to incorporate into the affected map panels. All maps and other supporting data submitted must be certified by a Registered Professional Engineer or a Licensed Land Surveyor and must reflect existing conditions. Maps or data prepared by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Bureau of Reclamation, or a State department of highways and transportation, are acceptable without certification as long as the sources and dates of the maps are identified. For further information on submittals involving topographic data, please refer to the section below *Additional Guidance on Appeal Submittals Involving Topographic Data.*

Flooding Sources Studied by Approximate Methods

Usually, where BFEs or base flood depths are not available, flood zone boundaries are delineated with the best available data, including flood maps published by other Federal agencies, information on past floods, and simplified hydrologic and hydraulic analyses. If more detailed data or analyses are submitted, FEMA will use them to update the flood hazard information shown on the affected map panels. Such data and analyses may include the following:

- Published flood maps that are more recent or more detailed than those used by FEMA;
- Analyses that are more detailed than those performed by FEMA or that are based on more detailed data than those used by FEMA;
- Topographic data and resulting updated SFHA boundaries.

For further information on submittals involving topographic data, please refer to the section below *Additional Guidance on Appeal Submittals Involving Topographic Data.*

Please note that, when applicable, appeals related to the *methodology* used to develop an approximate flood zone boundary must follow the guidelines established for appeals to BFEs, base flood depths, SFHA zone designations, or regulatory floodways under Section 3.1 above. However, since flood profiles, FDTs, Summary of Discharges Tables, Transect

Data Tables, and Summary of Stillwater Elevations Tables are not developed in support of approximate floodplain boundaries, these data will not need to be submitted for appeals to flooding sources studied by approximate methods.

All submitted data and analyses must be certified by a Registered Professional Engineer or a Licensed Land Surveyor. Maps prepared by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Bureau of Reclamation, or a State department of highways and transportation, are acceptable without certification as long as the sources and dates of the maps are identified.

Additional Guidance on Appeal Submittals Involving Topographic Data
For appeal submittals that involve topographic data, the following additional guidelines must be followed:

- The data must be more detailed/accurate, and/or reflect more recent topographic conditions, and be in a digital Geographic Information System (GIS) format preferably;
- The appeal submittal must clearly state which flooding sources are being appealed based on the updated topographic data;
- Updated SFHA boundary delineations that reflect the submitted topographic data for each appealed flooding source must also be provided, preferably in digital GIS format;
- All topographic data submitted must adhere to FEMA's current data capture standards for such data;
- If necessary, a data sharing agreement must be provided.

4. Appeal Period Procedures

Appeals and comments must be resolved by following the procedures below:

- Acknowledgement by FEMA of the receipt of an appeal in writing, ensuring that acknowledged appeals include ALL of the criteria discussed above.

- Acknowledge the receipt of comments. This can be done either in writing, by FEMA, or through a documented phone conversation between the mapping partner and the community that submitted the comments. At a minimum FEMA must notify the community in writing that it did not receive any appeals. This can be done by separate correspondence or by the inclusion of language in the Letter of Final Determination (LFD).

- FEMA or the mapping partner will evaluate any scientific or technical data submitted for compliance with existing mapping statues, regulations, or Guidelines and Standards.

- FEMA or the mapping partner will request any additional scientific or technical data required to properly review the appeal or comment.

- FEMA or the mapping partner will make a recommendation to FEMA on the resolution of the appeal or comment.

- FEMA or the mapping partner will prepare a draft appeal resolution letter (if **all** the criteria for an appeal are met).

- The assigned mapping partner shall dispatch the signed FEMA appeal resolution letter and if warranted, Revised Preliminary copies of the FIRM and FIS report to the community CEO and floodplain administrator and all appellants. All correspondence must be prepared and issued on FEMA Headquarters or FEMA Regional letterhead.

- FEMA provides a comment period of 30 days following the date the appeal or comment resolution letter is issued. Any comments received during the 30 day comment period must be addressed and resolved before proceeding with the LFD. Extensions to this 30 day period can only be granted with FEMA Headquarters approval.

5. General Technical Guidance

Detailed guidance on the supporting documentation that must be submitted in support of an appeal can be found in *Appeals, Revisions, and Amendments to National Flood Insurance Program Maps—A Guide for Community Officials.*

Unless appeals are based on the use of alternative models or methodologies, the hydrologic and hydraulic analyses that appellants submit must be performed with the models used for the flood study, PMR, or LOMR. Generally, when appellants are required to submit hydrologic or hydraulic analyses, those analyses must be performed for the same recurrence interval floods as those performed for the flood study, PMR, or LOMR. The vertical datum used in any data submitted must match the datum used in the preliminary FIS report and FIRM. Further, SFHA boundaries are to be shown on a topographic map (preferably, in digital form) whose scale and contour interval are sufficient to provide reasonable accuracy.

New flooding information cannot be added to a FIRM in such a way as to create mismatches with the flooding information shown for unrevised areas. Therefore, in performing new analyses and developing revised flooding information, appellants must tie the new BFEs, base flood

depths, SFHA boundaries, SFHA zone designations, and/or regulatory floodway boundaries into those shown on the maps for areas not affected by the appeal.

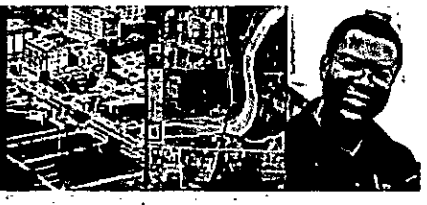
All analyses and data submitted by appellants, including those that show mathematical or measurement errors must be certified by a Registered Professional Engineer or Licensed Land Surveyor, as appropriate.

6. Scientific Resolution Panel (SRP)

FEMA's Scientific Resolution Panel (SRP) process reinforces FEMA's commitment to work with communities to ensure the flood hazard data depicted on FIRMs is built collaboratively using the best science available.

When changes to the FIRMs are met with conflicting technical and scientific data, an independent third party review of the information may be needed to ensure the FIRMs are updated correctly. The SRP serves as the independent third party. To be eligible for an SRP, an appeal must include supporting information or data to substantiate that the BFEs, base flood depths, SFHA boundaries, SFHA zone designations, or floodways proposed by FEMA are scientifically or technically incorrect. An SRP request is an option only after FEMA and a local community have been engaged in a collaborative consultation process for at least 60 days without a mutually-acceptable resolution of an appeal.

FEMA



Scientific Resolution Panels

FEMA's Scientific Resolution Panel (SRP) process reinforces FEMA's commitment to work with communities to ensure the flood hazard data depicted on Flood Insurance Rate Maps (FIRMs) is built collaboratively using the best science available. Flood hazards are constantly changing, and as such, FEMA regularly updates FIRMs through several methods to reflect those changes. When changes to the FIRMs are met with conflicting technical and scientific data, an independent third party review of the information may be needed to ensure the FIRMs are updated correctly. The Scientific Resolution Panel serves as the independent third party.

Who can request an SRP?

A community, Tribe or political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction can request FEMA use the SRP when conflicting data are presented. Chief Executive Officers or authorized community representatives must make or endorse the SRP request if they did not develop or propose the conflicting technical data.

When can communities request an SRP?

A community can request an SRP if it has:

- Not received a Letter of Final Determination (LFD);
- Submitted an appeal during the 90-day appeal period with scientific or technical data resulting in different flood hazards than those proposed by FEMA;
- Allowed at least 60 days of community consultation with FEMA (but no more than 120 days).

Additionally, a community that has received a FEMA-issued appeal resolution letter and has not exercised the SRP process will have 30 days from the issuance of the letter to request an SRP.

Independent Panel Sponsor

The SRP process is managed by the National Institute of Building Sciences (NIBS), a non-profit organization independent from FEMA. NIBS will act as the Panel Sponsor, coordinating the SRPs, ensuring that proper regulations and procedures are employed and maintaining a cadre of experts from which Panel members are selected.

Panel Member Selection

For each appeal, an SRP (or Panel) of three or five members will be convened. Panel members are technical experts in surface water hydrology, hydraulics, coastal engineering, and other engineering and scientific fields that relate to the creation of Flood Hazard Maps and Flood Insurance Studies throughout the United States.

Based on the technical specifications of the appeal, NIBS will develop a list of potential panel members with relevant expertise from its cadre of experts. NIBS will ensure that there is no conflict of interest amongst the panel members. NIBS will confirm that members do not reside in the state from which the appeal is taken and have no personal or professional interest in its findings of the appeal.

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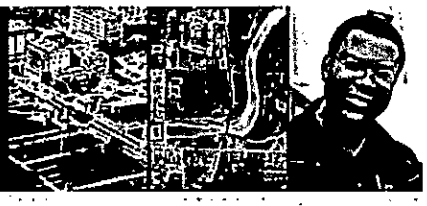
Increasing Resilience Together



NIBS will provide the list of eligible panel members to the community and FEMA. The community selects the majority (in the case of a five-member Panel, the community selects three), and FEMA selects the minority (in the case of a five-member Panel, FEMA selects two).

The Process

To request an SRP, the Chief Executive Officer of a community or authorized representative completes an SRP Request Form and submits it to FEMA during the time periods outlined above.

Once FEMA confirms the appeal is eligible for an SRP, FEMA will forward the SRP Request form to NIBS to initiate the Panel selection process and develop a list of potential members.

Once the Panel is convened, Panel members will be provided with a summary of the issue, FEMA's data, and the data the community submitted during the 90-day appeal period. Panel members will review the data and, on a point-by-point basis, deliberate and make a decision based on the scientific and technical challenges of the appeal.

If the community feels it is necessary to make an oral presentation in support of its appeal, it must include a justification on the SRP Request Form.

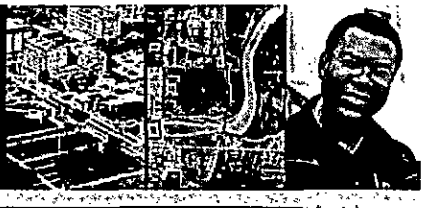
Resolution

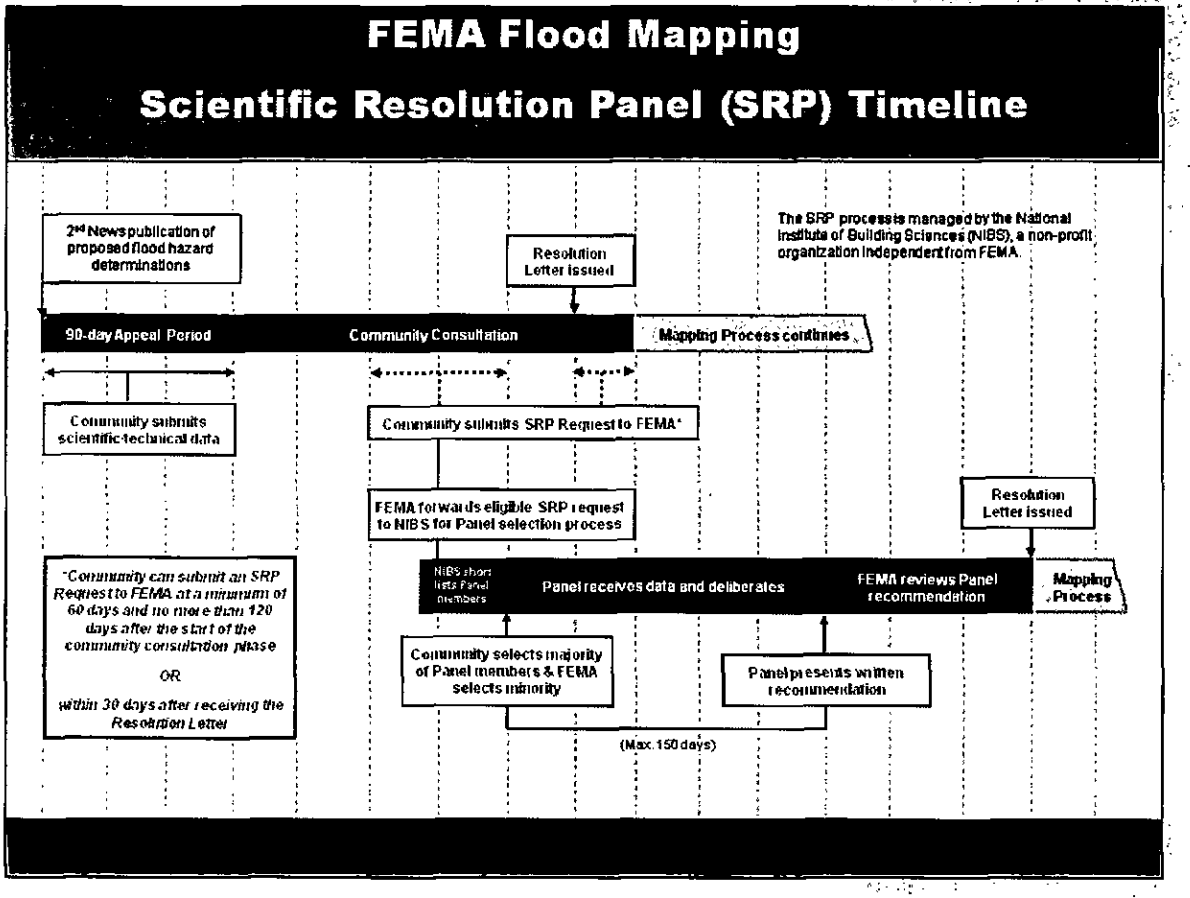
The Panel will render a written recommendation to FEMA, based on the scientific and technical data submitted by the community and FEMA. The recommendation may either deny the community's data or incorporate it in part or in whole into the FIRM. For an appeal to be incorporated, the community's data must satisfy the NFIP standards for flood hazard mapping.

The Panel will present a written report with its decision and rationale to FEMA and the community no later than 150 days after being convened. The SRP's decision will become the recommendation provided to the FEMA Administrator. Once a final determination has been made, FEMA will issue a resolution letter. If changes to the maps are made, FEMA will incorporate the changes into revised preliminary FIRM panels and Flood Insurance Study. These changes will be made available to the community with a resolution letter for review prior to the issuance of an LFD.

Once a determination is made and a resolution letter is issued, the community will not be able to re-submit an appeal of the proposed flood hazard information nor request an SRP again. If the community is not satisfied with the recommendation of the Panel or the determination of the FEMA Administrator, it may appeal to the appropriate United States District Court, as outlined in Section 67.12 of the National Flood Insurance Program (NFIP) regulations.

FEMA





For Additional Information

For more information on appeals, see the FEMA document: *Appeals, Revisions, and Amendments to National Flood Insurance Program Maps: A Guide for Community Officials*.

Part 67 of the NFIP regulations, which pertains to appeals, is available on the "Forms and Publications" section of FEMA's Flood Hazard Mapping website at www.fema.gov/fhm.

Other Important Links www.floodSRP.org www.fema.gov/plan/prevent/fhm/st_hot.shtm#2

Status of Map Change Requests: http:/www.fema.gov/plan/prevent/fhm/st_main.shtm

Risk MAP: www.fema.gov/plan/prevent/fhm/rm_main.shtm

Flood Hazard Mapping Annex: www.floodmaps.fema.gov

Flood Insurance: www.floodsmart.gov

RiskMAP
Increasing Resilience Together

Correspondence #5
10/11/2012

TOWN OF KINGSTON
KINGSTON TOWN WATER UTILITY
HC 65 BOX 130 KINGSTON
AUSTIN, NEVADA 89310
775 964-2120
kingstonh2o@starband.net

Members:
June Manhire
Don Haines
Rosalie Zamora
Ann Miles
Betty Kemp

September 27, 2012

Bert Ramos, Supervisor
Lander County Road and Bridge South
PO Box 63
Austin, NV 89310

Dear Bert,

The Kingston Town Board and Kingston residents would like express our gratitude for your swift and able response to the flash flooding that occurred in Kingston in August. We appreciate that you and your crew could get to Kingston quickly and start making the roads passable, especially when the second flood happened right before the Labor Day weekend. You and your crew did an excellent job of fixing the roads in the weeks after the floods and also in finishing the shoulder work that completed the asphalt job. Please extend our thanks to your crew and also to Donna who does a fantastic job in the office.

Sincerely,

June Manhire

June Manhire, Chairman, Town of Kingston

Cc: Lander County Commissioners

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OCT 0 3 2012
COUNTY COMMISSION

Correspondence #6
10/11/2012

J-U-B COMPANIES | THE LANGDON GROUP | GATEWAY MAPPING INC.

J-U-B ENGINEERS, INC.

October 2, 2012

Mr. Gene Etcheverry, Lander County Executive Director
315 South Humboldt Street
Battle Mountain, NV 89820

RE: **COUNTY ENGINEER POSITION - LANDER COUNTY**

Dear Mr. Etcheverry:

Lander County is an important client for J-U-B and we have truly enjoyed and appreciated the opportunity to serve you and the Commissioners as your airport engineer for the Battle Mountain and Austin Airports. Based upon recent internal conversations with Lew Lott and J.D. Heithoff, it is our understanding that the County will be going out for formal selection of a new County Engineer consultant in the very near future.

J-U-B submitted our interest for this position in August of 2009 and is very interested in again pursuing this position with the County. We believe this is a tremendous opportunity to provide you with the same client care and technical expertise that you have become accustomed to with your airports on a county wide basis.

The vast majority of J-U-B's experience over the last 60+ years has been serving municipalities (cities and counties) throughout the Western United States who have faced and successfully solved many of the same issues currently challenging Lander County. We have technical experts with water and pavement systems as well as expertise in all aspects of civil engineering, planning, design, and construction that are necessary to provide you with a "full suite" of engineering services.

We look forward to providing the County with a full Statement of Qualifications over the next few weeks as a part of your formal selection process. We also understand that transitions from an existing consultant (particularly in the middle of on-going projects) can be a very challenging time for you and your staff. Please know that our staff is available to provide any technical support you may need through this transition as an "interim engineer" to the County. That work can be done as an addendum to our Airport Engineering Contract or through a separate agreement. It is understood that the value of the "interim" work would stay below $35,000 in costs to comply with Nevada's engineering selection statute.

RECEIVED
OCT 04 2012
COUNTY COMMISSION

a 250 S. Beechwood Avenue, Suite 201, Boise, ID 83709-0944 *p* 208-376-7330 *f* 208-323-9336 *w* www.jub.com

Please feel free to call me at 208-376-7330 if you have any questions or would like to discuss this letter in more detail. Thank you again for the opportunity to work with Lander County.

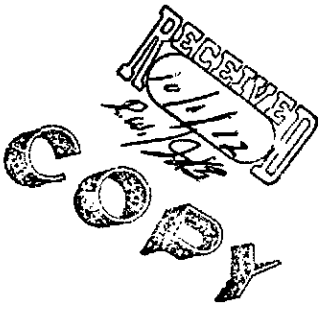
We look forward to successfully continuing to be the county's trusted advisor and an extension of your staff for many years to come.

Sincerely,

J-U-B ENGINEERS, Inc.

Timothy Haener
Executive Vice President

Correspondence #7
10/11/2012



8245 N 27th Ave #2086

Phoenix, AZ 85051

9/18/2012

Re: Acct 161 and other concerns

Hello Commissioners and Water/Sewer,

I was bothered as to why I kept incurring charges beyond my monthly water payment, so I recently requested an itemization of my billing account. What I received dates back to October 2011. For the most part, my independent audit shows the charges you have are correct, with the exception of the interest calculation on June 20th. This was an error in my favor and caused a snowball effect up to the current billing cycle. I will initiate a payment for the correct amount of 42.65.

Much of the late charges you have assessed are upsetting to me because there was apparently a rate change for which I was not notified, as well as an increase in late charges- to 3% it would appear. Since it is apparent you have been receiving my payments, and that you also must have had my current address on my checks, was it not questionable why I was paying the old rate (for over a year) instead of the new? I make these payments automatically through bill pay and was not alarmed at not receiving a bill recently.

As far as the March/April months I missed, that was an error on my part in which I sent the payment to the assessor's office rather than yours. I accept responsibility for my mistake and gladly assume those late charges. In the future, please use the address on my checks to notify me of rate changes. I hope they do not occur for those of us who are not actually using the services. It is a bit excessive to expect nearly $200 a year for an unlivable property that is not utilizing services. That is, unfathomably, more than my taxes themselves. I expect no action by the Water/Sewer dept regarding this letter, but Commissioners please read on, as this prompts me to take the opportunity to address other concerns.

I believe your rates have increased in the neighborhood of 100% over the past 10 years. At what point do you stop bilking property owners for services not even being utilized? Your surpluses should be showing up in rate reductions. As a taxpayer in Lander County, I request that you hire an MBA or MPA Consultant to determine the relevance of expenditures and reallocate wasteful spending to those areas of greater need (not just a required audit of the financial statements). The individual accounts and funds should be analyzed. While fiscal conservatism and construction projects may seem useful, I hope the county is considering the

useful life and residual expenses and will consider the benefits of investing in the people, as well.

AUSTIN: I would not have such an issue with paying these "hidden taxes" if needed public services were being provided in Southern Lander County. The emergency services situation there is shameful and it is your job to assure the safety of ALL of the residents and visitors of the county. Review of your statements indicates you have the ability to do so, utilizing a period of recent growth, due mainly to mining. Yet, even less has been provided for public services - especially for Austin. The large drop in grant revenue is of concern as well, for this is an excellent means for obtaining funding for public services and safety net services. What about educating the residents to meet their needs? Do you have funding in place for EMS, Fire, Public Health, and Emergency Management/Disaster education? Where do the schools and programs for the children fit into the mix?

Obviously, I am not able to see the whole picture without an intensive analysis, but as someone who is highly trained in such matters, and as someone who has a vested interest in Southern Lander County, I must pay attention. I look forward to a day, in the near future, where I can visit my home in Austin and know that help will be there if needed.

Respectfully,

X

Toni M Parks
MBA-hcm

Ton M. Parks - digitally signed

distribution:

Lander County Sewer and Water

Lander County Commissioners